



City of Riverbank
Planning Commission Meeting
City Hall North • Council Chambers
6707 Third Street • Suite B • Riverbank • CA 95367

Agenda

Tuesday, December 20, 2016 – 6:00 P.M.

CALL TO ORDER: Chair: Villapudua

ROLL CALL: Chair: Villapudua
Vice Chair: McKinney
Commissioner: King
Commissioner: Stewart
Commissioner: Tabacco

CONFLICT OF INTEREST

Any Planning Commission Member or Staff who has a direct Conflict of Interest on any scheduled agenda item to be considered is to declare their conflict at this time.

1. PUBLIC COMMENTS (No action to be taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the Planning Commission Board. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the Planning Commission Board.

2. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the Planning Commission Board unless otherwise requested by an individual Planning Commissioner Member for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item 2.A: Posting of the Agenda. The Agenda for the December 20, 2016, Planning Commission Meeting was posted on the City Community Center bulletin board, City Hall North & South bulletin boards, Post Office, city website and emailed to the Library on December 15, 2016.

Item 2.B: Approval of the Agenda. This provides an opportunity for the Planning Commission or Staff to recommend that an item be placed on the agenda for discussion or to adjust the proposed agenda to allow an item to be taken out of order.

Item 2.C: Approval of the Minutes of the March 15, 2016 Planning Commission Meeting, having been read by the individual Commissioners and stands approved as submitted. *Abstain from voting Commissioners: McKinney and Stewart.*

Item 2.D: Approval of the Minutes of the August 16, 2016 Planning Commission Meeting, having been read by the individual Commissioners and stands approved as submitted. *Abstain from voting Commissioner: King.*

Recommendation: It is recommended that Planning Commission approve the Consent Calendar by roll call vote.

3. PUBLIC HEARINGS

The Public Hearing Notice for Public Hearing Items 3.1, 3.2 & 3.3 was published in the Riverbank News on 12/07/2016.

Item 3.1: Development Agreement No. 01-2016 / Dept. File# 16-0014 – Hayes 4, Phase 2 Tentative Map 07-2004 – Resolution 2016-018 and recommend to City Council approval of an Ordinance - The project consists of a Development Agreement to clarify the original conditions of map approval specific to the Hayes 4, Phase Two development, adds map life, clarifies storm water drainage concepts and conditions of approval. The project consist of 9.40 gross acres and would result in 49 single-family detached residential lots consists of about 5,000 square feet (overall density of 5.21 du/gross acre), a 0.98 park/basin, and associated street, sewer, water, and storm drainage improvements. The project site has a General Plan Land Use Designation of Low Density Residential (LDR) and is Zoned Single Family Residential (R-1). **Location:** The proposed project is located in Riverbank and is bounded by Central Avenue to the East and is directly South of California Avenue. The project site is further identified as APN 062-022-003.

Pursuant to the California Environmental Quality Act (CEQA), an Initial Study has been prepared by the Lead Agency (City of Riverbank). This Initial Study (IS) has been circulated to the Governor's Office of Planning and Research (OPR) for consultation with other Responsible Agencies as SCH# 2016092072. The review period for the Initial Study closed on October 31, 2016 and all comments received have been incorporated into the revised IS presented in the Public Hearing. Based on the IS it has been determined that the proposed Project would not have a significant effect on the environment.

Recommendation: Approval by roll call vote

Item 3.2: TPM 02-2016 / Dept. File# 16-0008 / Resolution 2016-019 – Marlene Kuffel – request to divide one (1) large parcel into four (4) lots of 5,000 square feet each and a remainder. The General Plan designation for the site is Mixed Use (MU). CEQA Categorical Exemption: Article 19, Section 15315 Minor Land Division & Section 15332 In-Fill Development Projects. **Location:** 0 Ward Avenue, APN: 075-010-065 and APN: 075-010-064.

Recommendation: Approval by roll call vote

Item 3.3: Revocation of Conditional Use Permit No. 05-2007 and Business License / Resolution 2016-020 - Action on Code Enforcement Case #2015-0209 for 209 Concepts – **Location:** 6607 Callander Avenue, APN: 075-004-046. Repeated violations of the City's zoning code and conditions of approval of CUP 05-2007 have resulted in the City's decision to move forward to revoke the conditional use permit on the property.

Recommendation: Approval by roll call vote

4. PLANNING COMMISSION

Item 4.1: Annual Nomination and Apppointment of Chair and Vice Chair – Per Planning Commission Rules and Procedures.

5. COUNTY REFERRAL/CORRESPONDENCE/INFORMATION (Information Only – No Action)

Item 5.1: Del Rio Tank and Wells Project. CEQA comment period November 7 - December 22, 2016.

6. UP-COMING MEETING AGENDA ITEMS (Information Only – No Action)

Item 6.1: CUP 02-2016 – Mobilitie, LLC – request to install antennas within city light poles within city rights-of-way at various locations throughout the city, including one (1) located at Oakdale Road and Patterson Road. Site ID: 9CAB009302-A.

Item 6.2: Architecture and Site Plan Review 03-2016 – Jason Huckabee – request for architecture and site plan review of the Del Rio Theater building located at 3300 Atchison within the Downtown Specific Plan area. The proposed project includes a remodeled restaurant/piano bar, coffee shop with drive-thru, and banquet hall, a Conditional Use Permit for serving alcohol and a future lot merge. APN: 132-009-001.

Item 6.3: Development Agreement 01-2016 – Chris Hayes – approval of a Development Agreement between the City and the developer of the Hayes 4 Phase 1 subdivision. Property is located at Claus Road and Central Avenue. APN 062-022-022/-019.

7. ADJOURNMENT – The next regular Planning Commission meeting – January 17, 2017 @ 6:00 p.m.

AFFIDAVIT OF POSTING

I, Janet Smallen, do hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted 72 hours to the meeting in accordance to the Brown Act.

*Posted this 15th day of December, 2016
Janet Smallen, Sr. CDS*

NOTICE REGARDING AMERICANS WITH DISABILITIES ACT: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Development Services Department at (209) 863-7128 or jsmallen@riverbank.org. Notification 72-hours before the meeting will enable the City to make reasonable arrangements to ensure any special needs are met. [28 CFR 35.102-35.104 ADA Title II].

NOTICE REGARDING NON-ENGLISH SPEAKERS: Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank City Planning Commission shall be in English and anyone wishing to address the Planning Commission is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

GENERAL INFORMATION: The Riverbank Planning Commission meets on the third Tuesday of each month at 6:00 p.m.

COMMISSION AGENDAS: The Planning Commission agenda is posted pursuant to the California Brown Act, which only requires these agenda title pages to be posted near the entrance of the location where the meeting is to be held and, when technologically able, on the City's website. Additional documents may be provided by the City in its efforts of transparency to keep the public well informed. The agenda packet (agenda plus supporting documents) are posted for public review at the Development Services Department, 6617 Third Street, Riverbank, CA and at www.riverbank.org upon distribution to a majority of the Planning Commission. A subscription to receive the agenda can be purchased for a nominal fee through the City Clerk's Office.

PUBLIC HEARINGS: In general, a public hearing is an open consideration within a meeting of the Planning Commission Board, for which special notice has been given and may be required. During a specified portion of the hearing, any resident or concerned individual is invited to present protests or offer support for the subject under consideration.

Televised/Video of Meetings: Charter – Channel 2; AT&T Uverse – Channel 99
Visit www.riverbank.org to connect to meeting videos. (Note: Technical difficulty occurs on occasion preventing the televising or recording of the meeting.)

City Hall Hours: City Hall is open Monday – Thursday: 7:30 am – 5:30 pm and Fridays: 8:00 am – 5:00 pm; CLOSED alternating Fridays.

QUESTIONS: Contact the Developmental Services Department at (209) 863-7128.

Any documents that are not privileged or part of a Closed Session provided to a majority of the Planning Commission after distribution of the agenda packet, regarding any item on this agenda, will be made available for the public inspection at North City Hall, 6707 Third Street, Riverbank, CA during normal business hours.



City of Riverbank Development Services Department

Planning Division ≈ Building Division ≈ Neighborhood Improvement Division

6707 Third Street, Riverbank, CA 95367 Office (209) 863-7128 FAX (209) 869-7126

PUBLISH DATE: December 7, 2016
DEPT: PLANNING

LEGAL

CITY OF RIVERBANK **NOTICE OF PUBLIC HEARING**

Project Description: Development Agreement No. 01-2016 / Dept. File# 16-0014 – Hayes 4, Phase 2 Tentative Map - The project consists of a Development Agreement to clarify the original conditions of map approval specific to the Hayes 4, Phase Two development, adds map life, clarifies storm water drainage concepts and conditions of approval. The project consist of 9.40 gross acres and would result in 49 single-family detached residential lots consists of about 5,000 square feet (overall density of 5.21 du/gross acre), a 0.98 park/basin, and associated street, sewer, water, and storm drainage improvements. The project site has a General Plan Land Use Designation of Low Density Residential (LDR) and is Zoned Single Family Residential (R-1). **Location:** The proposed project is located in Riverbank and is bounded by Central Avenue to the East and is directly South of California Avenue. The project site is further identified as APN 062-022-003.

Pursuant to the California Environmental Quality Act (CEQA), an Initial Study has been prepared by the Lead Agency (City of Riverbank). This Initial Study (IS) has been circulated to the Governor's Office of Planning and Research (OPR) for consultation with other Responsible Agencies as SCH# 2016092072. The review period for the Initial Study closed on October 31, 2016 and all comments received have been incorporated into the revised IS presented in the Public Hearing. Based on the IS it has been determined that the proposed Project would not have a significant effect on the environment.

Project Description: TPM 02-2016 / Dept. File# 16-0008 – Marlene Kuffel – request to divide one (1) large parcel into four (4) lots of 5,400 square feet each and a remainder. The General Plan designation for the site is Mixed Use (MU). CEQA Categorical Exemption: Article 19, Section 15315 Minor Land Division & Section 15332 In-Fill Development Projects. **Location:** 0 Ward Avenue, APN: 075-010-065 and APN: 075-010-064.

Project Description: Revocation of Conditional Use Permit No. 05-2007 and Business License - Action on Code Enforcement Case #2015-0209 for 209 Concepts – **Location:** 6607 Callander Avenue, APN: 075-004-046.

Planning Commission Meeting
December 20, 2016 at 6:00 pm
City Hall Council Chambers - 6707 Third Street - Riverbank, California

ALL INTERESTED PARTIES are invited to attend the public hearing on **December 20, 2016** at the time and place specified above to express opinions or submit evidence for or against the subject matter being considered. Written comments via e-mail to dkenney@riverbank.org by postal service, or hand delivered to **6707 Third Street, Suite A, Riverbank, California, 95367**, will be accepted by the Development Services Department **up to 5:00 p.m.** on said date. All written comments received by said time will be distributed to the Planning Commission for consideration. Oral comments will be received by the Planning Commission **prior to** the close of the Public Hearing on the subject matter being considered. The Planning Commission will receive all testimony prior to taking action. Testimony cannot be given over the telephone. If you challenge the City's action on these matters in court, you may be limited to raising only those

issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City at, or prior to, the public hearing.

Meeting facilities are accessible to persons with disabilities. Any person requiring special assistance to participate in the meeting should notify the Administration Dept. at (209) 863-7122 or cityclerk@riverbank.org at least seventy-two (72) hours prior to the meeting. For questions regarding the public hearing matter contact Donna Kenney, Planning & Building Manager, at (209) 863-7124; dkenney@riverbank.org.

Any public record materials pertaining to the presentation of the subject matter being considered will be made available for review at the Development Services Counter at 6717 Third Street, Riverbank, and (if technologically possible) at <http://www.riverbank.org/Depts/planning/default.aspx> upon distribution to a majority of the Planning Commission (typically 72 hours prior to the meeting).



City of Riverbank
Planning Commission Meeting
6707 Third Street • Riverbank • CA 95367

MINUTES
Tuesday, March 15, 2016

The following minutes reflect action minutes, with added clarification for the record. A copy of the verbatim recording may be obtained, for a fee, by contacting the Development Services Department at (209) 863-7128.

CALL TO ORDER/ROLL CALL:

Present: Chair Villapudua, Commissioner King and Commissioner Tabacco

Absent: Commissioner: McKinney and Stewart

CONFLICT OF INTEREST: Any Planning Commissioner and Staff who would have a direct Conflict of Interest on any scheduled agenda item to be considered are to declare their conflict.

Commissioner King stated he would not be able to vote on the minutes from the January 19th Special Planning Commission Meeting as he was absent from the meeting.

1. PUBLIC COMMENTS (No action to be taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the Planning Commission. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the Planning Commission.

None

2. CONSENT CALENDAR

All items on the Consent Calendar are to be acted upon by a single action of the Planning Commission unless otherwise requested by an individual Planning Commissioner for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item No. 2.A: Posting of the March 15, 2016, Planning Commission Meeting.

ACTION: *By motion moved/second (Tabacco / King / passed 3-0) was approved as submitted; motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: Villapudua, King and Tabacco

Nays: None

Absent: McKinney and Stewart

Abstained: None

Item No. 2.B: The Agenda for the March 15, 2016, Planning Commission Meeting.

ACTION: *By motion moved/second (Tabacco / King / passed 3-0) was approved as submitted; motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: Villapudua, King and Tabacco

Nays: None

Absent: McKinney and Stewart

Abstained: None

Item No. 2.C: The Minutes of the February 29, 2016 Special Planning Commission Meeting, was continued until the next Planning Commission Meeting.

ACTION: *Item was not voted on and was continued until the next Planning Commission Meeting due to lack of quorum on this item.*

3. PUBLIC NOTICE

Item 3.1: Lee Sandoval / Proposal for Parcel Map 01-2016. Project Description: The applicant is requesting to divide an existing parcel containing one dwelling unit into two parcels. The Project is exempt from the requirements of CEQA Guidelines pursuant to Section 15315 Minor Land Divisions. Property is located at 6125 Roselle Avenue, APN: 132-063-001 and is rezoned Single Family Residential (R-1). The General Plan designation for the site is Low Density Residential (LDR).

- Donna M. Kenney introduced item 3.1 and presented the PowerPoint.
- Planning Commission discussed item and asked Donna M. Kenney questions about the project.
- Donna M. Kenney responded to the Planning Commissions questions.
- Public Hearing was opened at 6:16 p.m.
- Applicant Lee Sandoval spoke on behalf of his project.
- Being there were no further comments the Public Hearing was closed

ACTION: *By motion moved/second (Tabacco / King / passed 3-0) was approved as submitted; motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: Villapudua, King and Tabacco

Nays: None

Absent: McKinney and Stewart

Abstained: None

Item 3.2: Mark Wilbur / Diamond Bar West proposal for Architectural and Site Plan Review Application No. 01-2016. Project Description: The applicant is requesting the Architectural and Site Plan Review of single family dwelling units for 58 lots in the Diamond Bar West subdivision. The architectural review of structures for an approved subdivision is not a Project pursuant to CEQA Guidelines. Property is located at Santa Fe Street and Central Avenue, APNs 062-020-005/-019/-027 and is zoned Planned Development (PD). The General Plan designation for the site is Low Density Residential (LDR).

- Donna M. Kenney presented the staff report and PowerPoint on item 3.2.
- Planning Commission discussed item and asked Donna M. Kenney questions about the project.
- Villapudua asked about the No Parking within cul-de-sacs.

- King asked about the difference of Negative Declaration and Mitigated Negative Declaration.
- Tabacco commented that he liked the single story and front porches.
- Tabacco asked about green areas for the Diamond Bar West and the concern that the residents had to travel to parks.
- Donna M. Kenney responded to the Planning Commissioners questions.
- Villapudua had to leave the meeting early and had excused himself.
- Due to the fact that we had two absent Commissioners and the Chair Villapudua, having to leave early left us with no quorum, to vote on item 3.2.
- Public Hearing was opened at 6:31 p.m.
- Jolene Anderson resident that lives next to the project asked if she would be required to hook up to city sewer and water. Also stated that the sidewalk is taking up her property frontage and her circular driveway will be taken away.
- Gnapp Quen resident that lives next to the project had the same concerns about her sewer and water connections.
- Donna M. Kenney informed the two residents that they would not be required to hook up to city services, unless they made improvements to their property that were over the threshold limit of \$10,000.00.
- Applicant Mark Wilbur spoke on behalf of his project.
- Jerry Anderson resident that lives next to the project asked what the city setbacks are from the street to the house/garage.
- Donna M. Kenney provided the setbacks per our zoning ordinance.
- Being there were no further comments the Public Hearing was closed at 6:39 p.m.

ACTION: *Item 3.2 was Continued until the next Planning Commission Meeting due to lack of quorum.*

4. COMMISSION ITEMS (Information Only – No Action)

Item 4.1: Update on the Planning Commission Academy held March 4-6, 2016. – Commissioners discussed their thoughts on the Planning Commission Academy they attended.

5. COUNTY REFERRAL/CORRESPONDENCE/INFORMATION (Information Only – No Action)

None

6. UP-COMING MEETING AGENDA ITEMS (Information Only – No Action)

Item 6.1: Diamond Bar West – Final Subdivision Map. Applicants are working on the plans for utilities and streets.

Item 6.2: RFP process for comprehensive Zoning Code update, including the Sign Ordinance.

7. NEW BUSINESS (Information Only – No Action)

Item 7.1: Crossroads Shopping Center, Pad “C” Update - Panda Express (open), Chipotle (open), Dickey’s BBQ Pit (open), AT&T Store (open), and Five Guys (will open in March).

Item 7.2: Crossroads Shopping Center, Pad “G” Update – (next to Bevmo) America’s Tire plans in review.

8. ADJOURNMENT – There being no further business, the meeting was adjourned at 6:43 p.m.

ATTEST:

APPROVED:

Donna M. Kenney
Recording Secretary

Carlos Villapudua, Chair
Planning Commissioner



City of Riverbank
Planning Commission Meeting
6707 Third Street • Riverbank • CA 95367

MINUTES
Tuesday, August 16, 2016

The following minutes reflect action minutes, with added clarification for the record. A copy of the verbatim recording may be obtained, for a fee, by contacting the Development Services Department at (209) 863-7128.

CALL TO ORDER/ROLL CALL:

Present: Chair Villapudua, Vice Chair McKinney, Commissioner Stewart, and Commissioner Tabacco

Absent: Commissioner: King

CONFLICT OF INTEREST: Any Planning Commissioner and Staff who would have a direct Conflict of Interest on any scheduled agenda item to be considered are to declare their conflict.

No one declared a conflict.

1. PUBLIC COMMENTS (No action to be taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the Planning Commission. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the Planning Commission.

None

2. CONSENT CALENDAR

All items on the Consent Calendar are to be acted upon by a single action of the Planning Commission unless otherwise requested by an individual Planning Commissioner for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item No. 2.A: Posting of the August 16, 2016, Planning Commission Meeting.

ACTION: *By motion moved/second (Stewart / McKinney / passed 4-0) was approved as submitted; motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: Stewart, Tabacco, McKinney, and Villapudua

Nays: None

Absent: King

Abstained: None

Item No. 2.B: The Agenda for the August 16, 2016, Planning Commission Meeting.

ACTION: *By motion moved/second (Stewart / McKinney / passed 4-0) was approved as submitted; motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: Stewart, Tabacco, McKinney and Villapudua

Nays: None

Absent: King

Abstained: None

Item No. 2.C: The Minutes of the March 15, 2016 Planning Commission Meeting, having been read by the individual Commissioners was continued until the next Planning Commission Meeting of September 20, 2016.

ACTION: *Item was not voted on and was continued until the next Planning Commission Meeting due to lack of attendees on this item.*

Item No. 2.D: The Minutes of the July 19, 2016 Planning Commission Meeting, having been read by the individual Commissioners and stands approved as submitted.

ACTION: *By motion moved/second (Stewart / McKinney / passed 3-1) was approved as submitted; motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: McKinney, King, and Stewart

Nays: None

Absent: King

Abstained: Tabacco

3. PUBLIC NOTICE

Item 3.1: City initiated General Plan Amendment: This project involves a General Plan Amendment to modify the typical street design by classification and type illustrated in Table CIRC-2 of the Riverbank 2005-2025 General Plan Circulation Element. The existing Table CIRC-2 is confusing in many ways. The existing table suggests the creation of right of way width dedications which do not appear to be realistic and the creation of drainage swales behind sidewalks away from the street sections. The proposed new Table CIR-2 is in keeping with current and projected right of way demands as well as the obligations for properly treating storm water run-off through roadside drainage swales and treatment devices.

- Donna Kenney presented item 3.1 and presented the PowerPoint on item 3.1.
- Planning Commissioners asked questions pertaining item 3.1.
- Donna Kenney responded to their question they had.
- Being that the Commission had no further comments.
- Public Hearing was opened at 6:11 p.m.
- Evelyn Halbert had question to how it would affect existing streets.
- Donna Kenney responded to Evelyn's question that it would not affect existing streets.
- Being there were no additional comments the Public Hearing was closed at 6:15 p.m.

ACTION: *By motion moved/second (Stewart / McKinney / passed 4-0) was approved as submitted; motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: Villapudua, McKinney, Tabacco, and Stewart

Nays: None

Absent: King

Abstained: None

4. COMMISSION ITEMS (Information Only – No Action)

Item 4.1: A Resolution of the City Council of the City of Riverbank Approving and Adopting a 5-year Capital Improvement Plan (CIP) for Fiscal Years 2016-2021.

- Donna Kenney presented the information for the (CIP) for Fiscal Years 2016-2021.
- Planning Commissioners asked Donna Kenney some questions about the CIP.
- Donna Kenney answered there questions they had.

5. COUNTY REFERRAL/CORRESPONDENCE/INFORMATION (Information Only – No Action)

Item 5.1: Public Notice received from Stanislaus County that they will be updating there General Plan. Donna Kenney had received this information after the agenda was sent out so it was not on the agenda, but added at the meeting.

6. UP-COMING MEETING AGENDA ITEMS (Information Only – No Action)

Donna updated Commission on these items.

Item 6.1: Diamond Bar West – Final Subdivision Map

Item 6.2: Hayes 4 Phase 1 – Development Agreement and Initial Study

Item 6.2: Monterosso – Final Subdivision Map

Item 6.3: Ward Villas – Final Subdivision Map

Item 6.4: Diamond Bar East – Final Subdivision Map

7. NEW BUSINESS (Information Only – No Action)

Item 7.1: Donna Kenney updated Commissioner's on Commissioner Stewart's concerns from the July 19, 2016 meeting on neglected properties through out Riverank.

8. ADJOURNMENT – There being no further business, the meeting was adjourned at 6:30 p.m.

ATTEST:

APPROVED:

Donna M. Kenney
Recording Secretary

Carlos Villapudua, Chair
Planning Commissioner

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

ITEM NO:	3.1	December 20, 2016
APPLICATION:	Development Agreement No. 01-2016 – Countryside, formerly known as Hayes 4, Phase Two Tentative Map – APN: 062-022-003. The project consists of a Development Agreement that clarifies the original conditions of map approval specific to the Hayes 4, Phase Two development, adds map life, clarify storm drainage concepts and conditions of approval. The project consists of 9.40 gross acres and would result in 49 single-family detached residential lots consisting of about 5,000 square feet (overall residential density 5.21 du/gross acre), a 0.98 park/basin, and associated street, sewer, water, and storm drainage improvements.	
OWNER:	McRoy-Willbur Communities, Inc. and James A Aartman 2909 Coffee Road, Suite 12A Modesto, CA 95355	
APPLICANT:	McRoy-Wilbur Communities, Inc. and James A. Aartman 2909 Coffee Road, Suite 12A Modesto, CA 95355	
ENGINEER:	Don Hicks Benchmark Engineering, Inc. 1121 Oakdale Road, #1 Modesto, California, 95355	
LOCATION/APN:	The proposed project is west of Clause Avenue and bounded by Central Avenue to the east, and directly south of California Avenue. The project site is further identified as being Assessor Parcel Number (APN) 062-022-003.	
GENERAL PLAN:	Current: Low Density Residential (LDR)	
ZONING:	Current: Single Family Residential (R-1)	

**ENVIRONMENTAL
DETERMINATION:**

Pursuant to the California Environmental Quality Act, the City of Riverbank as the Lead Agency prepared an Initial Study. The Initial Study was circulated to the Governor's Office of Planning and Research for consultation with other Responsible Agencies as SCH# 2016092072. The review period for the Initial Study closed on October 31, 2016 and all comments received were incorporated into the revised Initial Study presented with this staff report.

Based on the findings of the Initial Study, the proposed Project would not have a significant impact on the environment.

PROJECT PLANNER: John B. Anderson, Contract Planner

RECOMMENDATION: Planning Staff recommends that the Planning Commission adopt a resolution recommending approval of the proposed project based on the analysis presented below and the findings published in the Initial Study for the Hayes 4, Phase Two Development Agreement.

ACRONYMS:

LDR – Low Density Residential
DU – Dwelling Unit
CEQA – California Environmental Quality Act
IS – Initial Study
RMC – Riverbank Municipal Code
DA – Development Agreement
TM – Tentative Subdivision Map
COA – Conditions of Approval
PD – Planned Development
LAFCO – Local Agency Formation Commission

ATTACHMENTS:

1. Vicinity Map and General Plan Map
2. Hayes 4, Phase Two Plans
3. Hayes 4, Phase Two Street Width Cross-Sections
4. Hayes 4, Phase Two DA - Initial Study
5. Hayes 4, Phase Two DA
6. Draft Planning Commission Resolution recommending approval of the proposed Ordinance to support the DA

I. EXECUTIVE SUMMARY

The Hayes 4, Phase Two development (the “Project”) consists of a Development Agreement to (1) clarify the original conditions of a Tentative Subdivision Map approval specific to Hayes 4, Phase Two, (2) extend the map life and (3) set forth criteria for the ultimate development of a Park/Storm Drainage Basin. The City approved both projects, Hayes 4, Phase One and Hayes 4, Phase Two, under a common set of conditions. The Conditions of Approval applied to both Phases, because in 2007, a common interest controlled both properties. In the interim, ownership interests have changed, and each Phase is now owned by separate entities. The property owners for each Phase wish to develop their respective properties independently. The original Conditions of Approval stipulated for improvements that benefited the entire area collectively. As a result of the altered ownership interests, compliance with the original Conditions of Approval for the Tentative Subdivision Maps would have been nearly impossible without clarification.

II. BACKGROUND

The Project is located on the Western edge of Riverbank and is west of Claus Avenue and bounded by Central Avenue to the east, is directly north of Kentucky Avenue, and directly South of California Avenue. Site consists of an irrigation pasture with no infrastructure improvement and a single family dwelling unit currently exists on the Project site. The Project site is surrounded by lands transitioning to more urban uses, but consists primarily of ranchette parcels. Riverbank High School is located immediately north of the site.

Stanislaus County LAFCo approved the City’s annexation of the Project site in 2005. As part of the annexation process, the City prepared a Negative Declaration, which suggested that “the project will incrementally increase the need for additional police officers.” The collection of property tax and other revenue generated by development of the property will partially mitigate the cost of additional police officers. The annexation staff report concluded that the Project would generate the need for an additional 0.28 police officers. In addition, the Bruinville Public Facilities Master Plan calls for the formation of a Public Safety Community Facilities District. The subject property agreed to participate in the recently formed Public Facilities Community District CFD 2016-01, and has successfully annexed to the District.

Pursuant to Resolution No. 2006-127, the Project must be included in the Bruinville Public Facilities Master Plan as a planning tool. The Bruinville Public Facilities Master Plan remains a valid document, and the City is moving forward with property development within the boundaries of the Bruinville Master Plan Area.

The Project is second of two phases approved by Tentative Subdivision Map 07-2004. The original intent of the Project was the development of 91 single family home sites in two (2) phases. Tentative Subdivision Map 07-2004 remains a valid map due to California Statutes that extended the Map life of valid projects. The City first approved the Hayes Tentative Subdivision Map by adopting Resolution No. 2005-046. On November 27, 2006, the City Council adopted Resolution No. 2006-127, approving the Phase 2 Vesting Tentative Subdivision Map for Tentative Map 07-2004. This Development Agreement will memorialize all prior entitlements for the Project granted by the City Council including clarifying map life.

III. PROJECT INFORMATION AND ANALYSIS

A. Site Design

The design of the subdivision remains unchanged, with the lot sizes meeting the minimum 6,000 square foot size as required by the RMC Single Family Residential (R-1) zoning district. The proposed Park/Storm Drainage Basin is to be used for storm drainage retention is conditioned to be completed and accepted by City Council prior to construction of the first “production home.” This condition excludes the construction of four (4) model homes for this Project.

The basic design of the subdivision and internal street circulation has remained unchanged, with two (2) exceptions. First, the Project’s new street design will accommodate the City’s new Low Impact Development Standards (LID) and to encourage complete use of the streets by vehicles and pedestrians. Second, clarify that the proposed 0.98 acre park will be utilized for dual park storm water management purpose.

B. Architecture / Residential Design Guidelines

The Projects’ residential construction must conform to the Community and Character Design elements of the General Plan. Specifically, the General Plan Policies Designs 3, 4, and 5 apply to this project. The design of each home will be subject to site plan review and may include Planning Commission review of the proposed architecture.

C. Transportation and Circulation

The design of the subdivisions provides one (1) access point to properties south of the project site, along “Randal Road” that goes through Hayes 4, Phase One. The second access point is to Central Avenue through “Milich Lane”. The connection points promote connectivity between adjacent neighborhoods and create a ease of access to community amenities like the pocket park/basin and the “Central Paseo” proposed in the Hayes 4 Phase One project. California Avenue is proposed to be improved to include a five (5) foot sidewalk, nine (9) foot swale for storm water treatment, an eight (8) foot parking lane and five (5) foot bicycle lane. Central Avenue is proposed to be improved in similar fashion. Detailed street width cross-sections are included as Attachment 3 of this Staff Report.

General Plan Goal DESIGN 1, states “Street and circulation patterns that encourage walking, bicycling, transit use and reduced traffic congestion” will be encouraged. The following General Plan Policies apply specifically to this case:

General Plan Policy DESIGN – 1.1 states, “Approved projects, plans and subdivision requests in new growth areas shall arrange streets in an interconnected block pattern, so that local pedestrian, bicycle, and automobile traffic do not have to use arterial streets to circulate within neighborhoods”.

General Plan Policy DESIGN - 1.3 states, “the City will ensure frequent street and trail connections between new residential developments and established neighborhoods”.

Planning staff believes the proposed circulation and access point to the south is consistent with the above General Plan Policy Designs stated above.

D. Low Impact Development (LID) Standards

The City has developed LID guidelines in anticipation of new storm water discharge standards through the MS4 permit process. The proposed Project embraces and promotes the City’s LID guidelines. Proposed street sections create a storm water swale between the curb and sidewalk (as a parkway strip). The swale serves as a primary filtration device for storm water generated by the Project. All Projects storm water is then collected and disposed of on-site through the use of a terminal storm water retention basins. The Project is designed to retain the storm water collected within the boundaries of the map, however, planning staff remains concerned that the LID systems may fail in the future.

The Project is designed to retain the storm water collected within the boundaries of the map, however, planning staff remains concerned that the LID systems may fail in the future. In this regard, planning staff will require participation in the funding of the Nolte Storm Water Solution by Bruinville Developers, per the adopted Master Plan. The fees are articulated in the City's Nexus Fee Study and imposed on all new development in the City of Riverbank.

IV. ENVIRONMENTAL DETERMINATION

Staff has prepared and circulated an Initial Study to evaluate possible environmental impacts associated with the Project. The CEQA review period concluded at the end of September. According to the Initial Study, the proposed Development Agreement will not have an adverse impact on the environment.

V. FISCAL IMPACT

The Project is, in essence, a clean-up of an older pre-approved residential project. The fiscal impacts associated with providing municipal services to new residential projects will be partially off-set by the future property owners obligation to fund a Maintenance Community Facilities District (CFD 2016-1). CFD 2016-1 will off-set expenses associated with street lighting, road maintenance, storm drainage maintenance, common area landscaping and police services. The developers of this Project have annexed the subject property into CFD 2016-1. The Stanislaus County Consolidated Fire District has asked for a similar Community Facilities District to compensate for addition expenses associated with emergency fire services.

In light of the obligation to participate in the above mentioned Community Facilities Districts, the Project should not have a negative fiscal impact on the City.

VI. PUBLIC NOTICE

Under to Government Code sections 65867, 65090, and 65091, notices for the Planning Commission mailed hearing notice to interested parties and properties within 300 feet of the project location on December 7, 2016. The Planning Commission also published hearing notice in the Riverbank News on December 7, 2016, and posted notice at both City Hall North and South on December 7, 2016 and the subject property on December 9, 2016.

VII. RECOMMENDATION

Planning Staff recommends approval of the proposed Project based on the analysis presented above and the findings published in the Initial Study for the Hayes 4, Phase Two Development Agreement.

Respectfully Submitted By:

John B. Anderson
John B. Anderson
Contract Planner

Attachment 1: Vicinity Map and General Plan Map

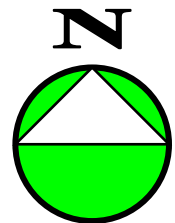


PLANNING DIVISION
Vicinity Map

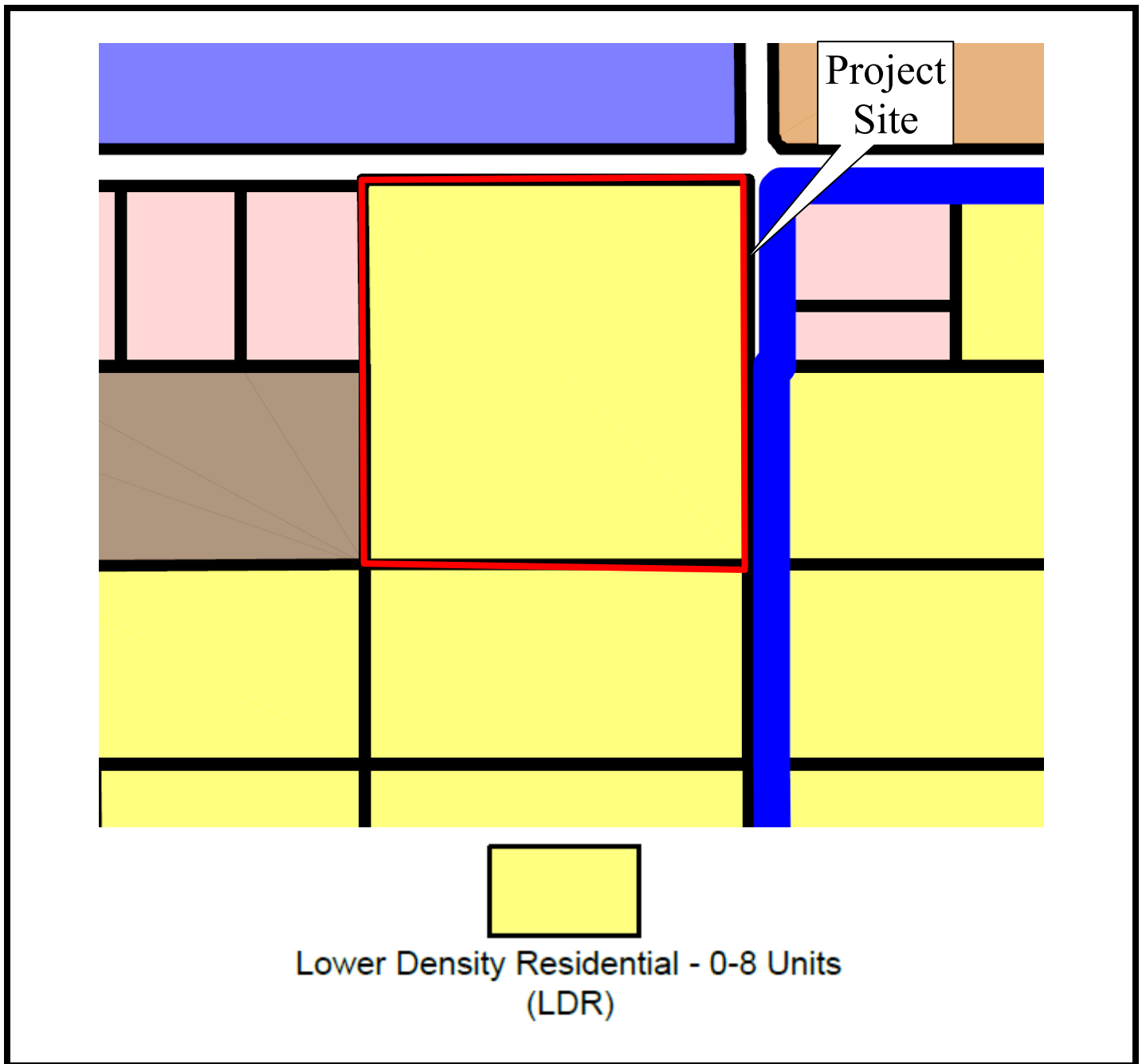


Development Agreement No. 02-2015
Hayes 4 Phase 2

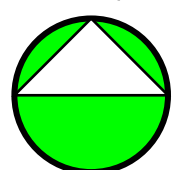
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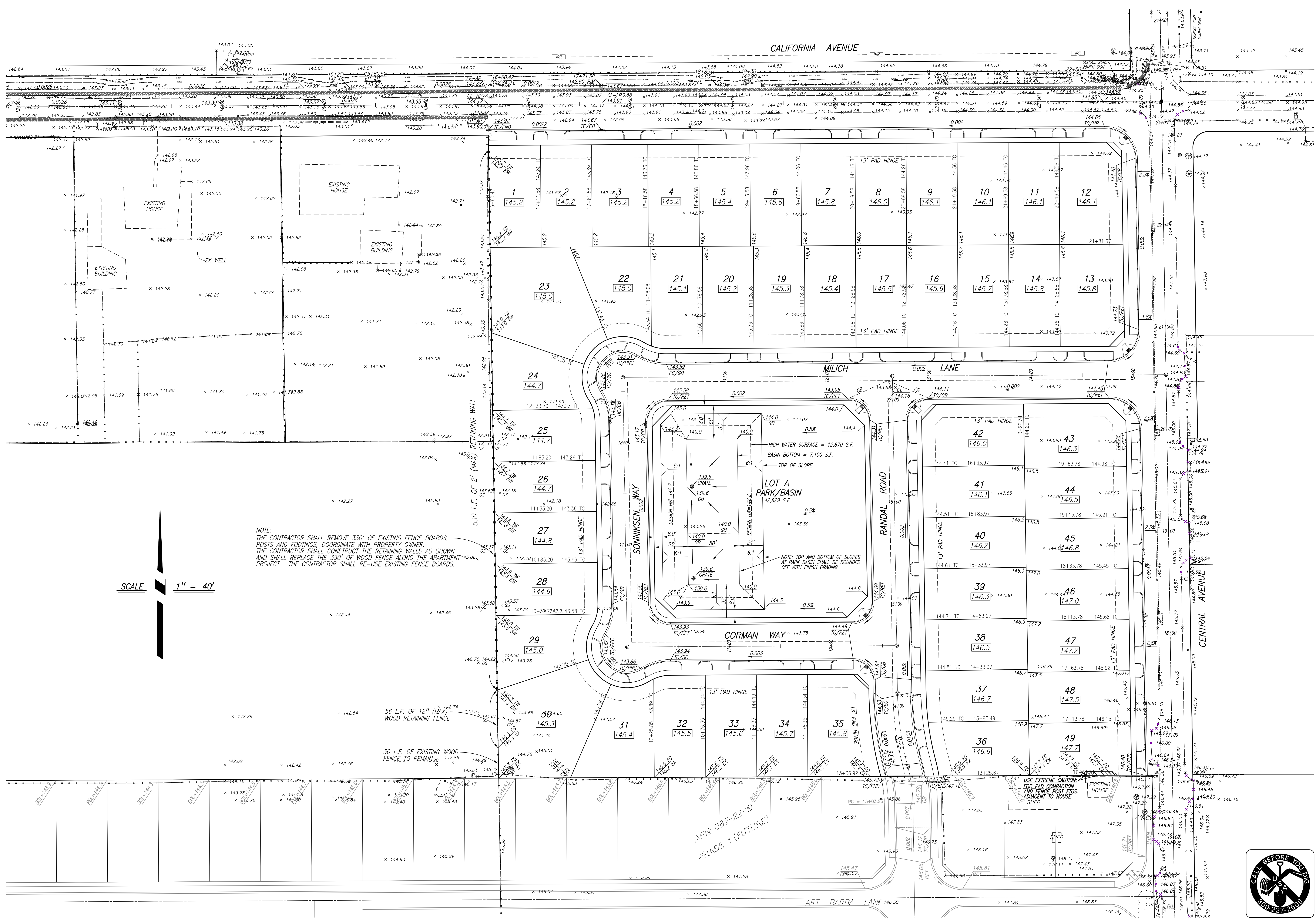
(Not to Scale)



PLANNING DIVISION
General Plan Map

	Development Agreement No. 02-2015 Hayes 4 Phase 2 APN: 062-022-003	N  (Not to Scale)
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Attachment 2: Hayes 4, Phase Two Plans



NOTE:
THE CONTRACTOR SHALL REMOVE 330' OF EXISTING FENCE BOARDS,
POSTS AND FOOTINGS, COORDINATE WITH PROPERTY OWNER.
THE CONTRACTOR SHALL CONSTRUCT THE RETAINING WALLS AS SHOWN,
AND SHALL REPLACE THE 330' OF WOOD FENCE ALONG THE APARTMENT/43.06' X
PROJECT. THE CONTRACTOR SHALL RE-USE EXISTING FENCE BOARDS.

SCALE 1" = 40'

APN: 082-22-00
PHASE 1 (FUTURE)



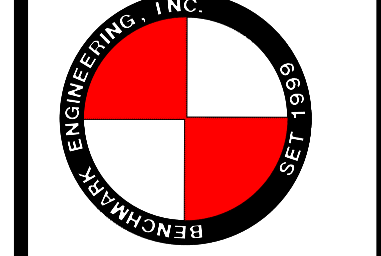
- PRELIMINARY -

PLOT DATE: 01/02/2000 03:29 FILE: K:\100000\dwg\BM2436.DWG



DATE	APPROVED
REVISIONS	DATE
NO	DESCRIPTIONS

BENCHMARK ENGINEERING, INC.
CIVIL ENGINEERING & LAND SURVEYING
1121 OAKDALE ROAD • SUITE 1 • MODESTO, CALIFORNIA • 95355
(209) 548-9300
FAX: (209) 548-9305

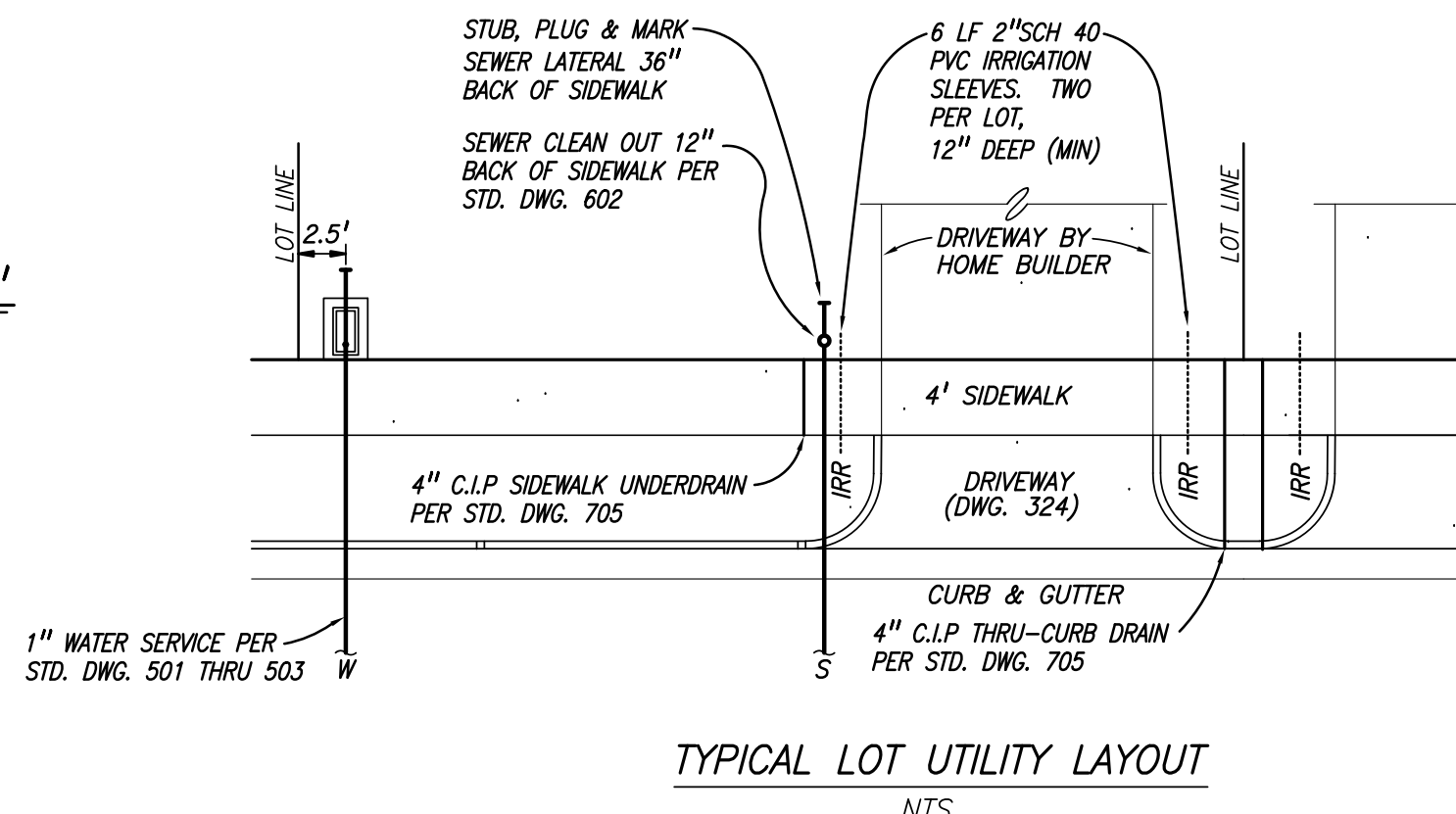
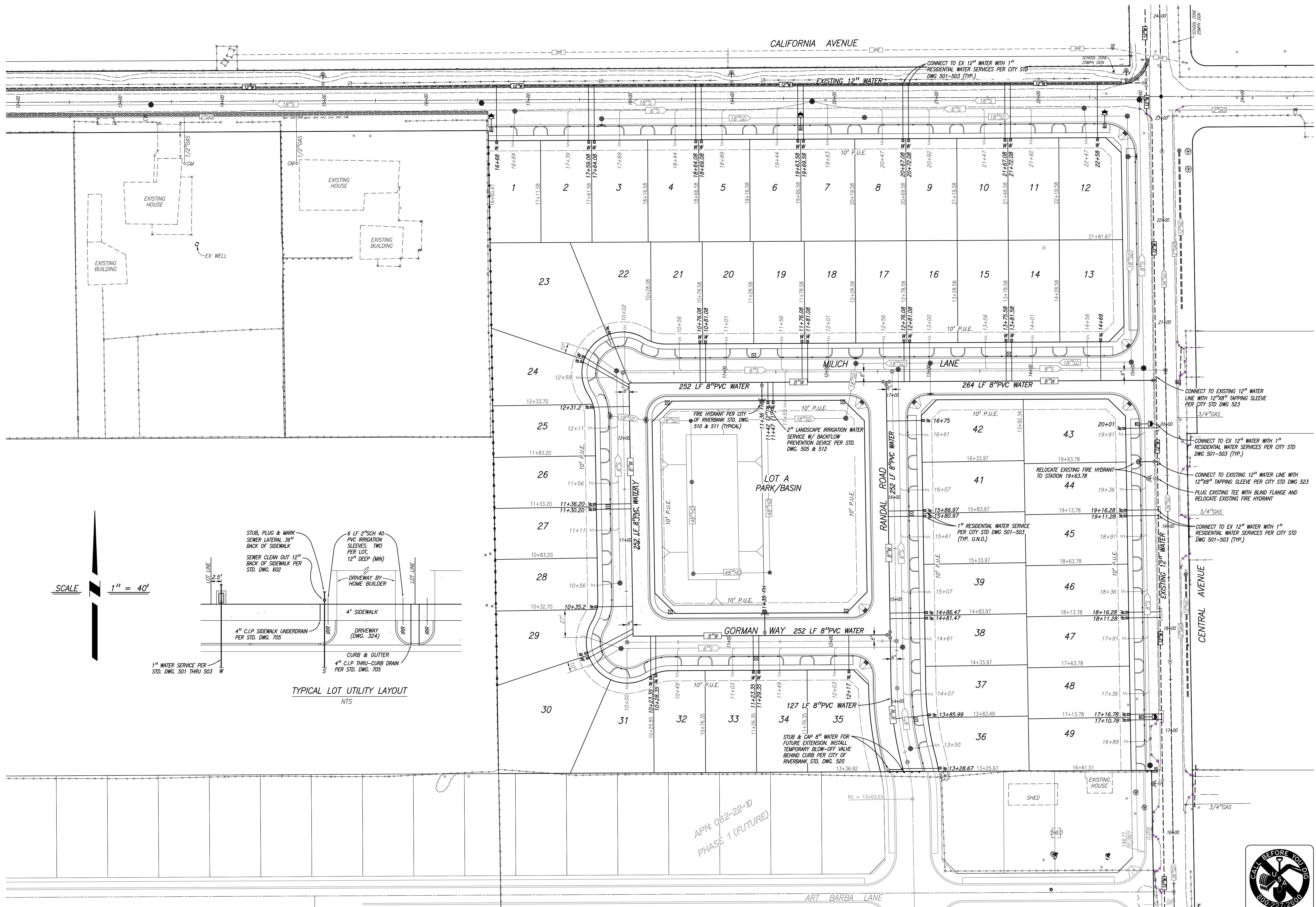


GRADING & DRAINAGE PLAN
IMPROVEMENT PLANS FOR:
COUNTRYSIDE
HAYES 4 SUBDIVISION - PHASE 2
RIVERBANK, CALIFORNIA

JOB NO. 141605
DATE 8/25/16
DR BY TG/DH
CK BY DH/MS
SCALE AS SHOWN

SHEET NUMBER
8
OF 17 SHEETS





SCALE 1" = 40'

APN: 062-22-10
PHASE 1 (FUTURE)

- PRELIMINARY -

REGISTERED PROFESSIONAL ENGINEER
MANUEL R. SOUSA
No. 65379
Exp. 06-30-17
CIVIL
STATE OF CALIFORNIA

DATE: _____
REVISED: _____
DATE: _____
APPROVED: _____
NO. _____
DESCRIPTIONS: _____

PREPARED UNDER THE DIRECTION OF:

BENCHMARK ENGINEERING, INC.
CIVIL ENGINEERING & LAND SURVEYING
1121 OKDALE ROAD - SUITE 1 • MODESTO, CALIFORNIA • 95355
FAX: (209) 548-9305
(209) 548-9300

WATER & COMPOSITE UTILITY PLAN

IMPROVEMENT PLANS FOR:
COUNTRYSIDE
HAYES 4 SUBDIVISION - PHASE 2
RIVERBANK, CALIFORNIA

JOB NO. 141605
DATE 8/25/16
DR BY TG/DH
CK BY DH/MS
SCALE AS SHOWN

SHEET NUMBER
10
OF 17 SHEETS

CALL BEFORE YOU DIG
800-227-2600

FILE: K:\141605\DWG\MP PLANS\SEWER-STORM.DWG
PLOT DATE: 8/25/16

Attachment 3: Hayes 4, Phase Two Street Width Cross-Sections

Attachment 4: Hayes 4, Phase Two DA – Initial Study

**INITIAL STUDY/
NEGATIVE DECLARATION**

for the

CITY OF RIVERBANK

**DEVELOPMENT AGREEMENT
FOR
TENTATIVE MAP NO. 07-2004 – PHASE TWO**

HAYES 4 - PHASE TWO SUBDIVISION

October 2016



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NEGATIVE DECLARATION

Lead Agency:

City of Riverbank

6707 3rd Street

Riverbank, California 95367

PROJECT NAME:

Development Agreement for Tentative Map Application No. 07-2004 – Phase Two

PROJECT PROPONENT AND LEAD AGENCY:

Project Proponent: McRoy-Wilbur Communities, Inc.
2909 Coffee Road, Suite 12A
Modesto, CA 95355

Lead Agency: City of Riverbank
6707 3rd Street
Riverbank, California 95367

PROJECT LOCATION:

The proposed project is located within the City of Riverbank, County of Stanislaus. Specifically, the proposed project is bounded by Claus Avenue to the West, Central Avenue to the East, is directly North of Kentucky Avenue, and directly South of California Avenue. The project site is further identified as being Assessor Parcel Number (APN) 062-022-003.

PROJECT DESCRIPTION:

The proposed project consists of a Development Agreement (DA) between the City of Riverbank and the Developers of the Hayes 4, Phase Two Subdivision; a 49 lot single-family residential development. The land covered by this DA was originally approved by the City of Riverbank as Tentative Map No. 07-2004, on April 25, 2005 (Resolution No. 2005-046). On November 27, 2006, the City Council adopted Resolution No. 2006-127, approving the Phase 2 Vesting Tentative Subdivision Map for Tentative Map No. 07-2004. The DA is understood to expire 5 years from the date of approval.

ENVIRONMENTAL DETERMINATION:

The Lead Agency has prepared an Initial Study, following, which considers the potential environmental effects of the proposed project. The Initial Study shows that although the proposed project could have a significant effect on the environment, there will not be a significant effect in the case because revisions in the project have been made by or agreed to by the project proponent. A NEGATIVE DECLARATION will be prepared.

MITIGATION MEASURES:

None Required.



Ms. Donna M. Kenney, Planning and Building Manager



Date

SECTION 1.0

INTRODUCTION

PROJECT TITLE

Development Agreement for Tentative Map No. 07-2004
“Hayes 4 Phase Two Subdivision”

LEAD AGENCY NAME AND ADDRESS

City of Riverbank
6707 3rd Street
Riverbank, California 95367

CONTACT PERSON AND PHONE NUMBER

Mr. John B. Anderson, Community Development Director
(209) 599-8377
John@jbandersonplanning.com

PROJECT SPONSOR’S NAME AND ADDRESS

McRoy-Wilbur Communities, Inc.
2909 Coffee Road, Suite 12A
Modesto, CA 95355

PROJECT LOCATION AND SETTING

The proposed project is located within the City of Riverbank, County of Stanislaus. Specifically, the proposed project is bounded by Claus Avenue to the West, Central Avenue to the East, is directly North of Kentucky Avenue, and directly South of California Avenue. The project site is further identified as being Assessor Parcel Number (APN) 062-022-003.

GENERAL PLAN AND ZONING DESIGNATIONS

The 9.40 +/- acre project site currently has a General Plan designation of Lower Density Residential (LDR) and is located within the Planned Development (P-D) zoning district.

OTHER PUBLIC AGENCIES WHOSE APPROVAL IS REQUIRED (E.G., PERMITS, FINANCING APPROVAL, OR PARTICIPATION AGREEMENT.)

City of Riverbank - Development Services Department/Public Works

LEAD AGENCY DETERMINATION:

On the basis of this initial evaluation:

X	I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
	I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
	I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
	I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
	I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Donna M. Kenney
Ms. Donna M. Kenney, Planning and Building Manager

10-5-16
Date

LEAD AGENCY DETERMINATION:

On the basis of this initial evaluation:

X	I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
	I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
	I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
	I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
	I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Ms. Donna M. Kenney, Planning and Building Manager

Date

SECTION 2.0 EVALUATION INSTRUCTIONS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

- c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The explanation of each issue should identify:
 - a) The significance criteria or threshold, if any, used to evaluate each question; and
 - b) The mitigation measure identified, if any, to reduce the impact to less than significance

SECTION 3.0

INITIAL STUDY CHECKLIST

This section of the Initial Study incorporates the most current Appendix "G" Environmental Checklist Form, contained in the CEQA Guidelines.

I. AESTHETICS -- WOULD THE PROJECT:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Have a substantial adverse effect on a scenic vista?				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) Substantially degrade the existing visual character or quality of the site and its surroundings?				X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?				X

DISCUSSION:

- I-a) The proposed project will have no effect on scenic vistas and therefore will have no environmental impact.
- I-b) The proposed project is located within the City of Riverbank, and is not located on a state designated highway. Based on a review of the California Department of Transportation website (<http://www.dot.ca.gov/hq/LandArch/scenic/schwy.htm>), the nearest state scenic highway is Interstate 5, which runs for approximately 28.1 miles (North/South) in Stanislaus County from the Merced County line to the San Joaquin County line. The proposed project is not located on or adjacent to Interstate 5, and therefore will have no impact to a state scenic highway.
- I-c, d) The proposed Development Agreement would not directly create new sources of light or glare that would adversely affect day or night-time views in areas of the City. The subject property

was subject to site-specific CEQA analysis previously where the appropriate design review, standards, conditions, and mitigation measures (if necessary) were determined at that time. Therefore, the Development Agreement alone would not directly result in physical changes in the City and would not degrade the existing visual character or quality of the City. Therefore, the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

II. AGRICULTURE AND FORESTRY RESOURCES: WOULD THE PROJECT:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104 (g))?				X
d) Result in the loss of forest land or conversion of forest land to non-forest use?				X
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?				X

DISCUSSION:

II-a, b) The project site is not located in an area identified as prime farmland, nor is the site being used or zoned for agriculture use. Furthermore, the site is not currently enrolled into a Williamson Act contract. Review of the Farmland Mapping and Monitoring Program of the California Resources Agency showed that the Project Location for the City of Riverbank is not mapped as Prime Farmland, Unique Farmland or Farmland of Statewide Importance. Therefore, the proposed project will not result in a significant impact on the City's or Region's agriculture resources and have no impact.

II-c, d) No forest land zoning exists at the site and there is no timberland zoned for Timberland Production and will not conflict with existing zoning and therefore will have no impact to this resource.

II-e) Please refer to the discussion under items (a) and (c), above.

MITIGATION MEASURES:

Mitigation is not required for this topic.

III. AIR QUALITY -- WOULD THE PROJECT:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?			X	
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			X	
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			X	
d) Expose sensitive receptors to substantial pollutant concentrations?			X	
e) Create objectionable odors affecting a substantial number of people?			X	

BACKGROUND DISCUSSION:

The proposed project is located in east Stanislaus County, which is a portion of the San Joaquin Valley Air Basin (SJVAB). Air quality management under the federal and state Clean Air Acts is the responsibility of the San Joaquin Valley Air Pollution Control District (SJVAPCD).

The federal and state governments have adopted ambient air quality standards (AAQS) for the primary air pollutants of concern, known as “criteria” air pollutants. Air quality is managed by the SJVAPCD to attain these standards. Primary standards are established to protect the public health; secondary standards are established to protect the public welfare. The attainment statuses of the SJVAB for Stanislaus County with respect to the applicable AAQS are shown in the following table.

The SJVAB is considered non-attainment for ozone and particulate matter (PM10 and PM2.5), because the AAQS for the pollutants are sometimes exceeded. The SJVAB is Attainment/Unclassified for carbon

monoxide, but select areas, not including the City of Riverbank, are required to abide by adopted carbon monoxide maintenance plans.

The California Air Resources Board (CARB) through the Air Toxics Program is responsible for the identification and control of exposure to air toxics, and notification of people that are subject to significant air toxic exposure. A principal air toxic is diesel particulate matter, which is a component of diesel engine exhaust.

The SJVAPCD has adopted regulations establishing control over air pollutant emissions associated with land development and related activities. These regulations include:

- Regulation VIII (Fugitive Dust Rules)
- Rule 4101 (Visible Emissions)
- Rule 9510 (Indirect Source Review)

SAN JOAQUIN VALLEY FEDERAL AND STATE AAQS ATTAINMENT STATUS

Pollutant	Designation / Classification	
	Federal Standards^a	State Standards^b
Ozone, 1-hour	No federal standard ^f	Nonattainment / Severe
Ozone, 8-hour	Nonattainment / Extreme ^e	Nonattainment
PM10	Attainment ^c	Nonattainment
PM2.5	Nonattainment ^d	Nonattainment
Carbon Monoxide	Attainment / Unclassified	Attainment / Unclassified
Nitrogen Dioxide	Attainment / Unclassified	Attainment
Sulfur Dioxide	Attainment / Unclassified	Attainment
Lead (particulate)	No designation	Attainment
Hydrogen Sulfide	No federal standard	Unclassified
Sulfates	No federal standard	Attainment
Visibility-Reducing Particles	No federal standard	Unclassified
Vinyl Chloride	No federal standard	Attainment

^aSee 40 CFR Part 81

^bSee CCR Title 17 Sections 60200-60210

^cOn September 25, 2008, EPA redesignated the San Joaquin Valley to Attainment for the PM10 National AAQS and approved the PM10 Maintenance Plan

^dThe SJV is designated nonattainment for the 1997 PM_{2.5} NAAQS. EPA designated the SJV as nonattainment for the 2006 PM_{2.5} on November 13, 2009 (effective December 14, 2009).

^eThough the SJV was initially classified as serious nonattainment for the 1997 8-hour ozone standard, EPA approved reclassification of the SJV to extreme nonattainment in the Federal Register on May, 2010 (effective June 4, 2010).

^fEffective June 15, 2005, the EPA revoked the federal 1-hour ozone standard, including associated designations and classifications. EPA has previously classified the SJV as extreme nonattainment for this standard. EPA approved the 2004 Extreme Ozone Attainment Demonstration Plan on March 8, 2010 (effective April 7, 2010). Many applicable requirements for extreme 1-hour ozone nonattainment areas continue to apply to the SJVAB.

The SJVAPCD has adopted a CEQA impact analysis guideline titled *Guide for Assessing and Mitigating Air Quality Impacts* (GAMAQI). The GAMAQI is utilized in the following air quality impact analysis where applicable. The GAMAQI establishes impact significance thresholds for the non-attainment pollutant PM₁₀ and precursors to the non-attainment pollutant ozone: reactive organic gases (ROG) and oxides of nitrogen (NO_x).

ROG	10 tons/year
NO _x	10 tons/year
PM ₁₀	15 tons/year

Projects that do not generate emissions in excess of these thresholds are considered to have less than significant air quality impacts. Furthermore, within the GMAQI, the SJVAPCD has established and outlines a three-tiered approach to determining significance related to a project's quantified ozone precursor emissions. Each tier or level requires a different degree of complexity of emissions calculation and modeling to determine air quality significance. The three-tiers established to date (from least significant to most significant) are: *Small Project Analysis Level (SPAL)*, *Cursory Analysis Level (CAL)*, and *Full Analysis Level (FAL)*. In each of the tiers, the SJVAPCD has pre-calculated the emissions on a large number and types of projects to identify the level at which they have no possibility of exceeding the emissions thresholds. In accordance with Table 5-3(a) of GMAQI, the proposed project is considered to be at a Small Project Analysis Level (SPAL), as it will not cross the SJVAPCD adopted threshold of 152 single-family (dwellings) units. Exceeding this limit would push the project into a separate tier as identified in the GMAQI. Because the proposed project qualifies as SPAL, GMAQI notes that it has no possibility of exceeding emission thresholds.

DISCUSSION:

III-a-e) This Development Agreement does not result in any direct physical changes to the environment, including air quality. The subject property was previously subject to its own environmental review where project-specific impacts associated with air quality were analyzed and

mitigated/conditioned for. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

IV. BIOLOGICAL RESOURCES -- WOULD THE PROJECT:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?			X	
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?			X	
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?			X	
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?			X	
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			X	
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

DISCUSSION:

IV-a-d) The City's 2005-2025 General Plan indicates that natural habitats consist primarily of isolated wetlands, as well as wetlands and riparian habitat associated with the Stanislaus River corridor along the northernmost part of the City. The Stanislaus River corridor area is the largest and most important area for sensitive habitat and wildlife in the Riverbank planning area.

As previously stated, the Development Agreement does not directly result in any physical changes to the environment, and site-specific CEQA review and analysis was previously prepared to address any potential impacts. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

IV-e) All new residential development projects within the City of Riverbank are required to comply with the policies of the 2005-2025 General Plan, and address biological resources in order to minimize impacts. General Plan Goals CONS-4 and CONS-5 as well as the associated policies established requirements in which Fish and Wildlife Habitat shall be preserved and protected within the Riverbank planning area. The Development Agreement will be done in compliance with the 2005-2025 General Plan, and thus, minimize any potential impacts to local policies related to biological resources. In addition, site-specific CEQA review and analysis was previously prepared to address any potential impacts to these policies. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

IV-f) There are no Habitat Conservation Plans, Natural Community Conservation Plans, or other local, regional, or state Habitat Conservation Plan within the City of Riverbank. Therefore, the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

No mitigation is required for this topic.

V. CULTURAL RESOURCES -- Would the project:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Cause a substantial adverse change in the significance of a historical resource as defined in '15064.5?			X	
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to '15064.5?			X	
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?			X	
d) Disturb any human remains, including those interred outside of formal cemeteries?			X	

DISCUSSION:

V-a-d)The Riverbank Branch Library, also referred to as the Riverbank Carnegie Library, located at 3237 Santa Fe Street, is the only structure within the City to be identified on the National Register for Historic Places. According to the California Office of Historic Preservation (www.ohp.parks.ca.gov), there are no other properties or structures identified on either the National Register or State Register of Historic Places.

In addition, as discussed previously, the Development Agreement does not include a specific development project, instead it provides the City and the Hayes 4 Phase Two Developer, the framework to record and physically develop the approved subdivision. Therefore, the Development Agreement would not cause a substantial adverse change in the significant of any cultural resources, including archeological, paleontological, and human remains. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

MITIGATION MEASURES:

No mitigation is required for this topic.

VI. GEOLOGY AND SOILS -- WOULD THE PROJECT:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:			X	
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.			X	
ii) Strong seismic ground shaking?			X	
iii) Seismic-related ground failure, including liquefaction?			X	
iv) Landslides?			X	
b) Result in substantial soil erosion or the loss of topsoil?			X	
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			X	
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			X	
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				X

DISCUSSION:

- VI-a-d) The Development Agreement will not directly result in physical changes in the City that would expose people or structures to seismic activity or landslides, result in the loss of soil or substantial erosion, or locate structures on unstable or expansive soils. Impacts related to geology and soils can generally be addressed through compliance with applicable State and/or Local policies and regulations including; California Building Code (Title 24), Riverbank Municipal Code, Alquist-Priolo Earthquake Fault Zoning Act, California Public Resources Code (Seismic Hazards Mapping Act), CEQA, and the National Pollution Discharge Elimination System (NPDES). Therefore, the Development Agreement will have a **Less Than Significant Impact**.
- VI-e) In general, all residential development within the City of Riverbank would be required to connect to the City's Wastewater System. Therefore, no new septic tanks or on-site septic systems would be permitted and the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

VII. GREENHOUSE GAS EMISSIONS -- WOULD THE PROJECT:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			X	
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			X	

BACKGROUND DISCUSSION:

Human-generated emissions greenhouse gases (GHGs) are understood to be an important cause of global climate change, which is a subject of increasing scientific, public concern, and government action. Atmospheric concentrations of GHGs that trap heat in the earth's atmosphere and lead to a variety of effects, including increasing temperature, changes in patterns and intensity of weather and various secondary effects resulting from those changes, including potential effects on public health and safety.

California AB 32 identifies global climate change as a "serious threat to the economic well-being, public health, natural resources and the environment of California." As a result, global climate change is an issue that needs to be considered under CEQA.

GHGs include carbon dioxide (CO₂), the most abundant GHG, as well as methane, nitrous oxide and other gases, each of which have GHG potential that is several times that of CO₂. GHG emissions result from combustion of carbon-based fuels; major GHG sources in California include transportation (40.7%), electric power generation (20.5%), industrial (20.5%), agriculture and forestry (8.3%) and others (8.3%).

The State of California is actively engaged in developing and implementing strategies for reducing GHG emissions. State programs for GHG reduction include a regional cap-and-trade program, new industrial and emission control technologies, alternative energy generation technologies, advanced energy conservation in lighting, heating, cooling and ventilation, reduced-carbon fuels, hybrid and electric vehicles, and other methods of improving vehicle mileage reduction programs. Using these and other strategies, the State's Global Climate Change Scoping Plan, adopted in December 2008, proposes to achieve a 29% reduction in projected business-as-usual emission levels for 2020.

The SJVAPCD adopted a Climate Change Action Plan in 2008, and issued guidance for development project compliance with the plan in 2009. The guidance adopted an approach that relies on the use of Best Performance Standards to reduce GHG emissions. Projects implementing Best Performance Standards would be determined to have a less than cumulatively significant impact. For projects not implementing Best Performance Standards, demonstration of a 29% reduction in GHG emissions from business-as-usual conditions is required to determine that a project would have a less than cumulatively significant impact.

DISCUSSION:

VII-a, b) Although not originally intended to reduce GHGs, California Code of Regulations (CCR) Title 24, Part 6: California's Energy Efficiency Standards for Residential and Nonresidential Buildings, was first adopted in 1978 in response to a legislative mandate to reduce California's energy consumption. Since then, Title 24 has been amended with recognition that energy efficient buildings require less electricity and reduce fuel consumption, which in turn decreases GHG emissions. The current Title 24 standards were adopted in response to the requirements of AB 32. Specifically, new development projects within California after January 1, 2011, are subject to the mandatory planning and design, energy efficiency, water efficiency and conservation, material conservation and resources efficiency, and environmental quality measures of the California Green Building Standards (CALGreen) Code (California Code of Regulations, Title 24, Part 11). As such, it is anticipated that the proposed Development Agreement will not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment or conflict with any plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

VIII. HAZARDS AND HAZARDOUS MATERIALS -- WOULD THE PROJECT:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X
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DISCUSSION:

VIII-a-h) The subject property covered in the Development Agreement is not located near any sites known to contain toxic or radioactive materials. The project site is not situated within an Airport Clear Zone or Accident Potential Zone. The project will not create a risk of explosion, release of hazardous substances or other dangers to public health. The project will not contribute hazardous materials to the vicinity either in its construction or upon its completion. The proposed Development Agreement will not interfere with any emergency response plan or emergency evacuation plan. Therefore, the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

IX. HYDROLOGY AND WATER QUALITY -- Would the project:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Violate any water quality standards or waste discharge requirements?			X	
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?			X	
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?			X	
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?			X	
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			X	
f) Otherwise substantially degrade water quality?			X	
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?			X	

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?			X	
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?			X	
j) Inundation by seiche, tsunami, or mudflow?				X

Discussion:

IX-a-e) Presently, all residential development within the City of Riverbank is required to comply with the applicable Federal, State, and local policies and regulations related to water quality including; Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) program, and the Riverbank Municipal Code. Potential water quality issues related to the violation of applicable water quality standards or waste discharge requirements would be analyzed upon the submittal of a site-specific development application. The Development Agreement does not include site-specific development projects, rather, it provides a framework in which the subject property's approved tentative map will be recorded and how the subdivision will be developed. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

IX-f-h) The 100-year flood event is primarily contained within the Stanislaus River channel, which includes the northern portion of the City of Riverbank. The City's 2005-2025 General Plan incorporated Policies PUBLIC-4.3, SAFE-1.6 through SAFE-1.7 in order to protect new development in this area from flood damage. The Development Agreement does not consist of any site-specific development that was not considered in the related tentative map approval. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

IX-i) Existing Federal and State oversight and inspections render the likelihood of dam failure as remote. Therefore, the Development Agreement will have a **Less Than Significant Impact**

IX-j) Inundation by a tsunami is unlikely due to the location of Riverbank and its proximity to the Pacific Ocean. And, although the topography of Riverbank is relatively flat, mudflows along the banks of the Stanislaus River could be possible. However, as noted previously, approval of the Development Agreement would not directly result in any physical changes, not previously

analyzed during the tentative map approval. Therefore, the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

X. LAND USE AND PLANNING - Would the project:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Physically divide an established community?				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

DISCUSSION:

X-a) The Development Agreement for the new 49-lot residential development would occur on a site that is now basically vacant with no agricultural activity or any use. Thus, an established community would not be divided or affected by the project. The area surrounding the site includes small ranchette parcels, with limited agricultural activity and single-family dwellings. All of these uses would remain with project development. Therefore, the proposed project will have **No Impact**.

X-b) The Development Agreement for the new residential development does not conflict with any land use plan, policy, or regulation of the City of Riverbank that was adopted for the purpose or mitigating an environmental effect. Therefore, the proposed project will have **No Impact**.

X-c) No habitat conservation plan or community conservation plan applies to the project site. Thus, the project would have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XI. MINERAL RESOURCES -- WOULD THE PROJECT:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X

DISCUSSION:

XI-a,b) The project site is located outside of any area designed by the California Department of Conservation - State Mining and Geology Board (SMGB) as containing known mineral resources. The proposed project is located within an area defined in the 2005-2025 General Plan as being a future residential area. Specifically, the land use designation of the project site is listed as Residential in the General Plan. As such, the Development Agreement will have **No Impact** to mineral resources of Statewide or local importance.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XII. NOISE -- WOULD THE PROJECT RESULT IN:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?			X	
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			X	
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			X	
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X	
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			X	
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

DISCUSSION:

XII-a-f) Construction noise associated with demolition, grading, and excavation activities could result in temporary or short-term noise impacts including ground-borne vibration or an increase in noise levels, while operational noise associated with vehicular traffic, outdoor activities, and stationary mechanical equipment could result in a permanent ambient increase in noise levels. Noise attenuation standards and requirements are regulated by the 2005-2025 General Plan, as well as Chapter 93 of the City's Municipal Code (Noise Ordinance). Any new residential

development would be required to comply with the policies and standards contained Health and Safety Element of the 2005-2025 General Plan, Chapter 93 of the Riverbank Municipal Code, and are subject to site-specific CEQA analysis as residential development applications are submitted to the City for consideration.

The Development Agreement does not consist of any new site-specific residential development, but rather, provides a policy framework to record and physically develop the approved subdivision. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

XII-e) As noted previously, the Development Agreement does not include specific development projects, and instead, provides a policy framework to record and physically develop the approved subdivision. Potential impacts related to this previously approved development was analyzed in the past. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

XII-f) There are no documented or known private airstrips within the City of Riverbank. Therefore, the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XIII. POPULATION AND HOUSING -- Would the project:

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

DISCUSSION:

XIII-a) The previously approved Tentative Subdivision Map was found to be consistent with the general plan land use designation and densities and City zoning classification for the site. The proposed Development Agreement would contribute to the subdivision that have already been assessed and mitigated to the extent possible as part of the previous project's CEQA process. As such, the proposed project will serve as an implementation tool for the subject property, which is located in an area designated as future residential growth under the City's General Plan. Therefore, the Development Agreement will have **No Impact**.

XIII-b,c)The proposed project will not require the displacement of existing housing which would necessitate the construction of replacement housing. Currently the project site contains no dwellings or structures and will not displace a substantial number of people. Therefore, the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XIV. PUBLIC SERVICES

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:			X	
Fire protection?			X	
Police protection?			X	
Schools?			X	
Parks?			X	
Other public facilities?			X	

DISCUSSION:

XIV-a) The Stanislaus Consolidated Fire Protection District provides fire protection and first response services for emergencies within the City of Riverbank. All law enforcement services in the City are performed under contract by the Stanislaus County Sheriff's Department. The Riverbank Unified School District (RUSD) provides elementary, junior high, and high school level education services to students within its District boundary. However, the Sylvan Union School District (SUSD) provides schooling to some children within the City of Riverbank. The Riverbank Parks and Recreation Department is responsible for administering and operating the sixteen (16) parks located throughout the City.

As previously discussed, the Development Agreement would not directly result in physical changes in the City not previously analyzed during the Tentative Map approval phase. As discussed in the Development Agreement, when new residential development occurs, the City will collect Public Facilities Fees on a per unit basis. These Fees, which include fees for fire

protection, police protection, and parks, are intended to mitigate any potential impact created by new residential development. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XV. RECREATION

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			X	
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?			X	

DISCUSSION:

XV-a) Payment of fees in lieu of parkland dedication, in accordance with the General Plan, would be required by the City of Riverbank as part of the standard development review and building permit process for the project. Payment of these fees would provide for park improvements elsewhere in Riverbank. Furthermore, a dual use park/drainage-basin has been incorporated to provide an open space recreational area for nearby residents. For this reason, the project would not be expected to increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated. The Development Agreement's impact in relation to this would be **Less than Significant**.

XV-b) As noted under Item (a) above, the recreational needs of project residents are expected to be met by the existing recreational facilities in the area, and the project would not require construction or expansion of other recreational facilities. The project's impact would therefore be considered **Less than Significant**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XVI. TRANSPORTATION/TRAFFIC -- WOULD THE PROJECT:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?			X	
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?				X
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X
e) Result in inadequate emergency access?				X
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities:				X

DISCUSSION:

- XVI-a) The Development covered in the Development Plan does not conflict with the City's 2005-2025 General Plan Circulation Element or Municipal Code. As such, the Development Agreement will have a **Less Than Significant Impact**.
- XVI-b) The Development Agreement will not directly result in an increase or conflict to the level of service standards and travel demand for the City of Riverbank. The project will be required to and does conform to, the circulation standards and policies set forth by the City's 2005-2025 General Plan. Therefore, the Development Agreement will have **No Impact**.
- XVI-c) The Development Agreement will not result in the change of air patterns. Therefore, the Development Agreement will have **No Impact** in this area.
- XVI-d) Street improvements discussed within the Development Agreement will not result in immediate construction or design hazards. As such, hazards due to a design feature are not anticipated to occur. Therefore, the Development Agreement will have **No Impact**.
- XVI-e) The Development Agreement, in itself, will not result in inadequate emergency access. Therefore, the Development Agreement will have **No Impact**.
- XVI-f) The proposed project will not conflict with any adopted policies, plans or programs regarding public transit, or bicycle facilities. Therefore, the Development Agreement will have **No Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XVII. UTILITIES AND SERVICE SYSTEMS -- WOULD THE PROJECT:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?			X	
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?			X	
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the projects projected demand in addition to the providers existing commitments?			X	
f) Be served by a landfill with sufficient permitted capacity to accommodate the projects solid waste disposal needs?			X	
g) Comply with federal, state, and local statutes and regulations related to solid waste?			X	

DISCUSSION:

XVII-a,b,e) New residential growth and development discussed within the Development Agreement would result in population growth assumed under and consistent with the City's 2005-2025 General Plan. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

XVI-c) Adoption of the Development Agreement does not require, or result in, the construction of new stormwater facilities. Rather, the Development Agreement provides the framework necessary for the City and the project's Developer to implement the construction of the approved Tentative Subdivision Map as it was approved. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

XVI-d,e) Potable water services within the City are provided by the City of Riverbank. It was determined, during the Tentative Map approval phase, that the City has sufficient groundwater supply to provide potable water services to the new residential units contemplated as part of the subdivision. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

XVI-f,g) Solid waste disposal in the City of Riverbank is provided via a franchise agreement with Gilton Solid Waste. Solid waste generated within the City is collected and then delivered to the Fink Road Landfill located in Crows Landing (Stanislaus County). As previously determined, during the Tentative Map approval phase, the Fink Road Landfill has the capacity to provide solid waste services to the subdivision discussed in the Development Agreement. Therefore, the 2014-2023 Housing Element will have a **Less Than Significant Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --

	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporation</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			X	
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?			X	
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			X	

DISCUSSION:

- XVIII-a) The Development Agreement, in itself, does not regulate or provide entitlements for new development, and would not directly result in any physical changes to the environment. As a result, no new environmental effects that would have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory are anticipated. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

- XVIII-b) Under the Development Agreement, no specific development would occur. Rather, the Development Agreement would facilitate the development of the previously approved Tentative Map. Therefore, these less than significant impacts would not combine with impacts from other projects to cause a cumulative impact. In addition, the Development Agreement is not considered to be growth inducing or a document that provides entitlements. Therefore, the Development Agreement will have a **Less Than Significant Impact**.
- XVIII-c) As noted previously throughout this Initial Study, the Development Agreement would not have an environmental effect that would cause substantial adverse effects on human beings either directly or indirectly. Therefore, the Development Agreement will have a **Less Than Significant Impact**.

MITIGATION MEASURES:

Mitigation is not required for this topic.

SECTION 4.0

REFERENCES

In accordance with Section 15063(a)(3) of the CEQA Guidelines, the following expert opinion, technical studies, and substantial evidence has been referenced and/or cited in the discussion included in Section 3.0, Initial Study Checklist:

1. City of Riverbank 2005 – 2025 General Plan, dated April 2009.
2. City of Riverbank 2005 - 2025 General Plan Environmental Impact Report (EIR), dated April 2009.
3. City of Riverbank Zoning Ordinance.
4. City of Riverbank Noise Control Ordinance, Article IX, Chapter 93.
5. California Department of Transportation Online Database of State Scenic Highways (www.dot.ca.gov/hq/LandArch/scenic/cahisys.htm).
6. California Department of Conservation Farmland Mapping and Monitoring Program, published October 2007.
7. Guide for Assessing and Mitigating Air Quality Impacts, adopted August 20, 1998, and as revised January 10, 2002, prepared by the San Joaquin Valley Air Pollution Control District.
8. Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA, dated December 17, 2009, prepared by the San Joaquin Valley Air Pollution Control District.
9. Flood Insurance Rate Map (FIRM) No. 06099C0335E, dated September 26, 2008, and No. 06099C0330E, dated September 26, 2008 prepared by the Federal Emergency Management Association (FEMA).



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

November 1, 2016

Donne M. Kenney
City of Riverbank
6707 Third Street
Riverbank, CA 95367

RECEIVED
NOV 03 2016

BY:

Subject: Hayes 4 - Phase Two Subdivision Development Agreement
SCH#: 2016092072

Dear Donne M. Kenney:

The State Clearinghouse submitted the above named Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on October 31, 2016, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

RECEIVED
JUN 13 1964

BY: _____

Document Details Report State Clearinghouse Data Base

SCH# 2016092072
Project Title Hayes 4 - Phase Two Subdivision Development Agreement
Lead Agency Riverbank, City of

Type Neg Negative Declaration

Description The proposed project consists of the City's approval of a development agreement between the city and the developers of the Hayes 4, phase 2 subdivision. The land covered by this DA has been previously approved by the City of Riverbank as tentative map no. 07-2004 on April 25, 2005 (resolution no. 2005-046). City council adopted resolution no. 2006-127 on November 27, 2006, approved the phase 2 vesting tentative subdivision map for tentative map no. 07-2004. The DA will extend the duration of the tentative map and is proposed to expire 5 years from the date of approval. In addition to extending the duration of the tentative map, the purpose of the DA is to clarify the number of lots, storm drainage concepts, and the conditions of approval for the tentative map.

Lead Agency Contact

Name Donne M. Kenney
Agency City of Riverbank
Phone 209-663-7124 **Fax**
email
Address 6707 Third Street
City Riverbank **State** CA **Zip** 95367

Project Location

County Stanislaus
City Riverbank
Region
Lat / Long 37° 43' 36" N / 120° 55' 15" W
Cross Streets Clause Rd and Central Ave
Parcel No. 062-022-003
Township 2S **Range** 10E **Section** 30 **Base** MDBM

Proximity to:

Highways SR 108
Airports
Railways BNSF
Waterways Stanislaus River
Schools Riverbank HS
Land Use Rancho Home, ag/single family res (R-1)/Lower density res

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Other Issues; Traffic/Circulation; Landuse

Reviewing Agencies Resources Agency; Department of Fish and Wildlife, Region 4; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 10; Native American Heritage Commission; Public Utilities Commission; Regional Water Quality Control Bd., Region 5 (Sacramento); State Water Resources Control Board, Division of Drinking Water; State Water Resources Control Board, Division of Drinking Water, District 10

Date Received 09/30/2016 **Start of Review** 09/30/2016 **End of Review** 10/31/2016

Central Valley Regional Water Quality Control Board

25 October 2016

Governor's Office of Planning & Research

OCT 26 2016

CERTIFIED MAIL

Donna M. Kenney
City of Riverbank
6707 3rd Street
Riverbank, CA 95367

STATE CLEARINGHOUSE 917 199 9991 7035 8421 5388

COMMENTS TO REQUEST FOR REVIEW FOR THE NEGATIVE DECLARATION, HAYES 4 – PHASE TWO SUBDIVISION DEVELOPMENT AGREEMENT PROJECT, SCH# 2016092072, STANISLAUS COUNTY

Pursuant to the State Clearinghouse's 30 September 2016 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Negative Declaration* for the Hayes 4 – Phase Two Subdivision Development Agreement Project, located in Stanislaus County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases,

the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/.

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Policy is available on page IV-15.01 at:
http://www.waterboards.ca.gov/centralvalleywater_issues/basin_plans/sacsjr.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan

(SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml.

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/.

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml.

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

Waste Discharge Requirements – Discharges to Waters of the State

If USACOE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml.

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf

Regulatory Compliance for Commercially Irrigated Agriculture

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/app_approval/index.shtml; or contact water board staff at (916) 464-4611 or via email at IrrLands@waterboards.ca.gov.
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at IrrLands@waterboards.ca.gov.

Low or Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Dewatering and Other Low Threat Discharges to Surface Waters* (Low Threat General Order) or the General Order for *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water* (Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf

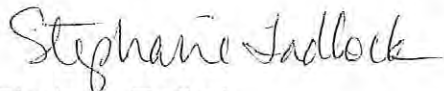
NPDES Permit

If the proposed project discharges waste that could affect the quality of the waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit.

For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/help/business_help/permit3.shtml

If you have questions regarding these comments, please contact me at (916) 464-4644 or Stephanie.Tadlock@waterboards.ca.gov.



Stephanie Tadlock
Environmental Scientist

cc: - State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

Attachment 5: Hayes 4, Phase Two Development Agreement

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Clerk

Recording fees exempt (Gov. Code §§ 6103, 27383)

(Space above line for recorder's use only)

APN: 062-022-003

DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF RIVERBANK

AND

MCROY - WILBUR COMMUNITIES, INC. AND JAMES A. AARTMAN, A SINGLE MAN

RELATING TO THE DEVELOPMENT KNOWN AS THE
"HAYES NO. 4 SUBDIVISION, PHASE 2

Adopted by City Council Ordinance No. _____
on _____

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF RIVERBANK, a California municipal corporation ("City") and McRoy - Wilbur Communities, Inc. and James A. Aartman, a single man (collectively, "Developer"). Developer and City may hereinafter be referred to individually as a "Party" and collectively as the "Parties". There are no other parties to this Agreement.

This Agreement is made with reference to the following facts:

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any persons and entities having a legal or equitable interest in real property, to provide for the development of such property and establish certain development rights therein.

B. Pursuant to the Development Agreement Statute, the City Council has adopted rules and regulations for considering and processing development agreements. This Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

C. Developer represents that, as of the recordation of this Agreement, it will have a legal or equitable interest to land consisting of approximately 9.40 gross acres, as shown on the map attached hereto as **Exhibit A**, and legally described in **Exhibit B** (the "Property").

D. In addition to this Agreement, and the consolidated conditions of approval attached and incorporated hereto as **Exhibit C** ("Conditions of Approval") the Property is subject to the following land use plans and entitlements ("Project Approvals"):

(i) On April 25, 2005, the City Council adopted Resolution No. 2005-046, approving tentative subdivision map 07-2004 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 88 residential lots on 18.74 acres

(ii) On November 27, 2006, the City Council adopted Resolution No. 2006-127, approving the Phase 2 Vesting Tentative Subdivision Map for Tentative Map 07-2004 (the "Tentative Map").

E. On _____, 20__, the City Council approved an Initial Study/Negative Declaration in connection with its adoption of Ordinance No. _____ approving this Agreement.

F. Developer has proposed to develop the Property into 49 residential lots and related public improvements in conformance with the provisions of this Agreement and the Project Approvals (the "Project").

G. Subsequent to the approval of this Agreement, City and Developer understand that additional land use approvals, entitlements and permits may be necessary to implement the Project ("Subsequent Approvals"). The Subsequent Approvals will include, but may not be limited to, a System Development Fee Reimbursement Agreement, a draft copy of which is attached hereto for reference as **Exhibit D**, and a Subdivision Improvement Agreement, a draft copy of which is attached hereto for reference as **Exhibit E**.

H. The City finds that development of the Project in accordance with this Agreement, the Project Approvals and Subsequent Approvals will provide for orderly growth within the City consistent with the goals, policies, and provisions of the General Plan.

I. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project pursuant to the Project Approvals, Developer seeks assurance that it may proceed with development of the Project in accordance with the terms and conditions of this Agreement.

J. The City shall maintain all documents mentioned in this Agreement and place them in a three ring binder, to be maintained at all times by the Development Services Department.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

The following defined terms in this Agreement shall have the meanings set forth below:

1.01. "Agreement" means this Development Agreement entered into by and between the City and Developer relating to the development known as "Hayes No. 4 Subdivision, Phase 2".

1.02. "City" shall mean the City of Riverbank, a California municipal corporation.

1.03. "City Council" shall mean the City Council of the City of Riverbank.

1.04. "City Code" shall mean the Riverbank Municipal Code.

1.05. "Conditions of Approval" shall mean the consolidated conditions of approval for the Project, attached and incorporated hereto as Exhibit C. The Conditions of Approval supersede previous conditions adopted in connection with City Resolution Nos. 2005-046 and 2006-127.

1.06. "Developer" shall mean, collectively, McRoy - Wilbur Communities, Inc. and James A. Aartman, a single man, and may include Developer's assignees where such assignment is validly made pursuant to this Agreement.

1.07. "Effective Date" shall mean the earliest date on which the following have both occurred: (a) the thirtieth (30th) day following the adoption by the City Council of the ordinance approving this Agreement, and (b) execution of this Agreement by both Parties.

1.08. "Facilities Districts" or "CFDs" shall mean a Mello-Roos Community Facilities District that City and Developer may form or annex into for the purpose of facilitating the long-term maintenance of public improvements serving the Property.

1.09. "General Plan" shall mean the 2005-2025 Riverbank General Plan, as amended.

1.10. "Growth Control Measure" shall mean any ordinance, resolution, minute order, policy, moratorium, rule, regulation, decision, standard or any other action taken by the City other than pursuant to voter initiative or referendum, which would otherwise be applicable to the Project, and which would (a) limit or restrict the number of building permits issued by the City for the Project; (b) limit or restrict the Project's ability to connect to the City's sewer system, water system, storm drainage system or any other City service; (c) alter the Project Approvals without consent of Developer, (d) limit the number of final occupancies issued by the City; or (e) any combination of the foregoing.

1.11. "Improvements" shall mean those water, sewer, storm drainage and traffic improvements identified in the Tentative Map and this Agreement.

1.12. "Landowner" shall mean the record owner of any legal parcel of the Property, whether one or more persons or entities, of fee simple title to any Unit including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; provided, however, that Landowner shall mean and include any person or entity which is a security holder in actual possession of a Unit.

1.13. "Planning Commission" shall mean the Planning Commission of the City of Riverbank.

1.14. "Project" shall mean the land uses, densities and improvements to the Property as depicted in the Project Approvals.

1.15. "Property" shall mean 9.40 acres of real property located west of Central Avenue and south of California Avenue, in the City of Riverbank and the County of Stanislaus, State of California, as shown on the map attached as Exhibit A.

1.16. "Subsequent Approvals" shall mean those approvals necessary to implement the Project Approvals that have not been conferred as of the Effective Date of this Agreement.

1.17. "System Development Fees" or "SDF" shall mean the City's capital facility programs and impact fee schedule adopted pursuant to Government Code section 66000 *et seq.*

1.18. "Tentative Map" shall refer to the Phase 2 Vesting Tentative Subdivision Map for the Project, as approved by the City Council on November 27, 2006 by Resolution No. 2006-127, attached and incorporated hereto as Exhibit A, which may be amended from time to time in compliance with this Agreement.

1.19. "Unit" shall mean a single family residential detached dwelling to be constructed on the land pursuant to the Project Approvals.

ARTICLE 2 GENERAL PROVISIONS

2.01. Findings. The City hereby finds and determines that entering into this Agreement will further the public health, safety and general welfare of the City and that the provisions of this Agreement are consistent with the City's General Plan.

2.02. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency, however, between the Recitals and Articles 1 through 10 of this Agreement, Articles 1 through 10 shall prevail.

2.03. Exhibits. The following exhibits, as they may be amended from time to time, are attached hereto and incorporated as part of this Agreement (the "Exhibits"):

- Exhibit A: Project Tentative Map
- Exhibit B: Legal Description of the Property
- Exhibit C: Consolidated Conditions of Approval
- Exhibit D: Draft System Development Fee Reimbursement Agreement
- Exhibit E: Draft Subdivision Improvement Agreement
- Exhibit F: Concept Pocket Park Design

2.04. Property Description and Binding Covenants. Developer represents that they have a legal or equitable interest in the Project and that all other persons holding legal or equitable interests in the Project (excepting owners or claimants in easements) agree to be bound by this Agreement. The Parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Project, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties hereto.

2.05. Term.

(a) Term. This Agreement shall only become effective upon commencement of the Effective Date and shall extend for period of five (5) years thereafter, unless said Term is terminated, modified or extended pursuant to this Agreement. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect.

(b) Extension. Developer may request to extend the term of the Agreement one time for the length of five (5) years. The City Council may approve a one-time extension. If approved, the extension shall be recorded on the Property in the official records of Stanislaus County.

(c) Termination. This Agreement shall automatically terminate with respect to any residentially zoned parcel of the Property that receives a final inspection in connection with the construction of a residential unit, provided that all improvements required to serve the parcel, as determined by City, have been accepted by City. Although such termination will be automatic, Developer or a then-existing Landowner may request that the City record a written notice of termination with the County Recorder for the applicable parcel. Termination of this Agreement for any such residential parcel shall in no way be construed to terminate or modify any assessment district, CFD, or lien previously recorded against such parcel at the time of termination.

(d) Tolling During Legal Challenge. In the event that this Agreement, or any of the Project Approvals are subjected to legal challenge by a third party, and Developer is unable to or elects not to proceed with the Project due to such litigation, the City may, in its sole discretion, toll the term of and timing for obligations imposed pursuant to this Agreement, provided that Developer must request, and if agreeable the City must provide, in writing, the terms of such tolling and any other timing considerations necessary to facilitate the tolling of this Agreement.

2.06. Amendment. This Agreement may be amended by mutual written consent of the Parties, in accordance with the provisions of Government Code sections 65867 and 65868 and this Agreement.

(a) Major Amendment. Any amendment to this Development Agreement which affects or relates to permitted uses of the Project, the density or intensity of land uses on the Property or neighboring properties or land uses, or any other material change, shall be deemed a "Major Amendment" and shall require noticed public hearings before both the Planning Commission and City Council. The City, in its sole discretion, shall determine whether a proposed amendment constitutes a material change necessitating a Major Amendment.

(b) Minor Amendment. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that minor changes to this Agreement may be appropriate with respect to the details and performance of the Parties. The Parties desire to retain flexibility with respect to the details of the Project and with respect to items covered by the general terms of this Agreement. If the City finds that clarifications, minor changes or minor adjustments are necessary or appropriate and do not constitute a Major Amendment, the Parties may effectuate such clarifications, minor changes and adjustments in a "Minor Amendment" approved in writing by Developer and the City Manager. Unless otherwise required by law, a Minor Amendment shall not require noticed public hearings.

2.07. Recordation. Once fully executed, this Agreement and any subsequent amendment or termination shall be recorded in the official records of Stanislaus County within ten (10) days after City executes such agreement, amendment or termination. Any amendment or termination of the Agreement that affects less than all of the Property shall clearly describe the portion thereof that is the subject of such amendment or termination.

ARTICLE 3 DEVELOPMENT OF THE PROPERTY

3.01. Vested Rights of Developer. By developing the Property consistent with the Project and during the Term of this Agreement, Developer is assured, and City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, including without limitation, the terms and conditions in the attached Exhibits and the Project Approvals are fully vested in Developer.

3.02. Permitted Uses. The Project's permitted uses, density and intensity of use, maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location of public improvements and utilities, payment of fees, and other terms and conditions of development applicable to the Project shall be those set forth in this Agreement and the Project Approvals. Project Approvals shall not be changed without the approval of the City and Developer, except as provided herein.

3.03. Priority of Enactment. The Parties intend that this Agreement, together with the Project Approvals, shall serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to the development of the Project. In the event of conflict between various documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) the Development Agreement; (2) the Project Approvals; (3) the General Plan; and (4) the ordinances, resolutions, policies and regulations adopted by the City in effect on the Effective Date including the ordinances governing the permitted uses of land, the density and intensity of uses, the timing of development, and the design, improvement, construction standards, policies and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the zoning ordinance and all other ordinances, codes, rules, policies and regulations of the City.

3.04. Character Design. Each home built as part of the Project shall conform to the Community and Character Design elements of the General Plan, specifically the policies of Goal Design-3, 4, and 5. The design of each home shall be subject to site plan review which may include review of the proposed architecture in front of the planning commission.

3.05. Improvement Standards. The Project shall comply with all improvement standards and specifications of the City, including street cross-sections, storm drainage, water, sewer, and drought tolerant landscape standards, which exist at the time that a site plan application is submitted to the City.

3.06. Storm Water Impact Standards. The Project shall adhere to the Low Impact Development Model Standards and Specifications as adopted by the City in January 2013. The project shall comply with the most current MS4 program elements imposed by the State of California, and City Ordinance.

3.07. Subdivision Maps.

(a) Time Period for Tentative Map. As provided in Government Code section 66452.6, the term of the Tentative Map is hereby extended so that it will remain valid through the Term of this Agreement. The Project Approvals shall also remain valid through the Term of this Agreement, notwithstanding any condition of approval or any other provision of the Project Approvals to the contrary.

(b) Dedication of Public Lands. This Agreement shall have no effect on dedication requirements and procedures under the Subdivision Map Act (Gov. Code § 66410 *et seq.*)

3.08. Changes to Existing Land Use Regulations. The Parties acknowledge that the following changes to existing laws, ordinances and regulations shall apply to the development standards of the Project:

(a) No Growth Control Measure. Except as expressly provided in this Section or other provisions of this Agreement, no Growth Control Measure shall be applicable to the Project, any portion or phase of the Project, or this Agreement.

(b) Changes Mandated by Federal or State Law. As provided in section 65869.5 of the Development Agreement Statute, this Agreement shall be modified or suspended as necessary to comply with state or federal laws or regulations enacted after the Effective Date, which prevent or preclude compliance with one or more provisions of this Agreement. Upon discovery of a subsequently enacted and conflicting state or federal law, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of City Law or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law. In such discussions, City agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such state or federal law and that such proposed changes shall be deemed to be consistent with this Agreement without further need for any amendment to this Agreement or the Project Approvals.

(c) Construction and Technical Design Standards. Development of the Project shall be subject to changes occurring from time to time to the California Building Code, California Fire Code and subsequent citywide changes to construction or technical design standards or specifications for public improvements which are reasonably and directly related to durability or longevity of the public improvements.

(d) Other Public Agencies. The Parties acknowledge that other public agencies outside of the control and authority of the City may regulate aspects of the development of the Project. This Agreement does not limit the authority of any such public agency. To the extent Developer requires permits or approvals from other public agencies, however, City agrees to cooperate with Developer to obtain such permits and approvals for the Project.

(e) Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible, to address such emergency in a way that does not have a material adverse impact on the Project in accordance with the Project Approvals and any Subsequent Approvals. If City determines that it is not reasonably possible to address the health and safety emergency in a way that avoids any material adverse impact on the Project, City, after consultation with Developer, shall select an option for addressing the situation that minimizes, so far as reasonably possible, the impact on development of the Project.

(f) Initiatives and Moratoria. Notwithstanding any other provision of this Agreement, the Project shall be subject to any initiative or referendum that specifically overturns City's approval of the Project Approvals, and any growth limitation ordinance, resolution, rule, regulation, policy or moratorium that is adopted and applied on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby. By way of example only, an ordinance which would preclude the issuance of a building permit due to a city-wide lack of adequate sewage treatment capacity to meet additional demand would directly concern an imminent public health issue under the terms of this paragraph and would support a denial of a building permit within the Project or anywhere else in the City if approval would require additional sewage treatment capacity. In all other cases,

(g) City Ordinances of General Applicability. The City may apply to the Project any subsequently enacted ordinances, only if all of the following conditions apply: (i) such subsequently enacted ordinances or guidelines have general applicability to all other relevant parcels within the City; (ii) such ordinances are not in direct conflict with the adopted ordinances or guidelines that were in effect on the Effective Date, and (iii) the application of such ordinances or guidelines would not prevent development, or significantly increase the cost of development, of the Project.

3.09. Development Timing. Developer shall be obligated to comply with the terms and conditions at those times specified in either the Project Approvals or this Agreement. The Parties acknowledge that Developer cannot predict with certainty when or the rate at which phases of the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, interest rates, competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of the City and Developer to hereby acknowledge and provide for the right of Developer to develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, City

Council Ordinance No. _____ and this Agreement. Developer shall use their best efforts, in accordance with their business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and with the Project Approvals.

3.10. Development of Park(s). Prior to the construction of the first production home, the Developer shall fully construct and have accepted by City Council the Park/Storm Water Basin, identified as "Lot A" on the Tentative Map. This requirement excludes the construction of four (4) model homes.

3.11. Conflict Resolution. If Developer believes the City has acted in conflict with the Project Approvals, Developer shall provide to the City Manager written notice describing the legal and factual basis for Developer's position. The City Manager will then respond to the allegations within thirty (30) days. If Developer is unhappy with the City Manager's response, such response may be appealed to the City Council.

ARTICLE 4 FEES, COSTS AND REIMBURSEMENTS

4.01. Processing and Inspection Costs. Developer shall pay those processing, inspection and plan checking fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Developer hereunder.

4.02. City Impact Fees. Except as provided in this Agreement, Developer shall pay all fees subject to the Mitigation Fee Act, Government Code section 66000 *et seq.*, including System Development Fees, impact fees, connection fees, public facilities fees or similar fees adopted by the City, and all other fees imposed as conditions of approval of the Property ("Fees"), as of the Effective Date of this Agreement. New Fees enacted after the Effective Date of this Agreement shall not be imposed upon the Project. Notwithstanding the above, Fees adopted prior to the Effective Date of this Agreement applicable to the Project may be increased or reduced, provided that such revised fees (a) must be reasonable, (b) have a direct nexus to development of the Property and Project, (c) apply generally to similar private projects or works within the City, and (d) the application of any such fee to the Property shall not require an amendment to this Agreement or any Project Approvals.

4.03. System Development Fee Credits. City and Developer have agreed in concept to System Development Fee credits attributable to Developer, as provided in the agreement attached as **Exhibit C** (the "Reimbursement Agreement").

4.04. County Fees. Development of the Property is subject to County Development Fees. Developer must provide proof of payment of County Development Fees prior to the issuance of any building permits by City.

4.05. School District Fees. Developer agrees to pay all impact fees established pursuant to Education Code section 17620 and Government Code section 65996 to the Riverbank Unified School District, Modesto City School District and/or the Sylvan Unified School District (whichever District applies) prior to the issuance of any building permit.

ARTICLE 5 IMPROVEMENTS, SERVICES AND UTILITIES

5.01. Fire Protection. Developer acknowledges that, as of the Effective Date of this Agreement, fire protection for the Property is provided by Stanislaus County Consolidated Fire Protection District. This Agreement does not address special assessments or other fees that may or may not apply to the Property in connection with services provided by Stanislaus Consolidated Fire Protection District.

5.02. Police Services. Developer acknowledges that law enforcement services for the City are performed under contract with the Stanislaus County Sheriff's Department.

5.03. Subdivision Improvement Agreement. Developer is obligated to construct the improvements identified in the Tentative Map. Developer acknowledges that, in order for the City to process any final map in connection with the Property, Developer shall be required to enter into a Subdivision Improvement Agreement as one of the Subsequent Approvals related to the Project.

5.04. Storm Drainage Improvements. Developer agrees to construct a storm water/park retention facility to be known as a Pocket Park internal to the subdivision. The preliminary concept drawings for the Pocket Park are shown on sheet 2 of the modified Tentative Map illustrated on Exhibit A to this agreement. The storm drain aspects of the Pocket Park shall be improved to a maximum depth of 4.0 feet with side slopes of 6:1 and shall be improved as a condition to recording the final map, or in connection with the City's approval of a subdivision improvement agreement.

5.05. Parkland Dedication and Improvement. Developer may offer to dedicate parkland within the park and storm drainage/park area, in order to satisfy parkland dedication requirements in accordance with the Quimby Act (Gov. Code § 66477), currently 5 acres of parkland per 1,000 persons (1 acre of park per 58 new dwelling units) and provisions of City Code related to park improvement.

(a) Dedication. To receive reimbursement for dedication of parkland within the storm drainage area, Developer must submit concept landscape drawings to the satisfaction of the Community Development Director and the Parks and Recreation Director in connection with approval of the final subdivision map for the Property. Developer will be under obligation to install or bond for the landscaping improvements, which shall be in compliance with City Drought Tolerant Landscape Standards. As the Property is currently subject to a CFD to finance ongoing maintenance of public improvements, no additional financial mechanism shall be required for park maintenance, provided that the Property remains in the CFD.

(b) Parkland Credit. The dedicated parkland will create an Open Space "Pocket Park", which serves to solve the Project's storm water obligation. 50% of the Pocket Park is proposed to be constructed as a dual-use storm basin. The remaining 50% of the Pocket Park will be parkland area will not be used for storm water retention. The City shall allow 50% credit, per net acre, in satisfaction of the parkland dedication requirements for the Property for the dual use basin area and 100% credit for the upland area not used for storm water retention. The same fee credit ratio will apply to the parkland fee category of the System Development Fees for the improved Pocket Park. City shall review the Construction Drawings for the Pocket Park in accordance with the Concept Plans illustrated in Exhibit F and, if approved, City shall require full installation of all agreed park improvements, including irrigation and all park appurtenances.

(c) Oversizing. City and Developer may agree to the dedication of more parkland than legally required for the Project (factoring in the 50% credit as set forth above). In such case, the value of the neighborhood park improvements to be installed by the developer may be credited through the City's SDF program, up to the amount defined in the neighborhood park improvement budget in the adopted SDF program. The terms for dedicating such excess parkland shall be defined in a reimbursement agreement, in similar form as the sample provided in Exhibit C, provided that Developer will not be entitled to any fee credit or reimbursement for construction costs that exceed the defined neighborhood park improvement budget.

ARTICLE 6 CITY OBLIGATIONS

6.01. City Cooperation. City agrees to cooperate with Developer in securing all permits that may be required by City and, to the extent applicable, state and federal agencies. In the event state or federal laws or regulations enacted after this Agreement have been executed, or action of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

6.02. Applications for Permits and Subsequent Approvals. City agrees that it will accept, in good faith, for processing review and action, all applications for development permits or other entitlements for use of the Property in accordance with the Project Approvals and this Agreement, and shall exercise its best efforts to act upon such applications in an expeditious manner.

ARTICLE 7 DEFAULT, REMEDIES, TERMINATION

7.01. General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement shall constitute a default. Any Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the

manner in which the default may be cured. During any such thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may terminate this Agreement and institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement. In no event shall either Party be liable to the other for consequential damages for any default or breach of this Agreement.

7.02 Developers' Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement, unless such default is cured or this Agreement is terminated. Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

7.03. Default by City. In the event City does not accept, review, approve or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Developer shall provide City with written notice of the default and the City shall have thirty (30) days to notify Developer of City's initial action to cure the default and ninety (90) days from receipt of Developer's notice to cure the default.

7.04. Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Provided, however, that Developer, its successors and assigns hereby waive any and all claims for monetary damages against City arising out of this Agreement at any time. All legal actions shall be initiated in the Superior Court of the County of Stanislaus, State of California.

7.05. Effect of Termination. Termination of this Agreement shall not affect Developer's obligations to comply with the General Plan and the terms and conditions of any and all remaining Project Approvals, nor shall it affect any other covenants of Developer which expressly continue after the termination of this Agreement.

7.06. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded to legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the

prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

ARTICLE 8 INDEMNIFICATION

8.01. Indemnification. Developer hereby agrees to indemnify the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from Developer or Developer's contractors, subcontractors, agents or employees operations under this Agreement, whether such operations be by Developer, or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's contractors or subcontractors. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement (exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action.

8.02. Third Party Legal Challenge. In the event of any legal or equitable act, action, or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. If Developer elects to file a validation action in order to confirm validity of this Agreement, City agrees to cooperate with Developer in this litigation and further agrees to refrain from raising any arguments that challenge the validity of this Agreement.

ARTICLE 9 ASSIGNMENT; MORTGAGEE PROTECTION

9.01. Mortgagee Protection. This Agreement, once executed, shall be superior and senior to any lien placed upon the Property or any portion thereof, including the lien of any deed of trust or mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Any such mortgagee or beneficiary shall be entitled to receive any notice of default under this Agreement provided that such mortgagee or beneficiary has submitted a written request to City to give such notice, setting forth the names and addresses of the persons to receive notices on behalf of such mortgagee or beneficiary and the kinds of notices to be sent to such persons. All provisions of this Agreement allowing Developer to cure any and all defaults shall also be available to any mortgagee or beneficiary entitled to notice above, should that mortgagee or beneficiary desire to cure said defaults.

9.02. Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.01 above, no mortgagee shall have any affirmative obligation or duty under this Agreement to

construct or complete improvements, or to guarantee such construction or completion. A mortgagee who takes lawful possession of the Property shall, however, assume any or all development rights consistent with any vested rights and this Agreement. Foreclosure under a mortgage, deed of trust, deed in lieu of foreclosure or sale following foreclosure or deed in lieu of foreclosure is permitted without the consent of the City. Following its acquisition of all or a portion of the Project, such holder of any mortgage or deed of trust, or any successor in interest thereto, shall be entitled to the benefits of this Agreement, shall be bound by its terms and obligations, and shall have standing to enforce the provisions of this Agreement, including the terms and conditions of Project Approvals which pertain to the Project or such portion thereof in which it holds an interest. Any such holder or successor who comes into possession of the Project, or any portion thereof, shall take the Project, or such portion thereof, subject to any claims for payments or charges against the Project or such portion thereof, which accrue under this Agreement or Project Approvals prior to the time such holder or successor comes into possession of the Project or such portion thereof. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder or successor to devote the Project, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by Project Approvals and this Agreement, subject to all of the terms and conditions of this Agreement.

9.03. Assignment of Rights. Subject to compliance with Section 9.04 below, Developer may sell, assign or transfer the Project in whole or in part to any person or entity at any time during the Term of this Agreement. Developer shall seek City's prior written consent to any sale, assignment or transfer, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within forty-five (45) days to any request made by Developer for such consent shall be deemed to be City's approval of the sale, assignment or transfer in question. City may refuse to give its consent only if, in light of the proposed assignee's reputation and financial resources, such assignee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such assignee. Such determination shall be made by the City Manager, and may be appealable by Developer to the City Council. To the extent reimbursements or fee credits from City are required pursuant to this Agreement or the Project Approvals, any and all such reimbursements and credits shall be distributed to Developer unless Developer and the subsequent Landowner specifically direct City in writing to distribute such reimbursements, or apply such credits, otherwise.

9.04. Assumption of Rights. Express written assumption of this Agreement by a subsequent Landowner of the obligations and other terms and conditions of this Agreement shall relieve Developer of such obligations so expressly assumed. Any such assumption agreement shall be in recordable form and shall be approved as to form by the City Attorney, and shall provide for a subsequent Landowner to contractually assume all of the rights of Developer as a Party to this Agreement with respect to the Project site, or portions thereof, which is sold, assigned or transferred by Developer to the subsequent Landowner. The City Clerk shall cause any such assumption agreement received by him or her to be duly recorded in the official records of Stanislaus County within ten (10) days of receipt. Subject to City's approval of such transfer pursuant to Section 9.3 above, upon recordation of said assumption agreement, Developer shall automatically be released from those obligations assumed by the assignee.

ARTICLE 10 GENERAL

10.01. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Developer and City and their successors and assigns, no other person shall have any right of action based upon any provision in this Agreement.

10.02. Project is a Private Undertaking. Both Parties acknowledge that the Project is a private development. No partnership, joint venture or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

10.03. Covenants Running with the Land. All of the terms and conditions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or any portion of the Property, whether by operation of law or in any manner whatsoever, during their ownership of the Property, or any portion thereof. All of the terms and conditions of this Agreement constitute covenants running with land pursuant to California law, including, without limitation, Civil Code section 1468.

10.04. Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

10.05. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer with the terms and conditions of this Agreement, pursuant to Government Code section 65865.1. If, following such review, the City Manager is not satisfied that Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council. Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

10.06. Estoppel Certificate. City shall, within at least twenty (20) days prior written notice, execute, acknowledge and deliver to Developer, Developer's lender, potential investors and assignees, an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement and that the

Agreement has not been terminated and is enforceable in accordance with its terms and conditions.

10.07. Construction. This Agreement shall be subject to and construed in accordance and harmony with the Riverbank Municipal Code, as it may be amended provided that such amendments do not impair the rights granted to the Parties by this Agreement.

10.08. Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

10.09. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:	City of Riverbank 6707 3rd Street Riverbank, CA 95367 Attn: City Manager
With a copy to:	Churchwell White LLP 1414 K Street, 3 rd Floor Sacramento, CA 95814 Attn: Douglas L. White, Esq.
If to Developer:	McRoy-Wilbur Communities 2909 Coffee Rd., Suite 12A Modesto, CA 95355 Attn: Mark Wilbur

Prevailing Wage. Developer shall be solely responsible for determining whether construction of any or all of the improvements required in connection with the Project trigger the obligation to

pay prevailing wages under California or federal law. In the event and to the extent that the payment of prevailing wages is required, Developer shall use diligent good faith efforts to ensure full compliance with those requirements. Developer shall defend, indemnify and hold harmless City, its agents, employees, officers and officials from any liability, loss, debts, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this Section shall survive the termination of this Agreement.

10.10. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in the Superior Court of Stanislaus County.

10.11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements whether oral or written. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by both Parties.

10.12. Counterparts. This Agreement and any and all amendments and supplements to it may be executed in notarized counterparts, and all counterparts together shall be construed as one document.

10.13. Waiver. No waiver by a Party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a Party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or under the law.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date, as defined in Section 1.07 above.

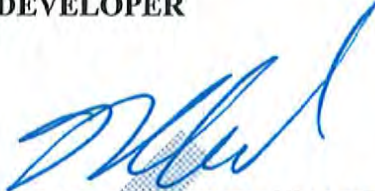
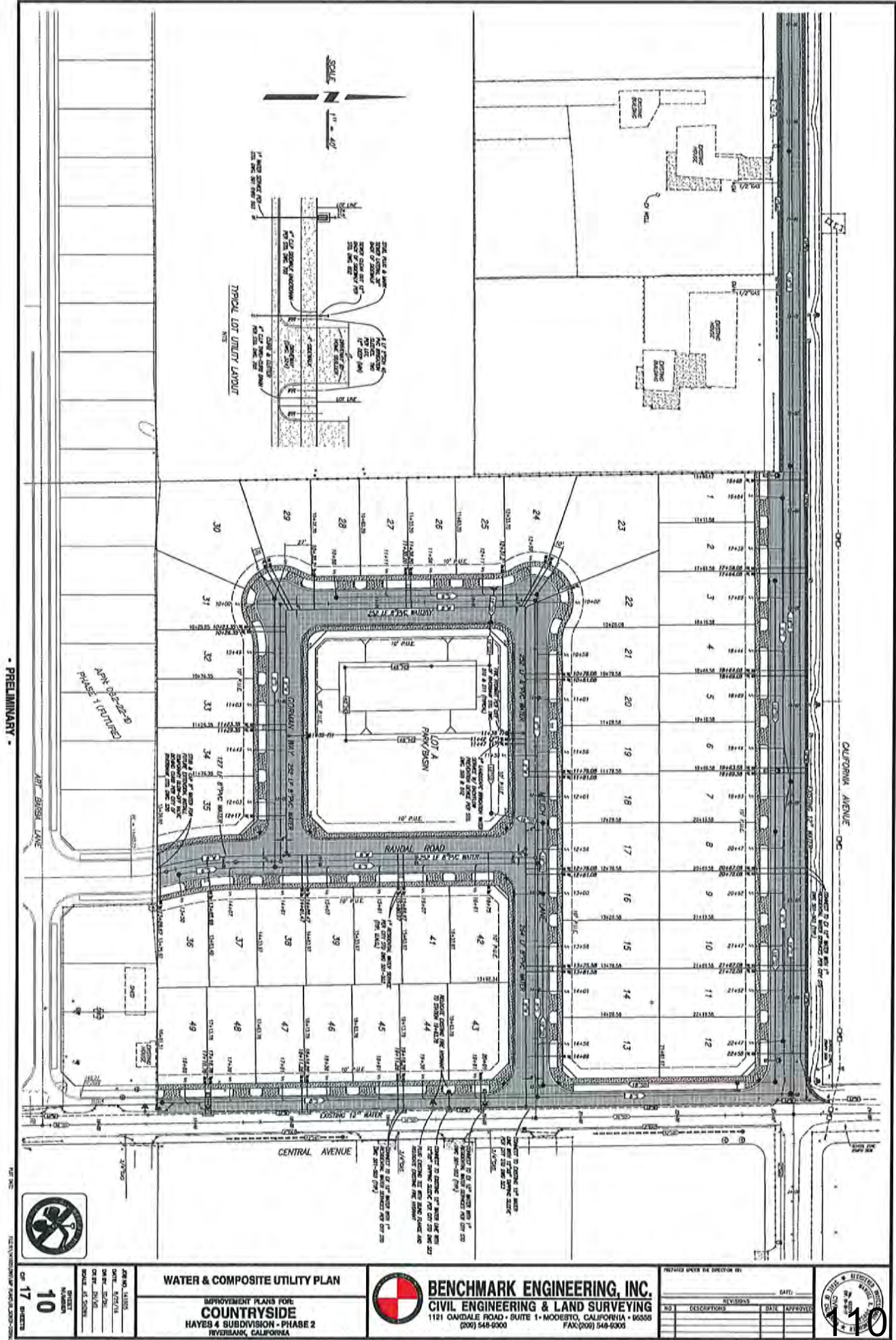
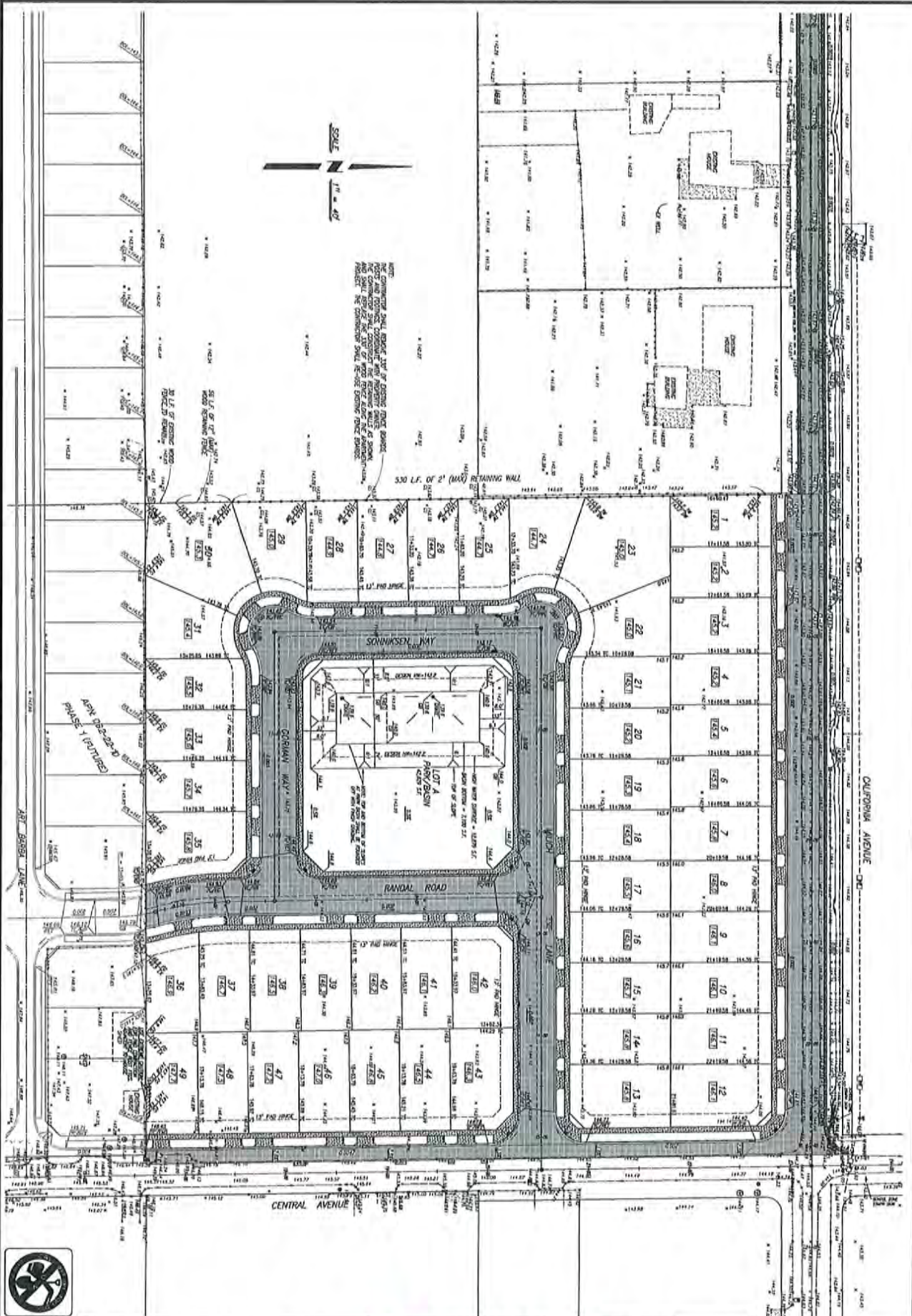
CITY	DEVELOPER
The City of Riverbank, a California municipal corporation	
By: _____ Richard O'Brien, Mayor	Print Name: <u>Michael Wilbur</u> On behalf of McRoy - Wilbur Communities, Inc.,
Date: _____	Print Name: _____ And On behalf of James A. Aartman, a single man.
APPROVED AS TO FORM:	
By: _____ Tom Hallinan, City Attorney	_____
ATTEST:	
By: _____ City Clerk	

EXHIBIT A

Project Tentative Map Exhibit's

DRAFT





PRELIMINARY



GRADING & DRAINAGE PLAN

IMPROVEMENT PLANS FOR
COUNTRYSIDE
 HAYES 4 SUBDIVISION - PHASE 2
 RIVERBANK, CALIFORNIA



BENCHMARK ENGINEERING, INC.
 CIVIL ENGINEERING & LAND SURVEYING
 1121 OAKDALE ROAD - SUITE 100, MOORESTOWN, CALIFORNIA 92558
 (714) 548-0000 FAX: (714) 548-0000

NO.	DESCRIPTIONS	DATE	BY



8
 OF 17 SHEETS

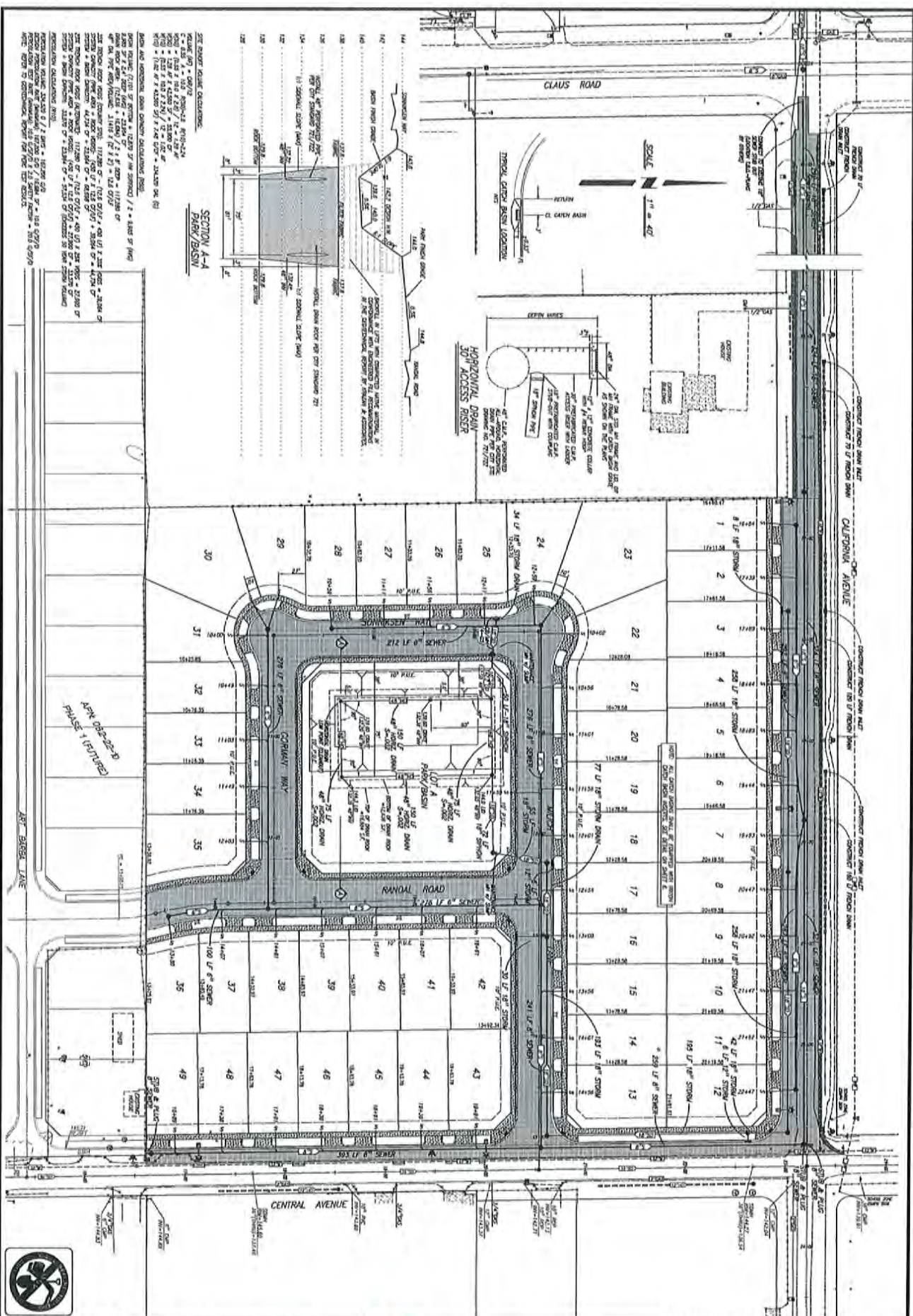




EXHIBIT B

Legal Description of the Project

APN: 062-022-003

LOT 316 and 330 OF THE RIVERBANK IRRIGATED FARMS, ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN THE OFFICE OF THE RECORDER OF STANISLAUS COUNTY, CALIFORNIA, ON JANUARY 15, 1913, IN VOLUME 7 OF MAPS, AT PAGE 23.

DRAFT

EXHIBIT C

Consolidated Conditions of Approval

DRAFT

Exhibit C

Consolidated Conditions of approval for Hayes 4, Phase 2, Tentative Map as approved by City Council by Resolution No. 2006-127 on November 27, 2006.

1. This approval is dependent upon and limited to the proposals and plans contained and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. The applicant shall secure and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
3. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site, either wind, water or transport, during the construction and operation of the project covered by this approval.
4. Should the project be found, at any time, not to be in compliance with any of the Conditions of Approval, or should the applicant construct or operate this development in any way other than specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to be violated.
5. If a final map reflecting these conditions of approval is not approved by the City Council within the time frame as stipulated in the Hayes 4, Phase 2 Development Agreement, this Tentative Map shall lapse and the city applicant shall reapply to the City of Riverbank for a new Map. Applicant may not rely on this approval to begin construction of structures on parcels illustrated on the submitted map until a final map is recorded. Notwithstanding, the Applicant may commence all on and off site work upon issuance of a grading and construction permit. Reapplications for a tentative map shall state the reasons why the applicant was unable to gain approval of a final map and why within two years from the approval of a new tentative ma the project is expected to be able to file a final map, if so granted. Reapplications for tentative maps may include information submitted in the initial application by reference. The zoning will not expire, nor will any associated applications (except tentative maps and vacation and abandonment applications), unless otherwise stated in the conditions of approval.
6. A copy of these consolidated conditions must be included in or attached to all contract bid specifications for the approved tentative map.
7. Development of the property must conform to the plans as approved by the Riverbank City Council and on file in the Development Services Department.

8. Although a courtesy reminder is typically mailed to the correspondent (on file) 30 days prior to an applicant's expiration, the applicant is fully responsible for maintaining the correct expiration date of any application.
9. Approval of this application does not constitute approval of any other entitlement or any other necessary permit, license or approval.
10. All conditions imposed on this map must be satisfied.
11. The following shall be noted on the submitted Tentative Subdivision Map:
 - A. All street cross-sections proposed by the map for Central and California Avenues shall include the construction of a half street plus a twelve foot travel lane constructed in accordance with City of Riverbank Standards and Specification. Central and California Ave's are planned as Minor Collectors at 84' of total Right of Way (ROW) per the adopted Riverbank Street Standards. However, due to site constraints City staff has agreed to a 40 foot half street section by reducing the standard three (3) foot bike lane buffer to one (1) foot for both Central and California Aves.
 - B. The Standard park land dedication and improvement obligation for single family developments is 5 acres of park for every 1,000 persons. The park ratio adopted by the City Council in RMC Section 152.037 (D) requires 1 acre of park per 58 dwelling units. Meaning that the proposed 49 residential units in this project has a Parkland dedication requirement of 0.8448 acres. Prior commitments by the City Council on this project have resulted in the granting of a 50% land dedication credit for the park/storm drainage system proposed and 100% land dedication credit for the park area not used for storm drainage purposes. Based on preliminary designs it appears that the proposed park/storm drainage basin (Pocket Park) will be about 0.98 net acres (net of ROW) in size. The dedication of the Pocket park will result in the dedication of 0.7374 net acres of land meaning the project will be required to pay for 0.1074 acres of parkland dedication multiplied by the current appraised value of similar land at the time of Final Map. The Pocket Park improvements might exceed the project obligation. In this case, it would be expected that the developer would be eligible for a reimbursement of over-sizing based on the procedures defined in the RMC Section 150.30. The actual size of the park/storm land dedication will be determined using the final calculations presented with the Final Map.
 - C. All streets shall be planned and constructed with a separated sidewalk with 1 street tree planted for each dwelling unit per standard interior lot and 2 trees for each corner lot indicated on the Tentative Map. The exception being the sidewalks adjacent to the Pocket Park, these streets shall have a monolithic pour against the Pocket park edge. The type of Street trees proposed shall be approved by the City before they are installed.

- D. Note that where finished grades of adjacent lots differ more than two feet, a retaining wall shall be constructed.
- E. Note the City's adopted policy that where there are differing grades, wall and fence height shall be taken from the higher grade.
- F. A centralized mail collection system, which includes a concrete foundation and supporting hardware, shall be installed to the satisfaction of the Riverbank Postmaster.
- G. Note that the map and improvements will be subject to provisions of the Bruinville Master Plan and the 2007 Nolte Master Plans prepared for the area.
- H. Submit elevations for review and approval by the Community Development Director that show the utilization of enhanced roofing material and wainscoting materials for each dwelling unit. Wainscoting shall extend alongside elevations for a minimum of five feet to the sideyard fence. All home designs shall comply with the Riverbank Community Character Element of the General Plan for Residential construction.
- I. Each lot shall be provided with a drainage system that captures run-off from all impervious surfaces and directs the storm water into lateral leach lines on that property. The lateral leach lines shall be located such that excessive flows will be surfaced and flowed across natural turf located in the front yard prior to entering the commonly maintained drainage system.
- J. The drainage system inlets shall provide for passive filtration of storm water.
- K. All drainage facilities shall be offered for irrevocable dedication to the City on the map. The City Engineer is directed to refuse all said facilities until such time that the City, at its sole discretion, determines to accept said facilities.
- L. To qualify for a fifty percent credit of open space, the developer shall be under obligation to prepare landscape and irrigation construction plans which comply with Riverbank's drought tolerant landscape standards and install the open space to the satisfaction of the Community Development Director and the Recreation Director. The property has been annexed to Riverbank CDF 2016-1 which was established to aid in funding the long term maintenance of the park/storm drainage area as well as other City Services.
- M. The applicant shall comply with all criteria stipulated in the executed reimbursement agreement between the City of Riverbank and the Bruinville Development Group for the construction of public potable water well to the satisfaction of the Community Development Director. This includes the obligation to fund the acquisition of the

land associated with Well Site No. 11 located off of Sante Fe Avenue, easterly of Central.

12. Prior to recordation of a Final Subdivision Map, the applicant shall comply with the following conditions:
 - A. Pursuant to Section 66473.1 of the State Subdivision Map Act, the Final Map shall show that all lots within the subdivision have a minimum of 100 square feet of solar access for each future building unit allowed by this subdivision.
 - B. The Final Map shall show the dedication of all onsite drainage easements, including easements for access thereto, and show monumentation for such easements, as required by the Director of the Department of Public Works, or verify that no easements are required.
 - C. Pursuant to Section 66456.1(b) of the State Subdivision Map Act, the Final Map shall include the entire area shown on the Tentative Map and shall not be filed as units or groups of units, unless the City and Applicant concur on a phasing plan for all improvements shown on the tentative map.
 - D. Provide the City Department of Public Works with standard forms approved by the Director of the Community Development Department stating that the applicable agency or agencies have provided commitment to the site for such public facilities that are required for the subdivision.
 - E. Include on the Final Map an "Easement Holder's Certificate" whereby all easement holders having record title interest within the confines of the Final Map consent to the filing of the Final Map. If required, pursuant to Section 66436(3) of the Subdivision Map Act include an "Easement Holder's Statement" on the Final Map indicating those signatures omitted from the map since their interest cannot ripen into a fee. Prepare a "subordination certificate" whereby those easement holders having interest within any future public dedications will subordinate their interest to the public. Each "subordination certificate" to be recorded concurrently with the Final Map and referenced on the Final Map.
 - F. Agree to comply with the final adopted provisions of the Public Facilities Master Plan for financing, timing, and thresholds for improvements in the area.
 - G. This project has annexed into the CFD 2016-1 for the purpose of providing long-term funding for the maintenance of public items including but not limited to: Lighting and Landscaping, Storm Water, Streets and Police Protection.
18. Prior to the issuance of a building permit, the applicant shall comply with the following conditions:

- A. Submit architectural elevations that show garage openings recessed from the front door elevation by a minimum of two feet.
- B. Submit elevations that show the utilization of tile roofing material and wainscoting materials for each dwelling unit. Wainscoting shall extend alongside elevations for a minimum of five feet.
- C. Submit construction plans that show the use of sunscreens and/or tinting on all southern and western exposed windows.
- D. Pay fire service impact fees to the Stanislaus Consolidate Fire District and bring receipt of said payment to the Community Development Department.
- E. Enter into a benefit assessment agreement or annex the properties into the Crossroads Community benefit assessment district with the Stanislaus Consolidated Fire District to the satisfaction of the Fire Marshall.
- F. Protect existing underground electrical facilities adjacent to the proposed development as required by the Pacific Gas and Electric Electrical Engineering Department. Appropriate easements for electric facilities shall be granted as required.
- G. Grant a 10' Public Utility Easement along all existing and proposed street frontages and any other necessary easements to either the Oakdale Irrigation District or other utilities as possible.
- H. Insure that electric service to the proposed project is available to the site. The applicant shall contact the appropriate electrical provider's Engineer Department to arrange for electrical service to the project.
- I. All new construction requires building permits in accordance with all applicable building and fire codes and submission of a plot and grading plan prepared by a registered professional civil engineer showing property lines, building locations, topography and such other data as required by the Public Works and Community Development Department.
- J. Drainage studies must be submitted and approved and all improvements must comply with the approved studies. Further, storm water management dedication and/or improvements may be required. Note that drainage shall not be allowed to cross sidewalk areas.
- K. Fire hydrants must be provided in compliance with Fire Department specifications, and a three foot fire hydrant easement is required behind all street frontage lot lines.

- L. All necessary utility easements shall be retained or reserved.
- M. All subsequent plans shall plot dedication and/or the relinquishment of all effected utility easements.
- N. Submit plans and specifications for improvements of all public and private street rights-of-way, water service utilities, wastewater collection, drainage easements, culverts, drainage structures and drainage channels, to the Department of Public Works for approval by the City Engineer.
- O. The exact depth of imported base material shall be based on soil tests which have been approved by the Director of the Department of Public Works.
- P. Sight distance requirements at all street intersections shall conform to the intersectional sight distance criteria of the Public Road Standards of the Department of Public Works and approved by the City Engineer.
- Q. If the improvement plans show a need to excavate in any public road right-of-way, the developer shall place a cash deposit or security bond with the City of Riverbank to ensure that any damage to the existing roadway is repaired in a timely manner.
- R. Construct, or agree to construct the public improvements and private improvements shown on both the improvement plans for the project and the Public Facilities Master Plan for the area as approved by the City.
- S. All new and existing utility distribution facilities, including cable television lines, within the project boundaries shall be placed underground. The developer is responsible for complying with the requirements of this condition, and shall make the necessary arrangements with each of the serving utilities, including licensed cable television operators, for the installment of such utilities.
- T. With respect to any claim, action of proceeding against the City, its officials, employees or agents relating to the action or inaction of the City in reviewing, approving or denying entitlements of any type, the Developer agrees to indemnify, hold harmless and defend the City and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs, and liability for claims of damage, for any property damage or personal injury, including death, which may arise as a result of any negligent acts or omissions by Developer or Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, or operation, of the Project. Developer agrees to indemnify, hold harmless and defend the City and its officers, agents, employees, and representatives from any and all actions for damages caused or alleged to have been caused by Developer's activities in connection with the Project. This

Agreement applies to all damages and claims for damages suffered or alleged to have been suffered arising out of or in connection to any and all Project operations, regardless of whether or not the City prepared, supplied or approved plans or specifications or both for the Project.

- U. In the event any legal action or special proceeding is commenced by any person or entity challenging any agreements between Developer and City, any entitlement or component of the Project such as the Project EIR, or any other City approval for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation. Upon the commencement of Project Litigation, Developer will indemnify and hold harmless the City from all costs and expenses incurred related thereto, including, but not limited to, damages, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer shall pay all litigation fees to the City within thirty (30) days of receiving a written request and accounting of such fees and expenses from the City. Notwithstanding the aforementioned, City may request a deposit to cover City's reasonably anticipated Project Litigation fees and costs, and Developer will provide such deposit to City within seven (7) days of any such request.
 - V. Deposit with the Department of Public Works sufficient funds to cover the cost of all plan check and inspection services associated with the improvements.
 - W. Hydrology and hydraulic calculations for determining the storm system design, with water surface profile and adequate field survey cross section data, shall be provided satisfactory to the Director of the Department of Public Works, or verification shall be provided that such calculations are not needed.
 - X. The applicant shall deposit \$500 construction landscape plan review and permit.
 - Y. Make payment or other arrangements to the satisfaction of the Riverbank Unified School District.
 - AA. Make payment or other arrangements for all City of Riverbank System Development Fees including regional storm drainage fees required by the Public Facilities Master Plan.
 - BB. The Public Facilities Master Plan for the area east of Claus Road has been completed to the satisfaction of the City Engineer and adopted by the City Council. The applicant shall implement all provisions of the plan on a fair share basis as determined by the City Engineer.
19. During construction of the project the applicant shall comply with the following conditions:

- A. The project complies with all applicable provisions of the San Joaquin Valley Air Pollution Control District Fugitive Dust rules.
 - B. Erosion control devices are installed and maintained to the satisfaction of the Community Development Director and Department of Public Works.
 - C. Neighboring streets directly adjacent to the site are kept clean of dust, litter and debris.
 - D. Construction traffic shall be limited to access to the site from Claus Road and a temporary driveway shall be constructed. Immediately after entering the site, $\frac{3}{4}$ inch rock shall be provided on the driveway surface twenty feet wide for a distance not less than thirty feet.
 - E. The installation (if required) of all gas, electric, sewer and water lines and any other below surface utilities is to take place before the installation of any concrete curbs, gutter, sidewalks, and the surfacing of the streets.
 - F. The hours of construction, including equipment warm-up, shall be limited to 6:00 a.m. and 6:30 p.m. on weekdays and 8:00 a.m. and 5:00 p.m. on weekends and legal holidays.
 - G. Construction of improvements shall be concurrent with the construction of necessary public facilities identified within the Public Facilities Master Plan for the area.
20. Prior to the issuance of a Certificate of Occupancy for the project, the applicant shall comply with the following conditions:
- A. Submit a letter from the Stanislaus Consolidated Fire District stating its satisfaction with the type and location of fire protection improvements and the minimum required water flow in gallons per minute.
 - B. All conditions of approval, applicable state statutes, and local ordinances must be satisfied, including all applicable building and fire code requirements for hazardous materials.
 - C. Provide the City Department of Public Works with evidence that any offer of dedication or grant of right-of-way shall be free of all encumbrances or subordinated and free of hazardous and/or toxic materials.
 - D. All building and improvements shown on plans shall be constructed and installed in substantial compliance with the submitted plans as well as in compliance with all applicable City of Riverbank standards and specifications.

- E. All improvements and the timing thereof specified by the adopted Public Facilities Master Plan shall be paid, financed or constructed to the satisfaction of the City Engineer.

EXHIBIT D

Draft System Development Fee Reimbursement Agreement

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Exhibit D

DRAFT REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is made this ____ day of _____ 2016 (the "Effective Date"), by and between the City of Riverbank, a municipal corporation ("City"), and _____ ("Developer"). City and Developer may each be referred to individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

A. On April 25, 2005, the City Council adopted Resolution No. 2005-046, approving Tentative Map 07-2004 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 88 residential lots on 18.74 acres.

B. On November 27, 2006, the City Council adopted Resolution No. 2006-127, approving the Phase 1 Vesting Tentative Subdivision Map for Tentative Map 07-2004 (the "Tentative Map" and "Project Area"). The Tentative Map is attached hereto for reference, as **Exhibit A**.

C. On _____, 20__, City adopted Ordinance No. __-__, approving a development agreement between City and Developer (the "Development Agreement"), to extend the life of the Tentative Map, clarify the conditions of approval applicable to the Project Area, establish vested entitlements to construct 49 residential lots in the Project Area, and overall, to promote the logical and orderly development of the Project Area.

D. Developer is obligated to construct and install public improvements in the Project Area (the "Improvements").

E. City proposes to provide Developer credits for the installation of the Improvements that the City has identified in its System Development Fee ("SDF") program. The total reimbursement for each category of Improvements is provided in **Exhibit B** attached hereto (the "SDF Fee Reimbursements").

F. The revised SDF fees for each unit in the Project Area, as revised in accordance with this Agreement, is provided in **Exhibit C** attached hereto.

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

AGREEMENT

Section 1. Project Scope. Developer shall be responsible for the design, construction, installation and bonding of the Improvements. City shall approve all plans and specifications for

the construction, and City shall inspect and accept the Improvements in accordance with Riverbank Municipal Code ("City Code"). The design and installation of the Improvements shall be to the satisfaction of City in its sole discretion, in accordance with City Code.

Section 2. Reimbursement. As provided below, City shall reimburse Developer for the completion and acceptance by City of the Improvements listed in Exhibit B.

2.1. *Amount of Reimbursement.* City shall reimburse Developer an amount up to the total reimbursement, for each SDF category shown in Exhibit B provided that the Improvements are accepted by City.

2.2. *Source of Reimbursement.* Reimbursements to Developer shall come from the following:

(a) SDF Fee Credit. Upon issuance of each of the 49 building permits in the Project Area, City shall reduce the SDF fees collected from Developer for each category of SDF fees related to the Improvement to be constructed (the "SDF Fee Credit"), in an amount up to the total SDF reimbursement shown on Exhibit B.

(b) SDF Fee Reimbursement. In some cases, **such as** the total SDF reimbursement exceeds the SDF Fee Credits available for the Project Area. In such case, after issuance of the 49th building permit in the Project Area, City shall pay the difference between the total SDF reimbursement and the SDF Fee Credits from the appropriate development impact fee fund, if funds are available, after the Improvements have been accepted by City as complete. City shall track and make payments to Developer based on the timing and priority of the request compared to other developers, using the date the City Council issues the 49th building permit as the priority date for reimbursement from City's SDF.

2.3. *Limited Obligation.* City shall only be required to provide SDF Fee Credits to Developer for Improvements listed in Exhibit B. City makes no warranty, express or implied, that SDF Fee Credits will be available to fully compensate Developer for the cost of installing the Improvements. In no event shall City be required to reimburse Developer directly from City's general fund. Developer further acknowledges that any deficiency in reimbursement for the cost of the Improvements shall in no way diminish Developer's obligations with respect to any provision in the Tentative Map or Development Agreement.

2.4. *Conditions for Payment.* City shall provide SDF Fee Credits to Developer only after all of the following conditions have been met to City's satisfaction:

(a) Developer has designed and constructed the Improvements in accordance with the City's public improvement design standards;

(b) City has formally accepted the dedication of Improvements for which the SDF Fee Credit reimbursement is sought by Developer;

(c) Developer is not in default of any obligation under this Agreement, the Development Agreement or any other agreement related to the Project Area, such as a subdivision improvement agreement; and

(d) Developer is not in default of any monetary obligation to the City, including without limitation plan check and inspection fees, loan repayments due to the City, ad valorem property taxes, special assessments or special taxes.

Section 3. Compliance with Laws. Developer shall insure that all work performed on the Improvements is performed in a manner that complies with all applicable federal, state, county and local government laws, regulations and rules, including all rules and regulations of City, as these rules and regulations may be modified or changed from time to time.

Section 4. City Inspection of Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Improvements and areas where construction of the Improvements is occurring or will occur.

Section 5. Quality of Work; Compliance with Laws and Codes. The construction plans and specifications for the Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is commenced.

Section 6. Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

Section 7. Limited City Obligation. The obligations arising from this Agreement are neither a debt of City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except for the issuance of SDF Fee Credits, as provided herein. Neither the City's general fund nor any special fund of City, except for the applicable account associated with each SDF category, shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of City is not pledged for the payment of any obligation arising from this Agreement. Developer shall not compel the forfeiture of any of City's property to satisfy any obligations arising from this Agreement.

Section 8. Liens, Claims, and Encumbrances. Upon request by City, Developer shall provide a written guarantee and assurance to City that there are no liens, claims, or monetary encumbrances on the Improvements, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which reimbursement is requested under this Agreement for the Improvements. Notwithstanding any other provision or term of this Agreement, City shall have no obligation to make any reimbursement payments until Developer has cleared any and all liens, claims and monetary encumbrances from the Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

Section 9. Acceptance. The City Engineer shall accept the Improvements in his or her sole discretion, pursuant to City Code, all applicable federal and state rules and regulations, and a subdivision improvement agreement between the Parties.

Section 10. Indemnity. [omitted – see subdivision improvement agreement].

Section 11. Assignment of Fee Credits. Fee Credits to be issued by City are personal to Developer and shall not automatically run with the land or the subsequent purchasers of Developer's property. Developer may transfer or assign any or all Fee Credits associated with this Agreement by providing notice to the City through a written statement in a form acceptable to the City Attorney. City may accept the assignment of Fee Credits for the same SDF categories to future developments on a dollar-for-dollar basis. The written statement shall notify the City of the credit amount that Developer intends to transfer or assign to specified properties or developments. After receipt of such written request from Developer and prior to issuance of building permits, City shall confirm in writing the amount of related SDF fees that City will collect from the assignee. In the absence of such written statement by City, no assignee may claim SDF Fee Credits attributable to this Agreement.

Section 12. Notice. Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City: City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Clerk

With a courtesy copy to: City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Manager

And to: Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814

Attention: Douglas L. White, Esq.

Developer:

With a copy to:

Either Party may give notice hereunder to designate a different address to which subsequent notices, payments or instruments shall be delivered.

Section 13. General Provisions.

13.1. *Term.* The term of this Agreement shall start as of the Effective Date written above and shall remain in effect until all Improvements have been accepted by City and City has awarded all SDF Fee Credits to Developer.

13.2. *Termination.* In the event Developer defaults in the performance of any of its obligations under this Agreement or materially breaches any of the provisions of this Agreement, and such default or breach is not cured by Developer within 10 business days (or such longer period as may be necessary) of written notice from City specifying such default, City shall have the option to terminate this Agreement upon written notice to Developer, or seek any available remedies at law.

13.3. *Captions.* Captions to each Section of this Agreement are for convenience purposes only, and are not part of this Agreement.

13.4. *Severability.* If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

13.5. *Governing Law; Venue.* This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Stanislaus, State of California.

13.6. *Assignment.* This Agreement shall not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld or delayed, and any assignment without such written consent shall be void and ineffective.

13.7. *Entire Agreement.* This Agreement contains the entire agreement between the parties with respect to the reimbursement of SDF Fee Credits. The Parties acknowledge that a subdivision improvement agreement will address improvement standards, bonding requirements and other provision related to the construction of the Improvements and their dedication to City.

13.8. *Modification.* This Agreement may be amended only by a written instrument signed by the Parties.

13.9. *Counterparts.* This Agreement may be executed in counterpart s, each of which shall be deemed an original, but both of which together shall constitute one instrument.

13.10. *Exhibits.* All exhibits attached hereto are incorporated as part of this Agreement.

13.11. *Interpretation.* Each Party acknowledges it has reviewed this Agreement with its own legal counsel and based upon the advice of that counsel, freely entered into this Agreement.

13.12. *Mandatory and Permissive.* "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

13.13. *Waiver.* The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

13.14. *Other Documents.* The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

13.15. *Attorneys' Fees.* In the event any party to this Agreement commences litigation for specific performance or damages for the breach of this Agreement, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court costs incurred.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the above-referenced Effective Date.

CITY:

City of Riverbank, a California municipal corporation

By: _____

Marisela Garcia, Interim City Manager

DEVELOPER:

a [California limited liability company/corporation]

By: _____

Date Signed: _____

Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:

By: _____
Tom Hallinan, City Attorney

DRAFT

EXHIBIT A

Tentative Map

DRAFT

EXHIBIT B

SDF Fee Reimbursements

The following improvements shall be eligible for reimbursement through the City's SDF Fee program:

Category	Fee Credit (per SFR Unit)	Total Reimbursement
PARKLAND* Dedication of a 0.7374 acre Pocket Park which includes as a secondary purpose to the abovementioned storm water retention improvements.	Dedication Credit: \$ _____ Park Improvement Credit: \$ _____	Maximum Dedication Credit: \$ _____ Maximum Improvement Credit: \$ _____
Sewer Trunk Extension in California – 18" sewer line from a point of connection easterly of Claus Road to the eastern most edge of the intersection improvements at the Central and California intersection (This credit will only apply if the Riverbank City Council approves an amendment to the sewer exhibit maps approved with the System Development Fees currently in affect.)	Sewer Improvement Credit: \$ _____	Maximum Improvement Credit: \$ _____

*To receive a parkland reimbursement, Developer must comply with provisions in the recorded development agreement for the Property; e.g., prepare landscape and irrigation plan in compliance with City Drought Tolerant Landscape Standards and install open space to the satisfaction of the Community Development Director and the Recreation Director. Potential credit shall be subject to City approval of the Pocket Park plans. Reimbursement will be consistent with the adopted System Development Fees as enacted by the Riverbank City Council and would include the park improvements as well as adjacent curb, gutter, sidewalk and ½ of the adjacent neighborhood streets in the percentages described above.

EXHIBIT C

Adjusted SDF Fee Schedule

The following is the adjusted SDF Fee schedule applicable to the Project Area:

Facility Type	Single Family Residential (SFR) per unit
Streets	\$ _____
Streets – Signals & Bridges	\$ _____
Sewer Collection	\$ _____
Sewer Treatment	\$ _____
Water Distribution	\$ _____
Water Wells & Storage	\$ _____
Storm Drainage	\$ _____
Storm Drainage (Other)	\$ _____
Police	\$ _____
Fire	\$ _____
Parks & Recreation	\$ _____
General Government	\$ _____
Administration (2%)	\$ _____

EXHIBIT E

Draft Subdivision Improvement Agreement

DRAFT

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Clerk

Exempt from recording fees
(Gov. Code §§ 6103 and 27383)

(Space above this line for Recorder's use)

APN: - - -

SUBDIVISION IMPROVEMENT AGREEMENT FOR THE DIAMOND BAR ESTATES – WEST SUBDIVISION

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 2016, by and between the City of Riverbank, a California municipal corporation ("City") and _____, a California _____ ("Subdivider"). City and Subdivider may herein be referred to individually as a "Party" and collectively as the "Parties". There are no other parties to this Agreement. This Agreement is made with reference to the following:

RECITALS

A. Subdivider is possessed of a tract of land consisting of approximately _____ acres, lying in the City of Riverbank, County of Stanislaus, California, known as "_____" (the "Subdivision").

B. On _____, 20__, the City Council approved Tentative Subdivision Map No. _____ for the Subdivision with conditions of approval (the "Tentative Map"), along with [Design Guidelines for the Subdivision, a General Plan Amendment and Zoning Ordinance Amendment]. Resolution No. _____ approving the Tentative Map is attached hereto as **Exhibit A** and incorporated herein by this reference (the "Resolution of Approval").

C. The Tentative Map is subject to the Subdivision Map Act (Gov. Code § 66410 *et seq.*) and the City's ordinances and regulations related to the filing, approval, and recordation of subdivision maps (together, the "Subdivision Laws") and the requirements and conditions contained in the Resolution of Approval.

D. Complete improvement plans for the construction, installation, and completion of the improvements ("Improvement Plans") have been prepared by Subdivider and approved by the City of Riverbank Planning and Building Manager or her designee, including but not limited to the City Engineer ("Manager").

E. Subdivider has presented to the City a proposed final map ("Final Map") for the Subdivision, pursuant to the provisions of the Subdivision Laws for approval and recordation.

F. In order for the City to approve and record a Final Map for the Subdivision, the Subdivider must either complete all of the improvements required by the Subdivision Laws, Resolution of Approval, Improvement Plans and Tentative Map ("Improvements"), or execute an agreement with the City to complete the Improvements within a specified period of time.

G. In order for the City to approve and record a Final Map for the Subdivision, Subdivider desires to enter into this Agreement, whereby Subdivider promises to install and complete, at Subdivider's sole cost, expense and risk, all of the Improvements required in connection with the Subdivision, including but not limited to grading work, constructing and installing the Improvements, and all labor that is required to complete these tasks to the satisfaction of the City ("Improvement Work").

H. Subdivider has secured this Agreement by depositing security with the City consisting of a cash deposit, bond, or letter of credit in form acceptable to the City to secure a one-year warranty of workmanship in accordance with the terms provided herein (the "Securities").

I. On _____, 2016, the City Council adopted Resolution _____, authorizing the City Manager to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. Recitals. The recitals above ("Recitals") are true and correct and are hereby incorporated into and made part of this Agreement. In the event of any inconsistency between the Recitals and Sections 1 through 23 of this Agreement, Sections 1 through 23 shall prevail.

2. Effective Date and Term. This Agreement shall only become effective on the date that both Subdivider and the City have executed this Agreement (the "Effective Date"), and shall terminate only after the release of all Securities, unless this Agreement is terminated in writing signed by both Parties.

3. Dedication. Except as otherwise provided in this Agreement or in the action of the City Council approving the Final Map, the City hereby rejects all lands, rights-of-way and easements offered for dedication on the Subdivision Map or by separate instrument. Such offers, however, shall remain open and constitute irrevocable offers of dedication in accordance with Government Code section 66477.2. All such offers of dedication may be accepted by the City in its sole discretion at any later date without any further notice to the Subdivider.

4. Installation of Required Improvements. Subdivider agrees to furnish, construct and install at Subdivider's own expense the Improvements, as shown on the Improvement Plans, will be on file in the Development Services Department, and which are to be installed to the sole

satisfaction of the City Engineer. The Improvement Plans may only be modified by the Subdivider subject to prior written approval by the City Engineer.

5. Subdivider's Obligations. Subdivider shall perform each of the following, at all times, throughout the term of this Agreement:

A. Complete, at Subdivider's sole cost and expense in a good and workmanlike manner, all of the Improvements in conformance with the Resolution of Approval (and any amendments thereto), the Subdivision Laws, and all applicable standards under City codes and ordinances and the City's general plan related to the Improvements (collectively, the "Improvement Standards").

B. Commence construction of the Improvements within three (3) months from the Effective Date of this Agreement. Subdivider shall notify the City Engineer in writing three days before the commencement of construction of the Improvements.

C. Complete all Improvements within twelve (12) months from the Effective Date of this Agreement, unless otherwise approved or extended in writing by the City Manager for good cause, after written application by Subdivider. Such application shall state fully the grounds and facts showing good cause for such extension to be granted. In granting any extension of time, the City may require a new or amended subdivision improvement agreement to reflect increases in the costs of constructing the Improvements or other conditions related to the extension of time.

D. Furnish and pay for all necessary equipment, labor and materials to complete the Improvements in conformity with the Improvement Standards.

E. Replace or repair all public improvements, private property, public utility facilities, and surveying or subdivision monuments that are destroyed or damaged in the performance of any work related to this Agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or private property damaged or destroyed in the performance of any work related to this Agreement. Any repair or replacement work shall be to the satisfaction, and subject to the approval, of the City Engineer.

F. Provide safe access for inspection by the City to the Improvements.

G. Give good and adequate warning to the public of each and every dangerous condition existing on or near the Improvements, and take reasonable action to protect the public from any such dangerous condition.

H. Perform all construction work related to installing the Improvements between 6:00 a.m. and 6:30 p.m. on weekdays and between 8:00 a.m. and 5:00 p.m. on weekends and legal holidays, unless otherwise approved in writing by the City Engineer.

I. Require each contractor and subcontractor to have a competent foreman on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing any work related to the Improvements. Subdivider shall maintain an office with a

telephone and Subdivider or a person authorized to make decisions and act for Subdivider in Subdivider's absence shall be available at the site of any Improvements within three (3) hours of being called at such office by the City at any time when construction work is being performed on the Improvements.

J. Assume all costs for utility and cable television undergrounding or relocation which is not the responsibility of the cable television, gas, electric, telephone or other utility company under the terms of any franchises with the City or otherwise imposed upon the utility companies by law.

K. Obtain and comply with all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

6. Estimated Cost of Improvements. The total estimated cost of the Improvements, as provided by Subdivider and reviewed and confirmed by the City Engineer, is [REDACTED] dollars (\$ [REDACTED]).

7. Title to Improvements. The City shall not accept any property to be dedicated or the Improvements unless they are constructed in conformity with the Improvement Plans and Improvement Standards, to the satisfaction of the City Engineer. Subdivider shall retain title to, shall be responsible for, and shall bear the risk of loss to, any of the Improvements constructed or installed, until such time as the Improvements are accepted by the City. Title to and ownership of the Improvements and any real property to be dedicated shall vest absolutely in the City upon completion and acceptance of such Improvements by the City Council. The City shall not accept the Improvements unless title to the Improvements is entirely free from all liens. Prior to acceptance, at City's request, Subdivider shall supply the City with appropriate lien releases, at no cost to and in a form acceptable to the City.

8. Acquisition and Dedication of Easements or Rights-of-Way. If any of the Improvements are to be constructed or installed on land not within the Subdivision or an already existing public right-of-way, no construction or installation shall commence before:

A. The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Improvements; or

B. The issuance of an order of possession by a court of competent jurisdiction pursuant to the State Eminent Domain Law (Cal. Code Civ. Proc. § 1230.010 *et seq.*). Subdivider shall comply in all respects with any such order of possession.

9. Final Acceptance of Work. Acceptance of the Improvement Work on behalf of the City shall be made by the City Council upon recommendation of the City Engineer, after satisfactory completion and inspection of all Improvements. Such acceptance shall not constitute a waiver by the City of any defects or deficiencies in the Improvements.

10. Repair of Defective Work. If, however, within a period of one (1) year after final acceptance by the City Council of the Improvements, any portion of the Improvements or any work done under this Agreement fails to fulfill any of the requirements of this Agreement, the Improvement Plans or the Improvement Standards, Subdivider shall without delay and without any cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements or work. If the Subdivider fails to act promptly in accordance with this requirement, or if the exigencies of the situation require repairs or replacements to be made before Subdivider can be notified or correct the situation, then the City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Subdivider shall pay to City the actual cost of such repairs plus fifteen percent (15%) within thirty (30) days of the date of billing for such work by City.

11. Securities.

A. *Securities.* Concurrently with or before the Effective Date of this Agreement, Subdivider shall furnish to the City:

i. *Faithful Performance Security.* Securities to guarantee the faithful performance of this Agreement, in the amount of one hundred percent (100%) of the total estimated cost of the Improvements.

ii. *Payment Security.* Securities to secure the obligations set forth under California Civil Code section 3082, as amended, in the amount of one hundred percent (100%) of the total estimated cost of the Improvements, for payment to the contractor, subcontractor, and to persons renting equipment or furnishing labor or materials to them for the work.

iii. *Guarantee and Warranty Security.* Securities to guarantee workmanship shall be in the amount of ten percent (10%) of the estimated cost of the Improvements, as stated in section 6 above, to guarantee and warrant the Improvements for a period of one (1) year following their completion and acceptance against any defective work or labor done, or defective materials.

12. Bonds. Any bonds submitted as Securities shall be executed by a surety company authorized to conduct a surety business in California and shall be in a form as specified by the Subdivision Laws and approved by the City. All Securities deposited as bonds under this Agreement shall be irrevocable, shall not be limited as to time (except as to the guarantee and warranty period), and shall provide that they may be released, in whole or part, only upon the written approval of the Director, as provided under the Subdivision Laws and in Section 14 below. All Securities shall expressly obligate the surety for any extension of time authorized by the City for Subdivider's completion of the Improvements, whether or not the surety is given notice of such an extension by the City. No change, alteration or addition to the terms of this Agreement or the plans and specifications incorporated herein shall in any manner affect the obligation of the sureties, except as required by the Subdivision Laws.

13. Records. Evidence of the Securities required by this Agreement shall be kept on file with the City Clerk. If the City Council gives specific, written approval to replace the

Securities by another approved security, such replacement Securities shall be filed with the City Clerk and, upon filing, shall be deemed to be incorporated into this Agreement. Upon filing of replacement Securities with the City Clerk, the replaced Securities may be released.

14. Release of Securities. The Securities required by this Agreement shall be released in accordance with the Subdivision Laws and the following provisions:

A. *Faithful Performance Securities.* The faithful performance security will be released upon acceptance of the Improvements by the City Council.

B. *Payment Security.* The payment security will be released thirty-five (35) days after acceptance of the Improvements by the City Council and recordation of a notice of completion by the City. The amount to be released shall be reduced by the total of all claims on which an action has been filed by any related materialmen, and notice thereof given in writing to the City. The City expressly may require the surety not to release the amount of security deemed necessary by the City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

C. *Guarantee and Warranty Securities.* The Securities provided for guarantee and warranty of workmanship shall be released after one (1) year following the completion and acceptance of the Improvements, and inspection thereof by the City's Construction Inspector, and approved by the City Engineer. If, however, the City Engineer determines there are defects in the Improvements that require correction pursuant to section 10 above, the City Engineer shall utilize the Securities to make all necessary corrections, including payment of reasonable expenses and fees and attorney's fees.

15. Inspections.

A. The City reserves the right to inspect all Improvements at any time. Subdivider shall at all times maintain safe access for inspection of the Improvements.

B. Upon completion of the Improvements the Subdivider may request a final inspection by the City's Construction Inspector. If the Construction Inspector determines that the Improvements have been completed in accordance with all Improvement Standards and Subdivision Laws, then the City Engineer shall certify the completion of the Improvements to the City Council, to accept or reject in their sole discretion. The City bears no liability for any costs or expenses resulting from delays in inspections.

C. Concurrently with or before the Effective Date of this Agreement, Subdivider shall pay inspection fees to the City in the amount of 3% of the estimated cost of the Improvements, in this case the amount of [REDACTED] dollars \$[REDACTED], in accordance with Riverbank Municipal Code section 152.075.

16. Default of Subdivider.

A. *Default of Subdivider.* Events of default by ("Default") by Subdivider may include, but shall not be limited to, any of the following:

i. Subdivider's failure to timely complete construction of the Improvements;

ii. Subdivider's failure to timely cure any defect in the Improvements to the satisfaction of the City Engineer;

iii. Subdivider's failure to timely deposit additional Securities as may be required by this Agreement;

iv. Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days;

v. the commencement of a foreclosure action against the Subdivision or a portion thereof, or any conveyance in-lieu or in avoidance of foreclosure; or

vi. Subdivider's failure to perform any material obligation under this Agreement.

B. *Notice of Default.* In the event of Subdivider's default, Subdivider shall be deemed to be in breach of this Agreement and the City may serve written notice upon Subdivider and Subdivider's surety, if any, of the breach of this Agreement. Subdivider shall have fifteen (15) days from receipt of written notice by City to cure any default.

C. *Remedies; Performance by City.*

i. In the event of Subdivider's default under this Agreement, and the applicable cure period set forth in this Paragraph has expired without such default having been cured, the City may thereafter deliver a notice of breach to Subdivider and Subdivider's surety, if any. If the default remains uncured within fifteen (15) days from receipt of the written notice of breach, Subdivider authorizes the City to complete all work on the Improvements at the sole expense of Subdivider, and Subdivider authorizes to utilize the Securities to complete all work on the Improvements and to pay all labor costs of contractors, subcontractors and workers related to the Improvements. The City may take over the Improvements and prosecute the same to completion, by contract or by any other method the City may deem advisable, for the account and at the expense of Subdivider, and Subdivider shall be liable to City for any excess cost or damages incurred by the City thereby. In the event the City takes over the Improvements or prosecutes the same to completion, the City, without liability for so doing, may take possession of, and utilize such materials, appliances, equipment, plant and other property belonging to Subdivider as may be necessary for completion of the Improvements.

ii. The City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The right of the City to draw upon or utilize the Securities is additional to and not in lieu of any other remedy available to the City.

iii. Failure of Subdivider to comply with the terms of this Agreement shall constitute consent to the filing by the City of a notice of violation against all the lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this subsection is in addition to and not in lieu of other remedies available to the City, and is not required to implement other available remedies. Subdivider agrees that the choice of remedy or remedies for Subdivider's default shall be at the discretion of the City.

iv. In the event that Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by the City in securing performance of such obligations, including but not limited to costs of suit and attorney's fees, costs of Improvements in the event of failure of performance, and all administrative costs. Such costs and fees shall be a proper charge against the Securities of Subdivider.

v. The failure of the City to take an enforcement action with respect to a default or breach, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Subdivider.

D. *Lien.* In accordance with the Subdivision Laws (Gov. Code § 66499), the recordation of this Agreement creates a lien attached to the property underlying the Subdivision and has the priority of a judgment lien in the amount necessary to complete the Improvements.

17. Environmental Warranty.

A. For purposes of this Agreement, the terms below have the following meanings:

i. "Environmental Laws" shall mean any federal, state, or local law, rule, regulation administrative or court order, ordinance, regulatory guidance document, standard, or requirements of any government authority regulating, relating to, or imposing liability standards of conduct concerning Hazardous Substances, or that pertains to the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Conservation and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 *et seq.*); the Clean Water Act (33 U.S.C. §§1251 *et seq.*); the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*); the Hazardous Materials Transportation Act (29049 U.S.C. §§ 1801 *et seq.*); the Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*); the Superfund Amendments and Reauthorization Act (42 U.S.C. §§ 6901 *et seq.*); the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*); the Safe Drinking Water Act (42 U.S.C. §§ 300f *et seq.*); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 *et seq.*); the Surface Mining Control and Reclamation Act (30 U.S.C. §§ 1201 *et seq.*); the Occupational Safety and Health Act (29 U.S.C. §§ 655, 657); the California Underground Storage of Hazardous Substances Act (Health and Safety Code §§ 25280 *et seq.*); the California Hazardous Waste Control Act (Health and Safety Code §§ 25100 *et seq.*); the California Safe Drinking Water and Toxic Enforcement Act (Health and Safety Code §§ 24249.5 *et seq.*); and the Porter-Cologne Water Quality Control Act (Water Code §§ 13000 *et seq.*); together with any amendments of or regulations promulgated under the statutes cited above.

ii. "Hazardous Substances" or "Hazardous Substance" shall include any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as so defined under any Environmental Laws or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), radon gas, urea formaldehyde, asbestos, lead, or electromagnetic waves. Hazardous Substances include any hazardous or toxic substance, material or waste which is regulated by the State of California, the United States government, or any other governmental authority with jurisdiction over the Property. Hazardous Materials include asbestos and any other hazardous waste or substance which has, as of the date hereof, been determined to be hazardous or a pollutant by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, or any instrumentality authorized to regulate substances in the environment which has jurisdiction over the Property which substance causes the Property (or any part thereof) to be in material violation of Environmental Laws.

B. Prior to acceptance of any Improvements by the City, Subdivider shall provide the City with a written warranty that:

i. Subdivider and the property being dedicated are in compliance with all Environmental Laws and are not subject to any existing, pending or threatened investigation by a federal, state, or local governmental authority regarding violations of Environmental Laws.

ii. Subdivider and its third party agents, contractors and subcontractors have not used, generated, manufactured, produced, discharged, or released on, under, or about the property to be dedicated, any Hazardous Substance except in accordance with all applicable Environmental Laws.

iii. Subdivider has not caused or permitted the release or discharge of, and has no knowledge of the release, discharge, or presence of Hazardous Substances on the property to be dedicated or the migration of any Hazardous Substances from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

C. Throughout the term of this Agreement, Subdivider shall give written notice within fifteen (15) days to the City of:

i. Any proceeding or investigation by any federal, California, or local governmental authority regarding the presence of Hazardous Substances on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

ii. Any claims made or threatened by any third party against the City or property to be dedicated regarding any loss or injury resulting from any Hazardous Substances; and

iii. Subdivider's discovery of any occurrence or condition on any property to be dedicated or any property adjacent to, or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability, or suit under any Environmental Law.

18. Design or Construction Defect.

A. After acceptance of the Improvements, the Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by a latent design or construction defect.

B. Provisions of this section shall remain in full force and effect for ten (10) years following the acceptance of the Improvements by the City.

C. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the Improvements and that the City shall not be liable for any negligence, nonfeasance, misfeasance, or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any Improvement Work. The Securities shall not be required to cover the provisions of this paragraph.

19. No Agency Relationship. Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of the City in connection with the performance of Subdivider's obligations under this Agreement. City elected and appointed councils, commissions, officers, agents, employees and representatives ("City Agents") shall not, be liable or responsible for any accident, loss or damage, regardless of the cause, happening or occurring to the Improvement Work or Improvements specified in this Agreement prior to the completion and acceptance of the Improvement Work or Improvements. All such risks shall be the responsibility of and are hereby expressly assumed by Subdivider.

20. Other Agreements. Nothing contained in this Agreement shall preclude the City from expending monies pursuant to agreements concurrently or previously executed between the Parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the City ordinances providing therefore, nor shall anything in this Agreement commit the City to any such apportionment.

21. Indemnity/Hold Harmless.

A. The City and City Agents shall not be liable and Subdivider agrees to indemnify, hold harmless and defend the City and City Agents from any and all claims, costs, and liability for claims of damage, for any property damage or personal injury, including death, which may arise as a result of any negligent acts or omissions by Subdivider or Subdivider's contractors, subcontractors, agents, or employees in connection with the construction, improvement, or operation, of the Improvements, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the Improvements. This indemnification and agreement to hold harmless shall

extend to injuries to persons and damages or taking of property resulting from the design or construction of the Subdivision and the Improvements as provided herein, and in addition, to injuries to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other Improvements.

B. Acceptance by the City of the Improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section.

C. Provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by the City of the Improvements. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the Improvements installed or Improvement Work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance, or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any Improvement Work. The Security shall not be required to cover the provisions of this section.

D. City shall not be liable for approving, reviewing, checking, or correcting any plans or specifications or for approving, reviewing or inspecting any Improvement Work. Nothing contained in this section is intended to, or shall be deemed to, limit or waive any protections or immunities afforded by law to the City or City Agents for the approval of the plan or design of the Improvements, including but not limited to the protections and immunities afforded by Government Code section 830.6. Subdivider shall defend, indemnify, and hold harmless the City and City's Agents from any claim, action, or proceeding against City or City Agents to attack, set aside, void, or annul an approval of the City or City Agents concerning the Subdivision.

22. Insurance. Without limiting Subdivider's duty to indemnify the City, Subdivider shall maintain in effect throughout this Agreement a policy or policies of insurance with the specifications and limits of liability specified herein.

A. Proof of Insurance.

i. Subdivider shall provide to the City a properly executed certificate of insurance, in a form satisfactory to the City Attorney for commercial general liability coverage; automobile liability, worker's compensation insurance, professional liability insurance, and course of construction coverage from an insurance provider approved by the City and licensed by the California Department of Insurance ("Certificates").

ii. Each Certificate shall provide that such insurance will not be cancelled, reduced in coverage, or allowed to expire without thirty (30) days' prior written notice to the City.

B. Minimum insurance limits. Contractor shall maintain limits no less than:

i. General Liability. Subdivider shall maintain such commercial general liability insurance with an insurance company admitted in California with an AM Best

Rating of not less than A+, as shall protect the City, the City's Agents, Subdivider, contractors, and subcontractors from claims for damages for personal injury, including death, as well as from claims of property damage which may arise from acts or omissions from Subdivider, contractors, or subcontractors for in relation to this Agreement. The amount of such insurance shall not be less than two million dollars (\$2,000,000.00) per occurrence with umbrella liability coverage of not less than two million dollars (\$2,000,000.00). Such insurance shall also:

1. Name the City and the City Agents as insured by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitation on the scope of its protection afforded to the above-listed additional insured; and

2. Be primary with respect to any insurance or self-insurance programs covering the City and City Agents.

- ii. Automotive Liability Insurance. Subdivider shall maintain automotive liability insurance covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services or performing work under this Agreement for bodily injury and property damage with a limit of not less than one million dollars (\$1,000,000.00) for each occurrence. Such insurance shall also:

1. Name City and City Agents as insured by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitation on the scope of its protection afforded to the above-listed additional insured; and

2. Be primary with respect to any insurance or self-insurance programs covering the City and City Agents.

- iii. Worker's Compensation Insurance.

1. Subdivider shall maintain worker's compensation insurance in accordance with California Labor Code section 3700, and with a limit of not less than one million dollars (\$1,000,000.00) per occurrence for employer's liability.

2. In the event any work is sublet, Subdivider shall require any contractor or subcontractor to provide worker's compensation insurance for all contractor's employees or subcontractor's employees, unless such employees are covered by the protection afforded by Subdivider.

23. No Vesting of Rights. Performance of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

24. Notices. Any notice or communication required hereunder between City and Subdivider must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such

notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: Donna M. Kenney, Planning and Building Manager

With copies to: City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: Jill Anderson, City Manager

and Churchwell White, LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attn: Douglas L. White, Esq.

If to Subdivider: _____

and _____

25. General Provisions:

A. *Governing Law.* The validity, interpretation and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California.

B. *Compliance with Laws.* Subdivider, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in the performance of the work required by this Agreement, including but not limited to all Improvement Standards or any other applicable land use approvals. Subdivider shall be responsible for obtaining all applicable licenses and permits.

C. *Venue.* Venue for any legal proceedings initiated in connection with this Agreement shall be in the Superior Court for the County of Stanislaus.

D. *Severability.* The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of competent jurisdiction, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

E. *Waiver.* The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

F. *Approvals by the City.* Any approval or consent that is to be given by the City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on the City.

G. *Integration.* This Agreement, together with its specific references, attachments and Exhibits, constitute all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the Parties with respect to the subject matter of this Agreement. Neither Party shall be liable for any representations made, express or implied, not specifically set forth herein. It is the intention of the Parties that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

H. *Captions.* The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

I. *Mandatory and Permissive.* "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

J. *Successors and Assigns – Covenant Running With the Land.* Subdivider shall not assign any of its obligations under this Agreement without the prior written consent of the City. Notwithstanding the above, all representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of or for the benefit of any or all of the Parties, shall be binding upon and inure to the benefit of such Party, its successors and assigns. This Agreement, however, shall not be binding on any lot that has been conveyed to an individual homebuyer and for which a Certificate of Occupancy has been issued by the City.

K. *Counterparts.* This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

L. *Other Documents.* Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and to that end, agree to execute and deliver such

other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

M. *Time is of the Essence.* Time is of the essence in this Agreement in each covenant and term and condition herein.

N. *Authority.* The Parties warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement have been fully complied with.

O. *Construction and Interpretation.* It is agreed and acknowledged by Subdivider that the provisions of this Agreement have been arrived at through negotiation, and that Subdivider has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

P. *Advice of Legal Counsel.* Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement.

Q. *Attorney Fees and Costs.* If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret any provision of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorney fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

R. *No Monetary Damages Against the City.* In the event of the City's default under this Agreement, Subdivider agrees that Subdivider may not seek, and shall forever waive any right to, monetary damages against the City.

S. *Modification.* This Agreement may be amended only by a written instrument signed by the Parties. Subdivider shall bear all costs of amendments to this Agreement that are requested by Subdivider.

T. *Exhibits.* All exhibits attached hereto are incorporated into this Agreement:

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Subdivider and City as of the day and year first above written.

SUBDIVIDER:

_____, a California _____

By: _____

Name: _____

Title: _____

Date: _____

CITY:

CITY OF RIVERBANK, a California
municipal corporation:

By: _____
_____, City Manager

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Tom Hallinan, City Attorney

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

EXHIBIT A

Tentative Map Resolution of Approval

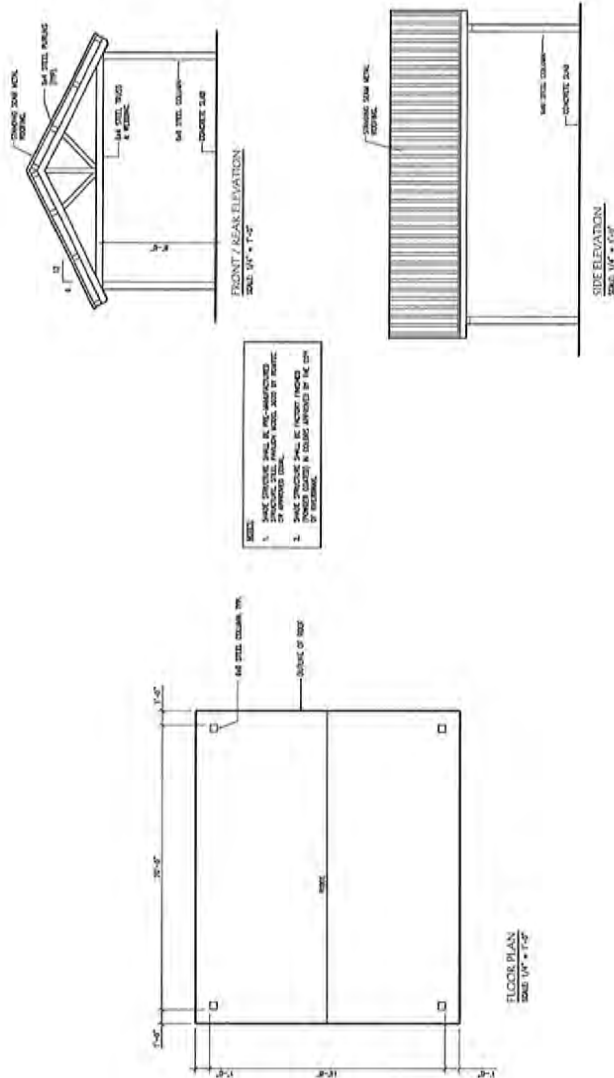
EXHIBIT F
Concept Pocket Park Plan

DRAFT

157
 CONCEPTUAL LANDSCAPE & SITE PLAN FOR:
NEIGHBORHOOD PARK – HAYES IV, PHASE II
 CENTRAL AVENUE
 RIVERBANK, CALIFORNIA



158 PRELIMINARY SHADE STRUCTURE FLOOR PLAN & ELEVATIONS :
 NEIGHBORHOOD PARK – HAYES IV, PHASE II
 CENTRAL AVENUE
 RIVERBANK, CALIFORNIA

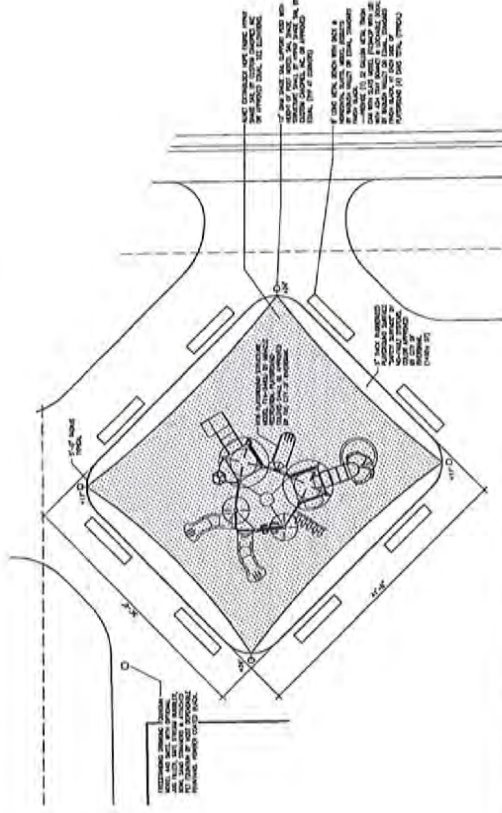




PLAYGROUND ELEVATION

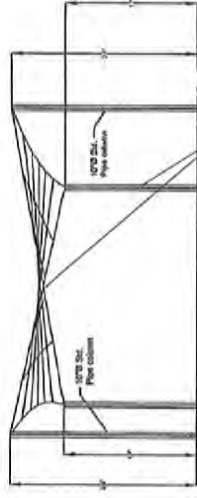
45

DESIGN TO BE APPROVED BY THE CITY OF RIVERSIDE



ENLARGED PLAYGROUND PLAN

SCALE: 1/8" = 1'-0"



SHADE SAIL ELEVATION

46

DESIGN TO BE APPROVED BY THE CITY OF RIVERSIDE

DESIGN TO BE APPROVED BY THE CITY OF RIVERSIDE



TYPICAL TRASH RECEPTACLE

47

DESIGN TO BE APPROVED BY THE CITY OF RIVERSIDE



DRINKING FOUNTAIN

48

DESIGN TO BE APPROVED BY THE CITY OF RIVERSIDE



TYPICAL PICNIC TABLE

49

DESIGN TO BE APPROVED BY THE CITY OF RIVERSIDE



TYPICAL BENCH

50

158 PRELIMINARY PLAYGROUND PLAN & PLAYGROUND SHADE STRUCTURE ELEVATIONS. NEIGHBORHOOD PARK - HAYES IV, PHASE II CENTRAL AVENUE RIVERBANK, CALIFORNIA

California All-Purpose Acknowledgment

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

Attachment 6: Draft Planning Commission Resolution

**CITY OF RIVERBANK
RESOLUTION NO. 2016-018**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK,
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE TO
APPROVE A DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF A 9.40
ACRE RESIDENTIAL SUBDIVISION, KNOWN AS HAYES 4, PHASE TWO,
LOCATED ON STANISLAUS COUNTY APN 062-022-003.**

WHEREAS, McRoy Wilbur Communities, Inc. and James A. Aartman, a single map (collectively, "Developer") propose to develop 49 residential lots in the City of Riverbank ("City") and related public improvements in conformance with the provisions of the proposed Development Agreement and related project approvals (the "Project"); and

WHEREAS, the City received an application for the Project that includes a proposal to execute a Development Agreement by and between the City and the Developer ("Development Agreement") clarifying original conditions of map approval specific to the Project, and adding map life; and

WHEREAS, the project site is currently zoned Single Family Residential (R-1) with a General Plan Land Use Designation of Low Density Residential (LDR); and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 20, 2016, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, upon review of the Development Agreement the Planning Commission finds that it complies with Government Code Section 65864 *et. seq.*, the City's General Plan, and the Riverbank Municipal Code; and

WHEREAS, upon review of the Development Agreement the Planning Commission finds that the public health, safety, and general welfare are advanced by City Council's adoption of the Development Agreement; and

WHEREAS, pursuant to Government Code sections 65867 and 65090, notice of the public hearing on the Development Agreement Ordinance was published in the *Riverbank News*, a newspaper of general circulation, on December 7, 2016; and

WHEREAS, pursuant to Government Code sections 65867 and 65091, all property owners within 300 feet of the property, according to the most recent assessor's roll were properly noticed of the public hearing on the Development Agreement Ordinance, on December 7, 2016.

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT:

The Planning Commission of the City of Riverbank hereby recommends City Council approval of Ordinance No. 2016-XXX authorizing a Development Agreement for the development of the residential subdivision known as the Hayes 4, Phase Two development attached hereto and incorporated herein by reference, based on the following findings:

1. Pursuant to California Government Code Section 65855, the recommendation to the City Council shall include the relationship to the applicable general or specific plan.
 - a. The properties identified as part of this action have a General Plan Land Use Designation of Low Density Residential (LDR) and the current zoning of single family residential (R-1). This action will authorize a Development Agreement which, amongst other matters, will clarify the original conditions of approval;
 - b. The proposed Development Agreement on these properties will achieve consistency between the General Plan and the Zoning Code, pursuant to Government Code Section 65860;
 - c. The Development Agreement complies with the public convenience, general welfare, and good land use practices. The terms of the agreement establish appropriate and adequate mechanisms to fund and install infrastructure needed to support public services to the Hayes 4, Phase One development and General Plan planning area.
2. CEQA. The City finds that Pursuant to the California Environmental Quality Act (CEQA), the City of Riverbank as Lead Agency has prepared an Initial Study/Negative Declaration, which concludes that the proposed Development Agreement will not have a significant effect on the environment.
3. Severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Planning Commission of the City of Riverbank hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the Twentieth day of December, 2016; motioned by Commissioner _____, seconded by Commissioner _____, and upon roll call was carried by the following vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Donna M. Kenney
Planning and Building Manager

Carlos Villapudua
Planning Commission Chair

Attachments:

Exhibit "A" – Draft City Council Ordinance

EXHIBIT A TO PC RESOLUTION NO. 2016-018

**DRAFT
CITY OF RIVERBANK
ORDINANCE NO. 2016-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING DEVELOPMENT AGREEMENT NO. 01-2016 FOR THE HAYES 4,
PHASE TWO RESIDENTIAL PROJECT**

WHEREAS, McRoy Wilbur Communities, Inc. and James A. Aartman, a single map (collectively, "Developer") propose to develop 49 residential lots in the City of Riverbank ("City") and related public improvements in conformance with the provisions of the proposed Development Agreement and related project approvals (the "Project"); and

WHEREAS, On April 25, 2005, the City Council adopted Resolution No. 2005-046, approving tentative subdivision map 07-2004 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 88 residential lots on 18.74 acres; and

WHEREAS, On November 27, 2006, the City Council adopted Resolution No. 2006-127, approving Phase 2 Vesting Tentative Map for Tentative Map No. 07-2004; and

WHEREAS, the City of Riverbank Planning Commission held a duly noticed public hearing on Tuesday, December 20, 2016 to consider the Project, and provided their recommendations to the City Council; and

WHEREAS, in order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et. seq.* ("Development Agreement Statute"), which authorizes the City and property owner to enter into a development agreement that establishes certain development rights in real property that is the subject of a development project application; and

WHEREAS, consistent with the requirements of the Development Agreement Statute, the City has adopted Resolution No. 99-39 establishing rules, regulations, and limitations for Development Agreements; and

WHEREAS, the City and the Developer intend to enter into a Development Agreement concerning the Project pursuant to California Government Code Section 65864 and Resolution No. 99-39; and

EXHIBIT A TO PC RESOLUTION NO. 2016-018

WHEREAS, the City Council of the City of Riverbank held a duly noticed public hearing on _____, 2017 to consider the introduction of the Hayes 4, Phase Two Development Agreement for first reading; and

WHEREAS, the City Council of the City of Riverbank held a duly noticed public hearing on _____, 2017 to consider the approval of the Project and the Hayes 4, Phase Two Development Agreement; and

WHEREAS, the City Council for City of Riverbank, based on its independent review and analysis of the EIR, the staff analysis, oral and written testimony, and the record as a whole, finds, after due study, deliberation and public hearing, and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank; and
2. The City Council finds that the Hayes 4, Phase Two Development Agreement:
 - a. Is consistent with the objectives, policies, and programs and residential land uses established by the 2005 Riverbank General Plan; and
 - b. Is consistent with the provisions of Government Code Section 65864 through 65869.5; and
 - c. Is in conformity with the public convenience and general welfare and good land use practices because the terms of the agreement establish appropriate and adequate mechanisms to fund and install infrastructure needed to support public services to the Project and General Plan planning area; and
 - d. Will provide funding and infrastructure to support the Project, and will not adversely affect the orderly development of property or the preservation of property values; and
 - e. Will provide funding and infrastructure to ensure that adequate public services are available to serve the Project without being detrimental to the health, safety, and general welfare of the City of Riverbank; and
 - f. Provides sufficient benefit to the City to justify entering into the Hayes 4, Phase Two Development Agreement.

EXHIBIT A TO PC RESOLUTION NO. 2016-018

NOW, THEREFORE, THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1: The City Council of the City of Riverbank approves a Development Agreement by and between McRoy Wilbur Communities, Inc. and James A. Aartman, a single map and the City of Riverbank relating to the development known as “Hayes 4, Phase Two Residential Project TM 07-004” located on the following APNs: 062-022-003.

Section 2: The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement.

Section 3: Notice of the public hearing on the proposed Development Agreement Ordinance was published in the Riverbank News, a newspaper of general circulation, on _____; and Notices of the public hearing on the proposed Zoning Ordinance Amendment were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor’s roll, on _____.

Section 4: The City Council finds that Pursuant to the California Environmental Quality Act (CEQA), the Lead Agency (Riverbank) has prepared an Initial Study/Negative Declaration which concluded that the proposed Development Agreement will have a less than significant impact on the environment.

Section 5: If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Planning Commission of the City of Riverbank hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

Section 6: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date or a summary of the Ordinance is published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

The foregoing was introduced at a regular meeting of the City Council of the City of Riverbank held on the Twentieth day of _____, 2017; motioned by Councilmember _____, seconded by Council Member _____, and upon roll call was carried by the following vote ____:

EXHIBIT A TO PC RESOLUTION NO. 2016-018

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Annabelle Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

ITEM NO: 3.2 **December 20, 2016**

APPLICATION: **Tentative Parcel Map Application 02-2016. Project Description:** Request to subdivide an existing 2.31 acre parcel of land into four (4) parcels of 5,400 square feet each with a remainder parcel of 1.81 acres. Property is located at 0 Ward Avenue, APN 075-010-065 and is zoned CX-1 (Mixed Use). The General Plan designation for the site is MU (Mixed Use).

OWNER: Marlene Kuffel c/o Bill Houck
1257 Kimball Street
Oakdale, CA 95361

APPLICANT: Bill Houck
1257 Kimball Street
Oakdale, CA 95361

ENGINEER: Bill Morris
Morris Engineering and Survey, Inc.
334 S. Yosemite Avenue, Suite D
Oakdale, CA 95361

LOCATION/APN: 0 Ward Avenue, APN 075-010-065

GENERAL PLAN: Mixed Use (MU)

ZONING: Mixed Use (CX-1)

ENVIRONMENTAL DETERMINATION: The project meets the criteria of Article 19, Categorical Exemptions Sec. 15315 Minor Land Division & Sec. 15332 In-Fill Development Projects.

PROJECT PLANNER: Donna M. Kenney, Planning and Building Manager

RECOMMENDATION: Approve the request to subdivide the subject parcel as recommended based on General Plan and Zoning Consistency findings.

ACRONYMS:	CEQA – California Environmental Quality Act
	CX-1 – Mixed Use Zoning
	MU – Mixed Use General Plan Designation
	RMC – Riverbank Municipal Code
	ROW – Right of Way
	SF – Square Foot or Feet

I. EXECUTIVE SUMMARY

The proposed project consists of a request to subdivide an existing 2.31 acre parcel of land into four (4) parcels and a remainder of 1.81 acres. The property is zoned CX-1 (Mixed Use) and the General Plan designation for the site is MU (Mixed Use). The Project is consistent with both Zoning and General Plan findings.

II. BACKGROUND AND ANALYSIS

Marlene Kuffel is the owner of a 2.31 acre property located at 0 Ward Avenue. She desires a Tentative Parcel Map (Exhibit A) to create four (4) parcels and a remainder of 1.81 acres. There is no construction proposed at this time.

The property is zoned Mixed Use and has a General Plan designation of Mixed Use. According to the Riverbank General Plan, the Mixed Use designation would accommodate neighborhood-scale retail uses, offices, personal and commercial services, and similar land uses. As such, this land use classification is expected to be mainly non-residential. However, the Mixed Use designation also explicitly allows for higher density residential development in a vertical or horizontal mixed-use setting. RMC 153.067 (B) allows detached residential uses with a minimum net density of eight (8) units per acre, including single family homes, caretaker units, and manufactured homes.

A. Development Standards

Lot Size

The proposed Tentative Parcel Map would subdivide an existing 2.31 acre parcel of land into four (4) parcels of 5,400 sf each and a remainder parcel of 1.81 acres. According to the Site Plan, the four (4) proposed parcels each have a proposed width of 50 feet and length of 108 feet. RMC 153.067 (B) allows detached residential uses with a minimum net density of eight (8) units per acre, including single family homes, caretaker units, and manufactured homes. Thus at 8.06 units per acre, this Project is consistent with CX-1 zoning.

Setbacks

The four (4) residential parcels will be fronting Ward Avenue and providing full frontage improvements. Although the zoning code is silent on setbacks for residential dwelling units in the CX-1 zone, the garage opening of any future structure on the four (4) new parcels will not be less than twenty (20) feet from the property line to which it faces (RMC 153.033 (C)(1)).

Roadways

Mixed Use designated areas should be designed to be accessible, safe, and convenient for bicyclists, pedestrians, transit users, and drivers. This piece of property is burdened with three roadway dedications: along the north property line; east property line; and south property line. Ward Avenue (south property line) will be improved when the four (4) 5,400 sf parcels are developed. The property owner shall enter into a deferred improvements agreement with the City to underground utilities and construct Ross Avenue (north property line) and Kuffel Way (east property line) when the remainder parcel is developed. The City is requiring the developer to provide temporary pedestrian and bicycle access from Ward Avenue to Patterson Road via a twelve foot ADA accessible path within the Kuffel Way dedication. The project is required to annex into the City's Community Facilities District (CFD) which will maintain this temporary access area. The City is also requiring a small concrete pad on Ward Avenue where children can await their school bus per a request from the school bus driver in that area.

B. General Plan Consistency Findings

The Project is consistent with the General Plan Policies discussed below:

Policy CIRC-1.1: "Approved plans, projects, and subdivision requests in new growth areas shall include the construction or pro-rata funding of transportation infrastructure that includes a connected and integrated system of bicycle facilities and pedestrian facilities, designed to comply with the Americans with Disabilities Act." *The City is requiring the developer to provide temporary pedestrian and bicycle access from Ward Avenue to Patterson Road via a twelve foot ADA accessible path within the Kuffel Way dedication to be consistent with this policy. The developer will be providing full frontage improvements on Ward Avenue, including pedestrian sidewalks.*

Policy CIRC-1.7: "The City will ensure frequent street and trail connections between new residential developments and established neighborhoods, between downtown and surrounding neighborhoods, across the railroad, across the river, and between other important origin and destination points." *Again, the City is requesting the developer provide temporary pedestrian and bicycle access from Ward Avenue to Patterson Road via a twelve foot ADA accessible path within the Kuffel Way dedication to accomplish consistency with this policy.*

Policy CIRC-2.4: "The City will ensure that redevelopment and revitalization efforts in the existing City are designed to accommodate and encourage pedestrian and bicycle

travel, as well as public transit options, as such options become more widely available.” *Again, the City is requesting the developer provide temporary pedestrian and bicycle access from Ward Avenue to Patterson Road via a twelve foot ADA accessible path within the Kuffel Way dedication to accomplish consistency with this policy. Curb, gutter, and sidewalk are being provided along Ward Avenue, including a concrete pad for children awaiting the school bus.*

Policy DESIGN- 10.7: “The City will require a strong pedestrian orientation through the design of buildings, streets, and sidewalks in commercial and mixed use projects. The City will encourage construction of continuous building facades with attractive window treatments and minimal, or no, setback distance from sidewalks. *The City has asked the developer to provide pedestrian and bicycle access through the site with a 12 foot wide temporary path between Ward Avenue and Patterson Road. It will be maintained by the Community Facilities District (CFD) until new Kuffel Way is constructed in its place.*

III. ENVIRONMENTAL DETERMINATION

Pursuant to the California Environmental Quality Act, staff has determined that the proposed Parcel Map is exempt pursuant to Section 15315 (Class 15) of the State CEQA Guidelines. The proposed Parcel Map meets the conditions prescribed by CEQA Section 15315 in that the project is a division of property in an urbanized area zoned for residential use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope of over twenty (20) percent.

IV. FISCAL IMPACT

This project will have a positive fiscal impact. The property owner has agreed to dedicate three (3) roadways to the City.

V. PUBLIC NOTICE

The Planning Commission hearing notice was published in the Riverbank News on December 7, 2016 and posted at City Hall North, South, Post Office, and website on December 7, 2016. In addition, the Applicant posted a Notice of Development Permit Application at 0 Ward Avenue on December 7, 2016 and notices were distributed to residents and business within 300-feet of the Project site in accordance with City standard practices on December 9, 2016. At the time of writing this Staff Report (December 14, 2016), the City has not received any written public comment. Written comments received by the City shall be supplied to the Commission on the day of the meeting.

VI. RECOMMENDATION

Approve the request to subdivide the subject parcel based on General Plan and Zoning Consistency findings.

ATTACHMENTS: 1. Planning Commission Resolution No. 2016-0019
Exhibit A - Tentative Parcel Map No. 02-2016

Respectfully Submitted By:

Donna M. Kenney
Donna M. Kenney
Planning and Building Manager

Attachment 1: Resolution

**City of Riverbank
Planning Commission
Resolution No. 2016-019**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
RIVERBANK APPROVING THE REQUEST OF MARLENE KUFFEL
FOR TENTATIVE PARCEL MAP 02-2016 TO SUBDIVIDE AN EXISTING
2.31 ACRE PARCEL INTO FOUR (4) PARCELS, LOCATED AT 0 WARD
AVENUE (APN 075-010-065)**

WHEREAS, an application has been received from Marlene Kuffel for a Tentative Parcel Map to divide one (1) 2.31 acre parcel into four (4) parcels of 5,400 square feet each with a remainder parcel of 1.81 acres; and

WHEREAS, the proposed tentative map is consistent with General Plan Policies below:

Circulation Element Policy 1.1, in which approved plans, projects, and subdivision requests in new growth areas shall include the construction or pro-rata funding of transportation infrastructure that includes a connected and integrated system of bicycle facilities and pedestrian facilities, designed to comply with the Americans with Disabilities Act; and

Circulation Element Policy 1.7, which encourages connections: "...between new residential developments and established neighborhoods, between downtown and surrounding neighborhoods, across the railroad, across the river, and between other important origin and destination points"; and

Circulation Element Policy 2.4, which ensures that redevelopment and revitalization efforts in the existing City are designed to accommodate and encourage pedestrian and bicycle travel"; and

Community Character and Design Element Policy 10.7, which requires a strong pedestrian orientation through the design of buildings, streets, and sidewalks in commercial and mixed use projects; and

WHEREAS, Tentative Parcel Map 02-2016 was reviewed by the Riverbank Planning Commission at a regular meeting held on December 20, 2016 in the manner prescribed by law; and

WHEREAS, The Planning Commission did consider a proposed Exemption pursuant to the California Environmental Quality Act and considers this to be the appropriate level of environmental review in this case. The Planning Commission finds that the proposed project meets the conditions prescribed in Section 15315 (Class 15, Minor Land Divisions) of the State CEQA Guidelines; and

WHEREAS, The Riverbank Planning Commission approves the requested Tentative Parcel Map as prepared by Bill Morris of Morris Engineering and Survey Company, Inc. and dated October 24, 2016, presented by Bill Houck as depicted in attached Exhibit "A", incorporated herein as a part of this Planning Commission Resolution; and

WHEREAS, The Planning Commission of the City of Riverbank hereby finds and adopts the following findings:

- A. The project is consistent with the General Plan in that the project directly implements General Plan Circulation Element Policies 1.1, 1.7, 2.4, and Community Character and Design Element Policy 10.7.
- B. Notice to the general public and adjoining neighbors in the time and in the manner required by State Law and City Code.
- C. According to the California Environmental Quality Act, the proposed project is exempt pursuant to Section 15315 (Class 15, Minor Land Divisions) of the State CEQA Guidelines. The proposed Project meets all conditions prescribed by CEQA Section 15315.
- D. The approval of the Tentative Parcel Map 02-2016 for the subdivision of one (1) 2.31 acre parcel into four (4) parcels of 5,400 square feet each with a remainder parcel of 1.81 acres will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood in that proposed are similar to, and compatible with, neighboring uses in the area.

WHEREAS, the request for a Tentative Parcel Map is approved by the Planning Commission of the City of Riverbank, subject to the following conditions:

- 1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in the Planning Commission Resolution 2013-014 and/or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
- 2. The project shall annex into the Community Facilities District (CFD); and
- 3. The project shall conform to the MS4 Post Construction Standards and the City's Storm Drain Ordinance; and
- 4. The applicant shall dedicate Ross and new 40 foot Kuffel Way rights of way; and
- 5. Curb, gutter, sidewalk on Ward Avenue shall be constructed for the entire frontage; and
- 6. A crosswalk across Ward Avenue shall be constructed and a concrete pad constructed for children awaiting the school bus; and
- 7. Utilities on Ward Avenue shall be undergrounded; and
- 8. Utilities on the north property line of the remainder parcel shall be undergrounded when it develops; and
- 9. Typical landscape and irrigation plans shall be submitted for the front yards of the four new parcels; and
- 10. The applicant shall work with staff to create a 12 foot temporary connection from Ward Avenue to Patterson Road within new Kuffel Way right-of-way for pedestrian and bikes.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission approves Tentative Parcel Map No. 02-2016, subject to those conditions established by Resolution No. 2016-019 and to be recorded as illustrated in Exhibit "A" to this Resolution entitled TPM for Marlene Kuffel dated October 24, 2016.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a meeting held on the 20th of December, 2016; motioned by Commissioner _____, seconded by Commissioner _____, and upon roll call was carried by the following vote of ____-____:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

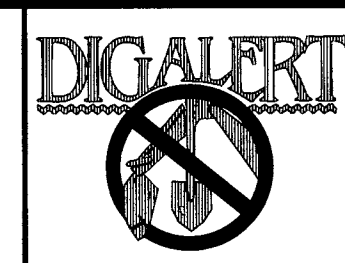
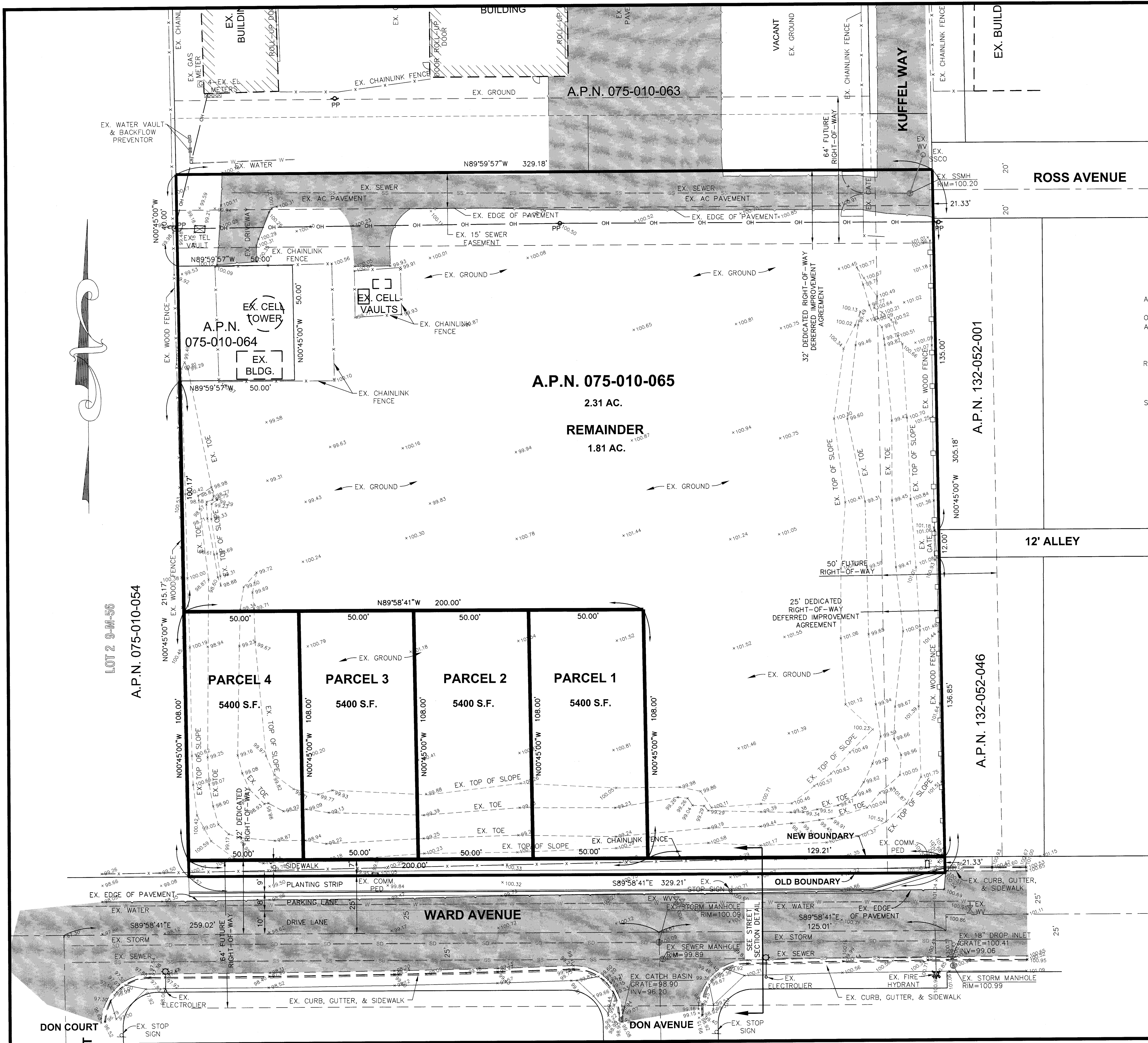
Approved:

Donna Kenney
Planning and Building Manager

Carlos Villapudua, Chairperson
Planning Commission

Exhibits: **A – Tentative Parcel Map prepared by Morris Engineering and Survey Company, Inc. and dated _____.**

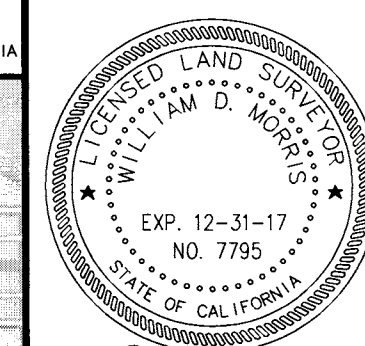
Exhibit "A" - Tentative Parcel Map



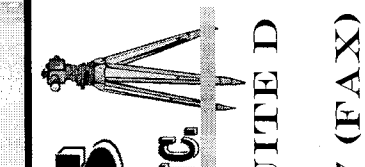
UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA

DIAL TOLL FREE
1-800-227-2600
AT LEAST TWO DAYS
BEFORE YOU DIG

SCALE	1"=20'
DRAWN BY	PLM
DESIGNED BY	WDM
CHECKED BY	WDM



BY: WILLIAM D. MORRIS
PLS: 7795
EXP.: 12/31/17
DATE: 10/24/16



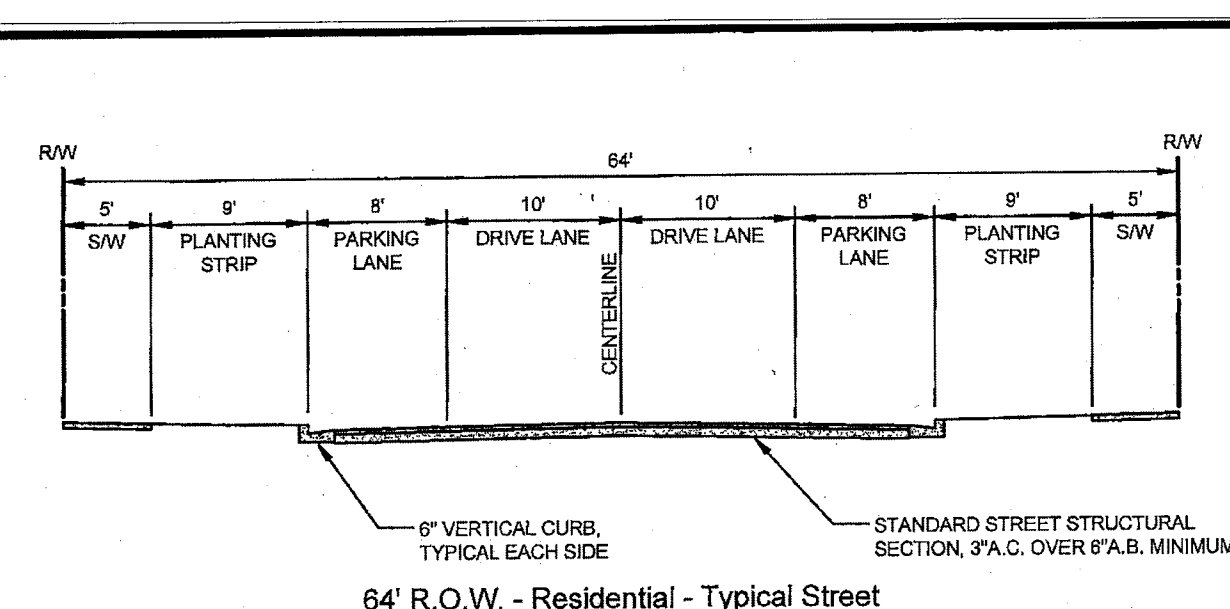
MORRIS
ENGINEERING & SURVEYING, INC.
3334 S. YOSEMITE AVENUE, SUITE
OAKDALE, CA 95361
(209) 845-9175 ☒ (209) 845-9177 ○
FAX (209) 845-9176



VICINITY MAP

A.P.N.:	019-010-064 & 019-010-065
OWNER:	GAYLAND DEAN KUFFEL
APPLICANT:	MARLENE KUFFEL P.O. BOX 328 RIVERBANK, CA 95367
REPRESENTATIVE:	BILL HOUCK 1257 KIMBALL ST. OAKDALE, CA 95361 (209) 968-2325
SITE:	WARD AVENUE RIVERBANK, CA 95367

TOTAL AREA: 2.31 AC.
WATER: CITY OF RIVERBANK
SANITARY SEWER: CITY OF RIVERBANK
STORM DRAIN: CITY OF RIVERBANK
SLOPE OF LAND: FLAT-20%
ZONING: COMMERCIAL-INDUSTRIAL
GENERAL PLAN: MIXED USE



NOTES:

- NOTES:**
1. FINISHED PAVING SHALL BE 3/8" HIGHER THAN LIP OF GUTTER EXCEPT WHERE PEDESTRIAN CROSSINGS ARE LOCATED, LIP WILL BE FLUSH.
 2. PART WIDTH STREETS, DEAD END STREETS AND ALL PAVEMENT TRANSITIONS SHALL REQUIRE 2"x6" REDWOOD OR PRESSURE TREATED HEADERBOARD.

LEGEND:

P/S	PARKING STRIP
R/W	RIGHT OF WAY
S/W	SIDEWALK

CITY OF RIVERBANK
DEPARTMENT OF PUBLIC WORKS

STREET SECTION
64' R.O.W.
RESIDENTIAL

CITY ENGINEER - WILLIAM F. KULL		
DRAWN BY: GK	DATE: 7/21/15	SCALE: NTS
REVISIONS:	SECTION:	DRAWING NO.

ADOPTED BY THE CITY COUNCIL: 3-10-15	DRAWING NO. 302
---	--------------------

TENTATIVE PARCEL MAP

BEING A PORTION OF LOT 1 AS SHOWN
ON THE MAP OF THE MORRILL TRACT
FILED FOR RECORD JULY 23, 1921 IN
VOLUME 9 OF MAPS AT PAGE 56,
SITUATE IN THE THE SOUTHEAST
QUARTER OF SECTION 26,
T.2S., R.9E., M.D.M.,
STANISLAUS COUNTY, CALIFORNIA
SCALE: 1"=20' SEPTEMBER 2016

DATE	REVISIONS
------	-----------

**TENTATIVE PARCEL MAP
A.P.N. 075-010-065
LANDS OF KUFFEL
2776 PATTERSON ROAD
RIVERBANK, STANISLAUS COUNTY, CA**

SHEET	1
OF	1
DATE	10/24/16
JOB NO.	16-120

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

ITEM NO: 3.3 **December 20, 2016**

APPLICATION: **Revocation of Conditional Use Permit No. 05-2007 and Business License at 6607 Callander Avenue, 209 Concepts** – Action on Code Enforcement Case #2015-0209.

PROPERTY OWNERS: Arnulfo and Maria Sanguino

**BUSINESS OWNER
209 CONCEPTS:** Nicholas Lopez

LOCATION: 6607 Callander Avenue, rear ½ of building
APN: 075-004-046.

**GENERAL PLAN
DESIGNATION:** Community Commercial (C/C)

**DOWNTOWN
SPECIFIC PLAN:** Highway Boulevard

PROJECT PLANNER: Donna M. Kenney, Planning and Building Manager

RECOMMENDATION: Revoke Conditional Use Permit (CUP) No. 05-2007 and the Business License for 209 Concepts based on the Municipal Code and CUP violations.

ACRONYMS: CUP – Conditional Use Permit
RMC – Riverbank Municipal Code

I. EXECUTIVE SUMMARY:

209 Concepts, an automobile repair and paint business at 6607 Callander has been found in violation of zoning code requirements and conditions of approval attached to the property's conditional use permit for the use of an auto paint booth. Documented violations go back to 2010 and, although city staff has sent

letters, conducted on-site visits, and met with the business owner at City Hall on several occasions, the same violations keep occurring. The business owner has told staff that he will not comply with the requirements so staff is asking that Conditional Use Permit No. 05-2007 and the business license for 209 Concepts be revoked.

II. BACKGROUND AND ANALYSIS:

An existing automobile repair shop on a parcel formerly zoned General Commercial (C-2) and currently zoned Highway Boulevard in the Downtown Specific Plan (Attachment 2), had a non-conforming auto paint booth at the northwest corner of the property which had been abandoned for over six months. The property owner was required to apply for a Conditional Use Permit pursuant to RMC 153.193 (C) and bring the paint booth up to current code in order to resume auto painting in the rear half of the building (Attachment 3). On April 17, 2007, the Planning Commission approved Conditional Use Permit (CUP) No. 05-2007, allowing the applicant at that time and subsequent businesses (Attachment 4), to use the auto paint booth under certain conditions. Auto repair and painting is not a permitted or conditional use in the Downtown Specific Plan, which includes the site.

Beginning in 2010 when the first violations of the CUP conditions of approval were documented, auto repair work, including mechanical as well as body sanding has been observed being conducted outside of the building. Inspections, Notices of Violations, re-inspections, and meetings have occurred but have not had an effect on the situation: February 25, 2015; June 23, 2015; July 10, 2015; December 2, 2015; December 9, 2015; March 18, 2016; March 21, 2016; March 29, 2016; April 18, 2016; April 19, 2016; May 25, 2016; June 8, 2016; June 30, 2016; July 6, 2016; August 9, 2016; October 25, 2016; and December 13, 2016 are the most recent. Photos have been provided (Attachment 6).

On April 19, 2016, Salvador Orozco of the Department of Consumer Affairs joined staff members on a site visit to 209 Concepts at 6607 Callander Avenue. Mr. Orozco found that Mr. Lopez did not have a state license to repair vehicles and made plans to follow up on it. The following day, the City's Neighborhood Improvement Officer sent a Notice of Violation to the applicant and cc'd Mr. Orozco. Violations include:

1. Pursuant to RMC 153.092 (Q)(2), all work shall be conducted within a building. Vehicles have been observed being worked on outside of the building almost continuously. The City's Neighborhood Improvement Officer has had an open case on current business 209 Concepts since June 23, 2015 but violations go back much further. An RV, several

wrecked vehicles and a vehicle chassis were parked in front of the building throughout October 2016.

2. Pursuant to RMC 153.092 (Q)(3), the businesses must meet off street parking requirements. The rear parking area contains numerous temporary structures blocking required parking spaces, causing a handicap parking space to be relocated in front of a 12' x 12' roll up door which provides access to the paint booth (Attachment 1).
3. Pursuant to RMC 153.092 (Q)(4), cars to be stored more than 24 hours shall be stored within the building or storage area surrounded by a six (6) foot high solid fence (out of the required setback areas). 209 Concepts business owner Nicholas Lopez told the Planning and Building Manager that he will not comply with this requirement.
4. Pursuant to RMC 153.094 (A)(2), no fence that limits visibility shall be constructed in excess of three (3) feet in height within the front or side yard of a corner lot. The permitted six (6) foot wrought iron fence with its attached tarps, metal, and plywood screening obstructs the view of vehicles entering and leaving the rear parking lot.
5. Pursuant to Section 105.1 of the 2013 CA Building Code, submit plans and applications for any structures built without a permit. Tent/carport-type structures have been erected in the rear and side yards of the site to cover vehicles being stored or worked on outside the building.
6. According to a Condition of Approval placed upon the project by the Planning Commission on April 17, 2007, the business owner shall keep the building in good repair and general appearance and not allow any business activity on the site to interfere with the peaceful enjoyment of neighboring sites. Wrecked vehicles and junk are kept outside the building.

V. PUBLIC NOTICE:

The Planning Commission hearing notice was published in the Riverbank News on December 7, 2016 and posted at City Hall North and South on December 7, 2016.

V. RECOMMENDATION:

Recommendation is to revoke Conditional Use Permit 05-2007 and the business license for 209 Concepts based on a history of continued violations to Municipal Code sections and required Conditions of Approval.

Respectfully Submitted By:

Donna M. Kenney
Donna M. Kenney
Planning and Building Manager

Attachments:

1. Resolution No. 2016-020
2. Aerial
3. Site Plan
4. 209 Concepts Business License
5. San Joaquin Valley Air Pollution Control District Report
6. Photos

Attachment 1: Resolution

**City of Riverbank
Planning Commission
Resolution No. 2016-020**

Resolution of the City of Riverbank Planning Commission
Revoking Conditional Use Permit No. 05-2007 for an auto paint booth
and the Business License for 209 Concepts at
6607 Callander Avenue (APN: 075-004-046)

Whereas, The Planning Commission held a public hearing on December 20, 2016 to consider revoking Conditional Use Permit (CUP) No. 05-2007 for an auto paint booth and the business license for 209 Concepts located at 6607 Callander Avenue, zoned as Highway Boulevard in the Downtown Specific Plan, for repeated violations of the CUP's Conditions of Approval; and

Whereas, The Planning Commission reviewed and considered the appropriate documents regarding the effects of the violations; and

Whereas, The Planning Commission of the City of Riverbank could not make the following findings to keep the CUP in effect:

1. The site is physically suitable for the proposed type and intensity of development permitted by CUP No. 05-2007 and does not cause any impacts on surrounding properties.

Pursuant to RMC 153.092 (Q)(2), all work shall be conducted within a building. The business owner of 209 Concepts stated to staff he does not have enough room indoors for all the vehicles he wants to work on. Vehicles have been observed by city staff being worked on outside of the building, including the sanding of vehicles before painting and hammering on damaged vehicles. Temporary accessory structures were installed to cover these vehicles being worked on, blocking required parking spaces and causing customer vehicles to be parked on city streets. Mechanical sanders and hammering could be heard out-of-doors during more than one staff visit.

Pursuant to Section 105.1 of the 2013 CA Building Code, submit plans and applications for any structures built without a permit. Tent/carport-type structures have been erected in the rear side yard of the site to cover vehicles being stored or worked on outside the building. These are being used as permanent structures and violate zoning setbacks.

Pursuant to RMC 153.094 (A)(2), no fence that limits visibility shall be constructed in excess of three (3) feet in height within the front or side yard of a corner lot. The permitted six (6) foot wrought iron fence with its attached tarps, metal, and plywood screening obstructs the view of vehicles entering and leaving

the rear side parking lot. Thus, there are aesthetic, noise, air quality, and parking impacts created by this business.

2. The approval of CUP No. 05-2007 for the property located at 6607 Callander Avenue is not detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood.

Pursuant to RMC 153.092 (Q)(3), businesses must meet off street parking requirements. The rear parking area contains numerous temporary structures blocking required parking spaces, causing the removal of a handicap parking space and customer vehicles to impact street parking.

Pursuant to RMC 153.092 (Q)(4), cars to be stored more than 24 hours shall be stored within the building or storage area surrounded by a six (6) foot high solid fence (out of the required setback areas). 209 Concepts business owner Nicholas Lopez told the Planning and Building Manager that he will not comply with this requirement as he does not have enough room to park all the vehicles inside the building and vehicles are at risk of being broken into without the screening he installed.

3. According to a Condition of Approval placed upon the project by the Planning Commission on April 17, 2007, the business owner shall keep the building in good repair and general appearance and not allow any business activity on the site to interfere with the peaceful enjoyment of neighboring sites.

There are aesthetic, noise, air quality, and parking impacts created by this business that interfere with the peaceful enjoyment of neighboring sites, including the outdoor storage of junk and vehicles, sanding and hammering vehicles out-of-doors, and temporary structures causing impacts to street parking.

Therefore, Be It Resolved, the Planning Commission of the City of Riverbank hereby finds based on sufficient evidence supplied by the applicant and evidence demonstrated in the public record that the establishment, maintenance and operation of the use and business has, under the circumstances of this particular case, been detrimental to the health, safety, and general welfare of persons residing and working in the neighborhood of such use and business and is detrimental and injurious to property and improvements in the neighborhood and to the general welfare of the city. The Planning Commission hereby revokes the use permit to allow the auto paint booth and the business license for 209 Concepts, located at 6607 Callander Avenue.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a meeting held on the 20th of December, 2016; motioned by Commissioner _____, seconded by Commissioner _____, and upon roll call was carried by the following vote of ____-____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Attest:

**Donna M. Kenney, Secretary
Planning and Building Manager**

Approved:

Carlos Villapudua, Chairperson

Attachment 2: Aerial



Google earth

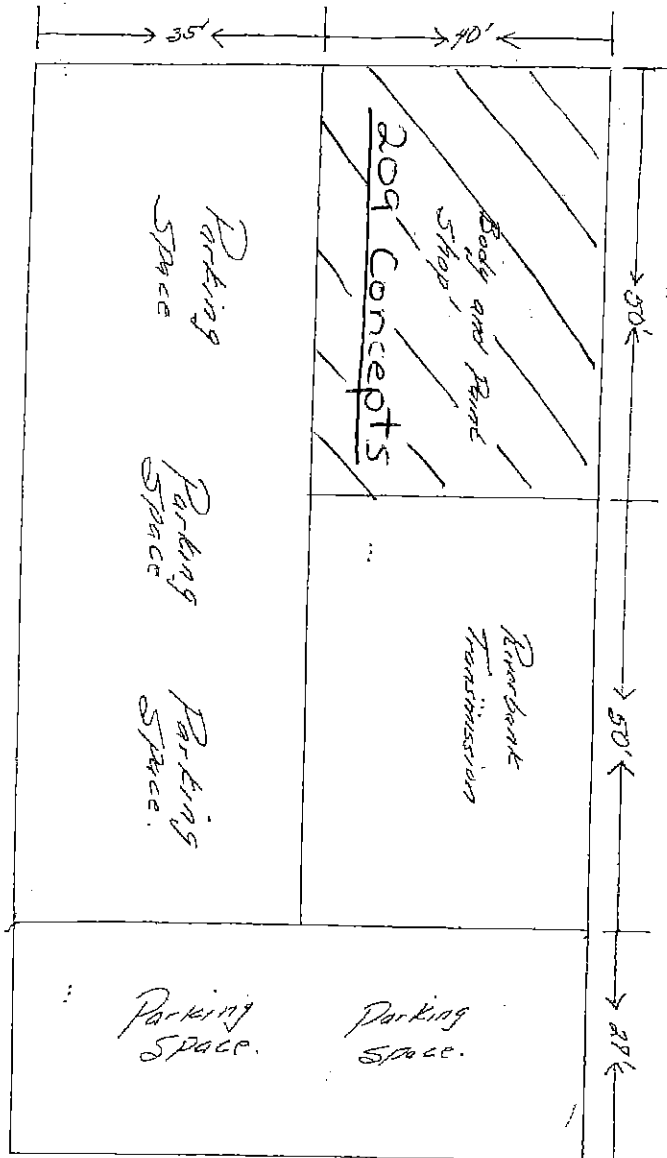
feet
meters

300
90



Attachment 3: Site Plan

Site Plan



Stanislaus Street.

Callander Avenue.

Attachment 4: Business Lic.



BUSINESS LICENSE APPLICATION

CITY OF RIVERBANK FINANCE DEPARTMENT

5617 THIRD ST RIVERBANK, CA 95367 (209) 869-7101 FAX (209) 869-7126

\$2500 Filing Fee
New 3/14/09
Owner

NOTE: SALES OR USE TAX MAY APPLY TO YOUR BUSINESS ACTIVITIES. YOU MAY SEEK WRITTEN ADVICE REGARDING THE APPLICATION OF TAX TO YOUR PARTICULAR BUSINESS BY WRITING TO THE NEAREST STATE BOARD OF EQUALIZATION OFFICE. FOR MORE INFORMATION CALL 1-800-400-7115 OR VISIT WWW.BOE.CA.GOV.

BUSINESS INFORMATION

Business Name: 209 Concepts Date of Application: 10/23/08
Legal Name (If Corporation): _____ Business Phone: (209) _____
Business Address (with city state zip): 6607 Callander
Business Mailing Address (with city state zip): 6301 Tina Ln. Riverbank
Contact Person: Arnulfo Sanguino Business Phone: (209) 969-2938
Contact Email: _____ Business Website: _____
Federal ID No: _____ Resale No: _____ State ID No: _____
Detailed Description of Business: Auto body work & Painting

No. of Employees: 2 Employees in 5 years: _____ Estimated Annual Sales: \$ _____ Sales in 5 years: \$ _____

OWNER INFORMATION

Name: Arnulfo Sanguino Owner Phone: (209) 869-2668
Home Address (with city state zip): 6301 Tina Ln. Riverbank
Contractor State License No: _____ Expiration Date: _____
Partner Name (If applicable): _____ Owner Phone: (____) _____
Partner Home Address (with city state zip): _____

VEHICLE INFORMATION (Commercial vehicles used for business. Attach additional sheets if necessary)

Vehicle #1: _____ Type _____ License Number _____ Vehicle #2: _____ Type _____ License Number _____

OFFICE USE:	APN	75 004-016	Zoning Compliance:	Yes/No	RDA:	Yes/No	Enterprise/Zone:	Yes/No	Special Conditions:	Yes/No	
PLANNING DEPT									DATE	1-21-09	☐
BUILDING DEPT									DATE	1-22-09	☐
FIRE DEPT									DATE	2-10-09	☐
SHERIFF'S DEPT									DATE	12-10-08	☐
ADMINISTRATION									DATE	12-16-08	☐
WASTE WATER TREATMENT PLANT									DATE		☐
WATER DEPARTMENT									DATE		☐
Date Copy was remitted to Economic Development _____											
COMMENTS:											

Attachment 5: SJV Air Pollution District



SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

☒ Northern Regional Office
4800 Enterprise Way
Modesto, CA 95356
(209) 557-6400

☐ Central Regional Office
1990 East Gettysburg Avenue
Fresno, CA 93726
(559) 230-5950

☐ Southern Regional Office
34946 Fiyover Court
Bakersfield, CA 93308
(811) 392-5500

NOTICE OF VIOLATION

NO. 43316

ISSUED TO:

NAME: 209 CONCEPTS PERMIT NO. N-8015-1-0
ADDRESS: 6607 CALLANDER AVE. 5-B'D
CITY: RIVERBANK STATE: CA ZIP: 95367
PHONE: 209-872-7740

OCCURRENCE LOCATION:

NAME: _____
ADDRESS: _____ ☒ Same as Above
CITY: _____ STATE: _____ ZIP: _____
DATE: 8-20-14 TIME: -

THIS NOTICE HAS BEEN ISSUED AS A RESULT OF A VIOLATION OF:

☒ San Joaquin Valley Unified Air Pollution Control District Rules and Regulations ☐ California Health and Safety Code

Rule(s) / Section(s): 2070, 4612
Equipment Type (If Applicable): MOTOR VEHICLE PAINT SPRAY BOOTH

Description: FACILITY FAILED TO MAINTAIN DAILY COATINGS
USAGE RECORDS

RECIPIENT NAME: NICOLAS LOPEZ TITLE: MANAGER

SIGNING THIS NOTICE IS
NOT AN ADMISSION OF GUILT

X

SIGNATURE

RETURN A COPY OF THIS NOTICE WITH A WRITTEN DESCRIPTION OF THE IMMEDIATE
CORRECTIVE ACTION YOU HAVE TAKEN TO PREVENT A CONTINUED OR RECURRENT VIOLATION.

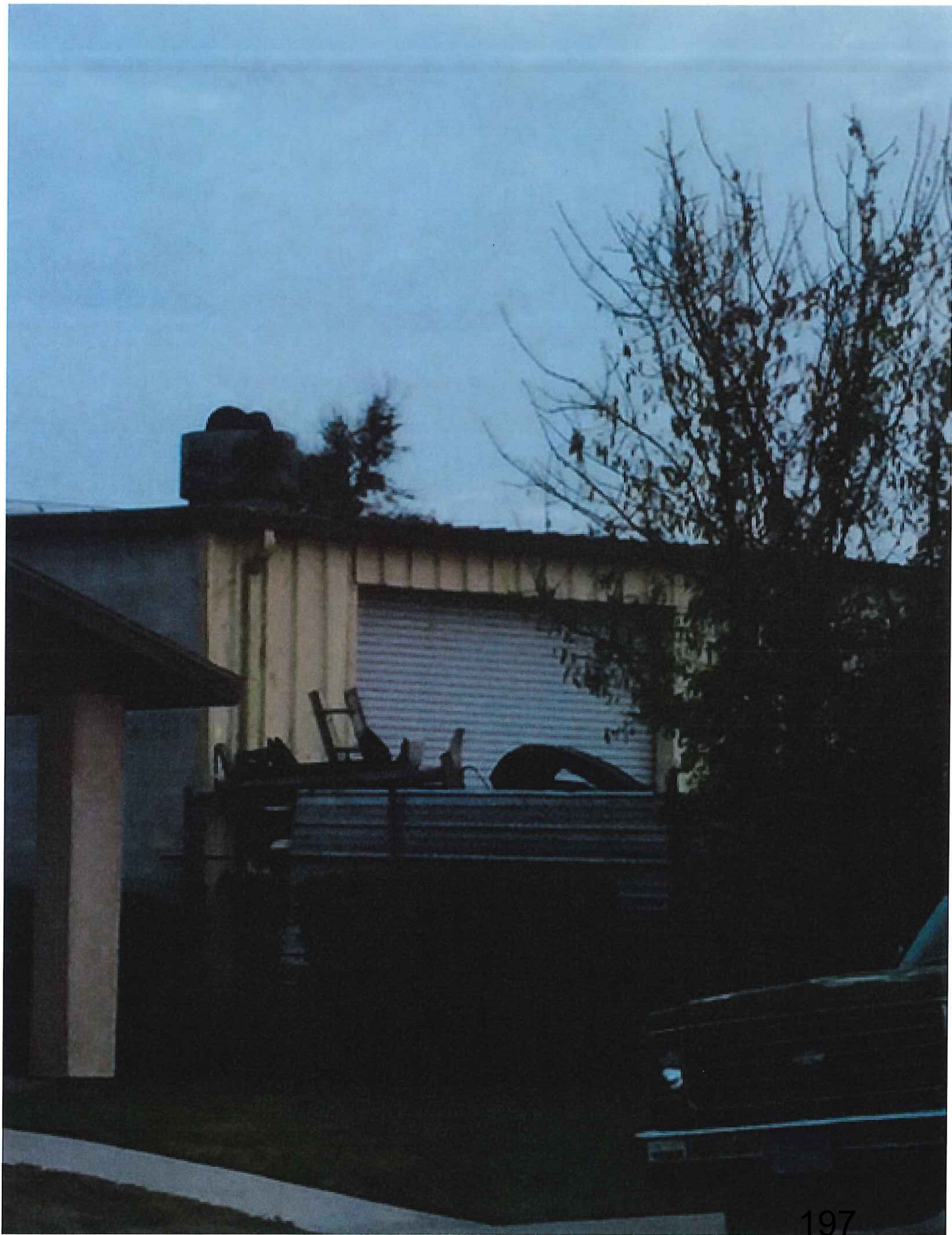
THIS VIOLATION IS SUBJECT TO SUBSTANTIAL PENALTIES.
YOUR RESPONSE DOES NOT PRECLUDE FURTHER LEGAL ACTION.

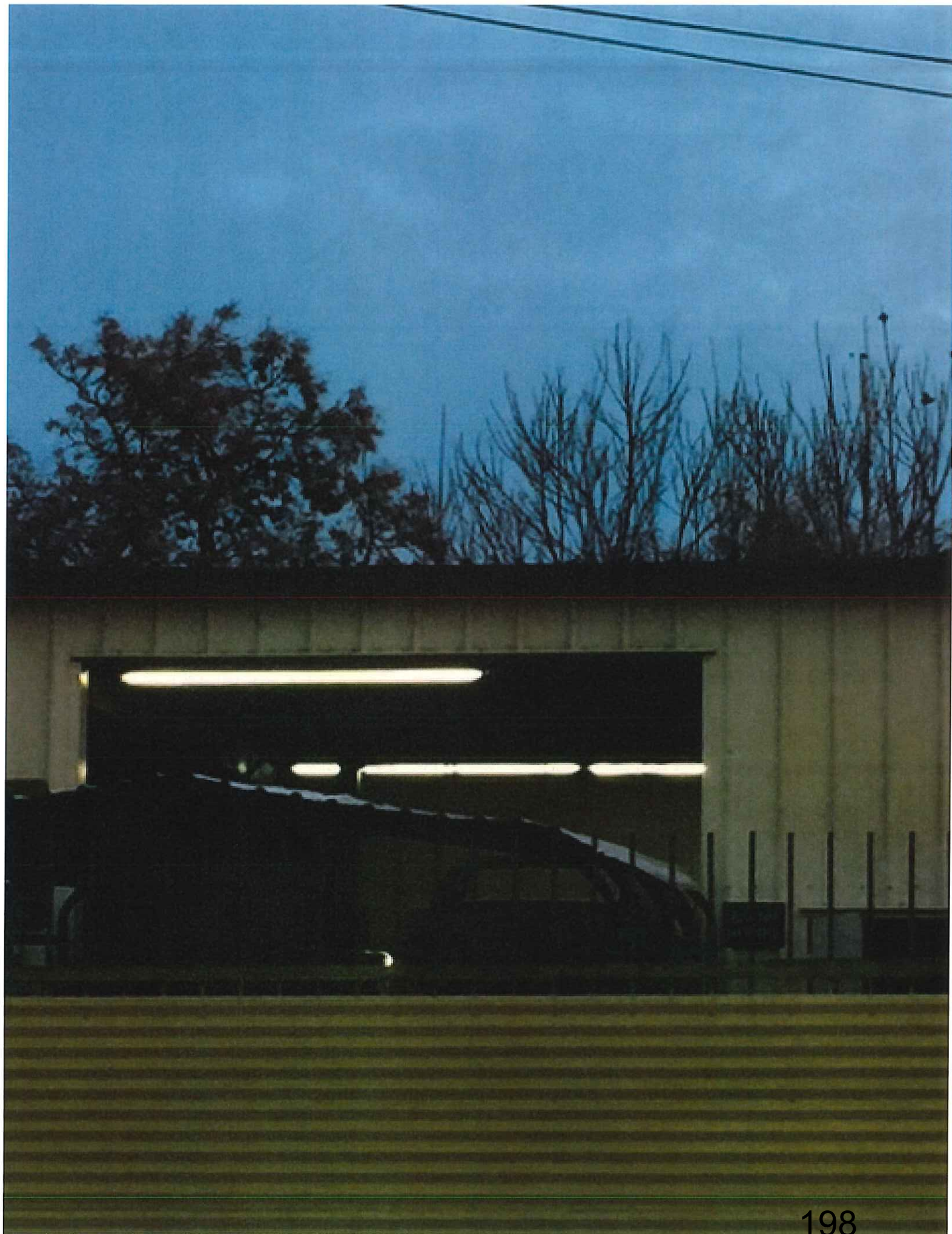
ISSUED BY: CRAIG MITCHELL

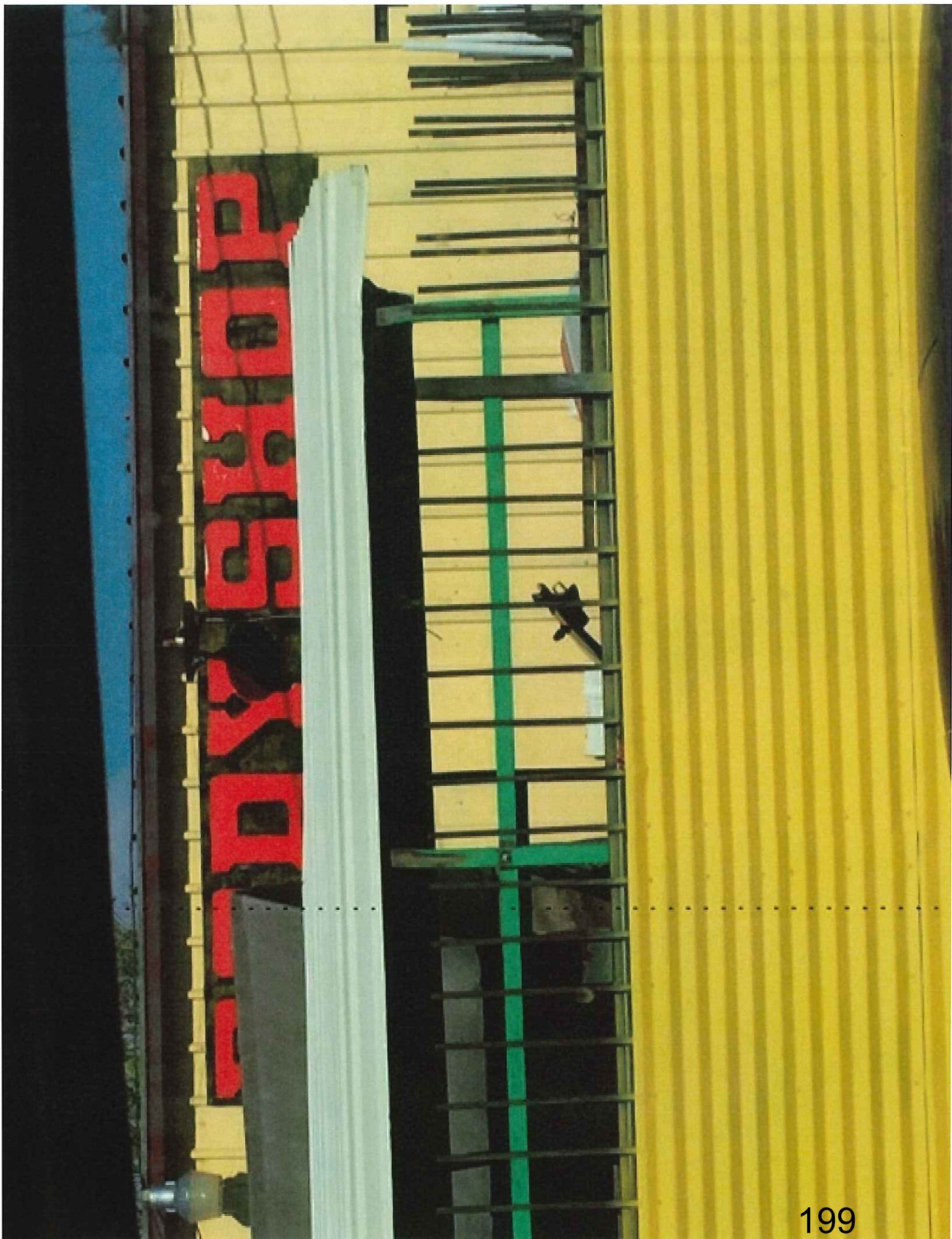
DATE: 10-29-14 TIME: 1202

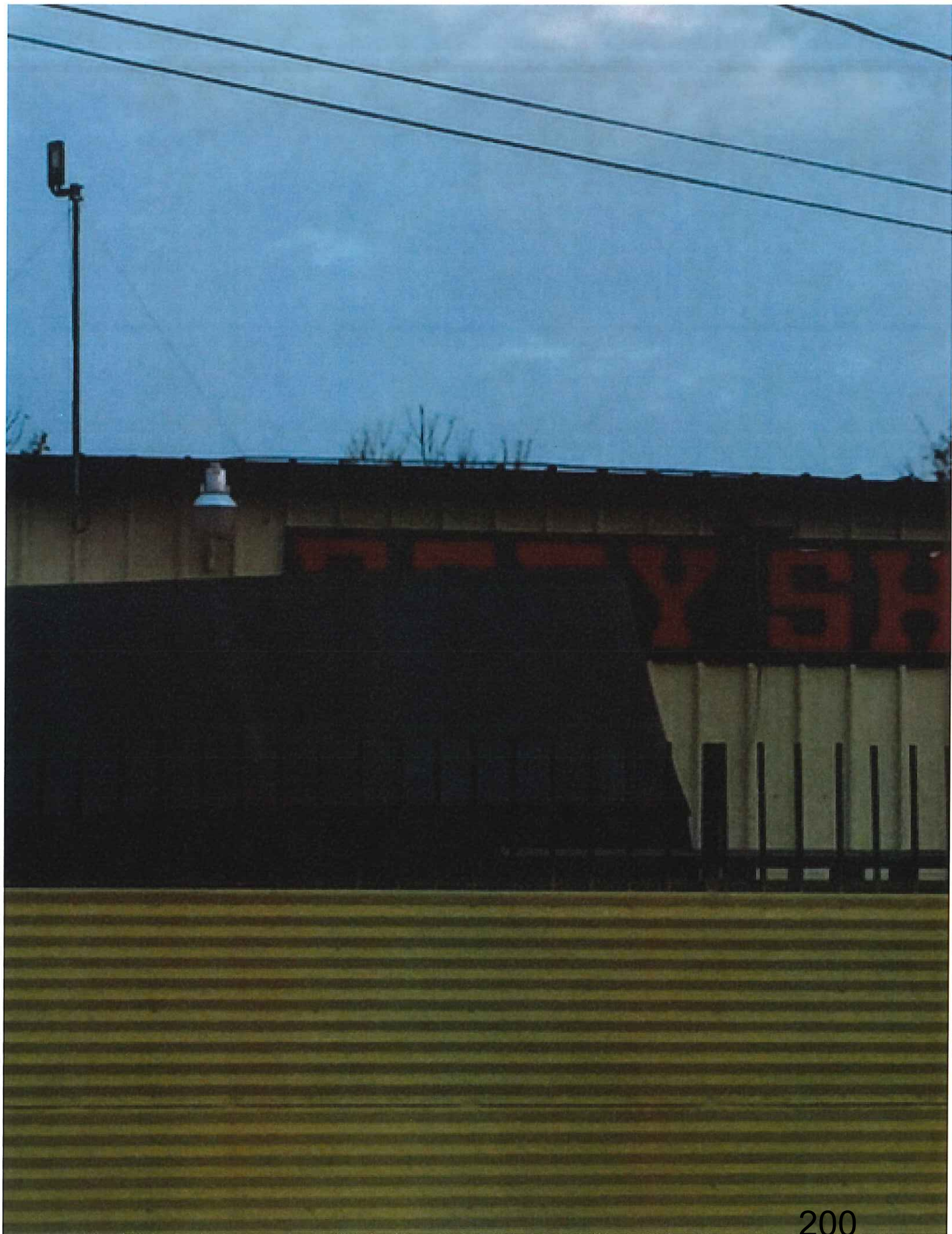
☐ MAILED

Attachment 6: Photos









Item 5.1: Information

NOTICE OF AVAILABILITY OF THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE DEL RIO TANK AND WELLS PROJECT

NOTICE IS HEREBY GIVEN that the Draft Environmental Impact Report (DEIR) for the Del Rio Tank and Wells Project has been completed and is available for public review. The public may review the DEIR during normal operating hours at the City of Modesto Utilities Department; 1010 10th Street, Suite 4600, Modesto, CA 95353, or on the City's website at www.modestogov.com. The public may request a CD of the DEIR by contacting Tamorah Bryant, Senior Civil Engineer, at (209) 577-5205 or email tbryant@modestogov.com.

The DEIR has been prepared in accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. The DEIR has identified cumulative impacts on air quality, greenhouse gas emissions, and potential for overdraft of the groundwater subbasin as significant and unavoidable impacts.

- 1. Project Name:** Del Rio Tank and Wells Project Environmental Assessment No. EA/UTL 2015-05 (SCH No. 2015072055)
- 2. Project Description:** The Proposed Project involves the construction and operation of water wells, a storage tank, and associated distribution facilities at two sites, Site A and Site B. The Proposed Project would develop a total of approximately 4.4 acres (approximately 190,000 square feet). The City of Modesto provides water service to the community of Del Rio. The Del Rio water system currently requires a new storage tank (and associated pump station), well, replacement well, backup generators, and pipelines to correct existing supply deficiencies. The existing Del Rio water system does not meet certain design pressure and storage volume requirements identified in the 2010 Water System Engineer's Report for water supply and fire-flow demand. The existing Del Rio water system also is not sufficient to supply anticipated future growth in the Del Rio area. The City intends to decommission one of its Del Rio water system wells (Well 271) when the new replacement well is brought online.
- 3. Project Location:** The Proposed Project is located in the census-designated place of Del Rio in Stanislaus County. Del Rio is located approximately 2 miles north of the City's sphere-of-influence boundary. The Proposed Project would involve activities at two separate sites within Del Rio: (1) Site A, southeast of the intersection of Ladd Road and St. John Road on APNs 004-077-018 and 004-077-019, and (2) Site B, at the northwest corner of McHenry Avenue and Stewart Road on the southeastern-most portion of APN 004-102-003.
- 4. Lead Agency:** City of Modesto Utilities Department, P.O. Box 642 (1010 Tenth Street), Modesto, CA 95353; Phone (209) 577-5205
- 5. Applicant:** City of Modesto, P.O. Box 642 (1010 Tenth Street), Modesto, CA 95353

PUBLIC COMMENT: In accordance with the time limits provided for by state law, the document's review period will extend from November 7, 2016 through December 22, 2016. Comments must be received before 5:00 p.m. on December 22, 2016. They may be sent to:

Tamorah Bryant, Senior Civil Engineer
City of Modesto
Utilities Department
Post Office Box 642
Modesto, CA 95353

DATED: November 4, 2016