

# CITY OF WINTERS PLANNING COMMISSION AGENDA

Tuesday, April 22nd, 2008 @ 7:30 PM  
City of Winters Council Chambers  
318 First Street  
Winters, CA 95694-1923  
Community Development Department  
Contact Phone Number (530) 795-4910 #112  
Email: [jen.michaelis@cityofwinters.org](mailto:jen.michaelis@cityofwinters.org)

Chairman: Albert Vallecillo  
Vice Chairman: Pierre Neu  
Commissioners: Joe Tramontana, Wade Cowan, Bruce Guelden, Corinne Martinez, Glenn DeVries  
Administrative Assistant: Jen Michaelis  
Community Development Director: Vacant

## I CALL TO ORDER 7:30 PM

## II ROLL CALL & PLEDGE OF ALLEGIANCE

## III COMMUNICATIONS:

1. Staff Reports  
Special Meeting Request for May 13<sup>th</sup>, 2008  
Current Projects List Dated April 15<sup>th</sup>, 2008
2. Commission Reports

## IV CITIZEN INPUT: Individuals or groups may address the Planning Commission on items which are not on the Agenda and which are within the jurisdiction of the Planning Commission. NOTICE TO SPEAKERS: Speaker cards are located on the first table by the main entrance; please complete a speaker's card and give it to the Planning Secretary at the beginning of the meeting. The Commission may impose time limits.

## V CONSENT ITEM

Approve minutes of the February 12<sup>th</sup>, 2008 regular meeting of the Planning Commission.

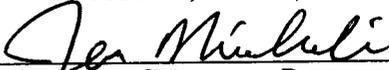
## VI DISCUSSION ITEMS:

1. Public Hearing and consideration of amendment to the Anderson Place Development Agreement to extend the term of the Agreement to 2016 and for Conditional Use Permit application (2008-CUP-01) submitted by Eva Brzeski for a boat and recreational vehicle storage, repair and sales facility located at 723 Railroad Avenue (APN 003-322-20).
2. Public Hearing To Make A Recommendation To The City Council On A Proposed Zoning Code Text Amendment To Exclude Rotary Park From The Requirements Of Zoning Code Section 17.96.030.
3. General Plan Conformity Report Regarding Partial Vacation of Abbey Street between Railroad and Elliot Streets

## VII COMMISSION/STAFF COMMENTS

## VIII ADJOURNMENT

**POSTING OF AGENDA:** PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT ADMINISTRATIVE ASSISTANT OF THE COMMUNITY DEVELOPMENT DEPARTMENT POSTED THE AGENDA FOR THIS MEETING ON TUESDAY, APRIL 15, 2008.



JEN MICHAELIS – COMMUNITY DEVELOPMENT ADMINISTRATIVE ASSISTANT

**APPEALS:** ANY PERSON DISSATISFIED WITH THE DECISION OF THE PLANNING COMMISSION MAY APPEAL THIS DECISION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CITY CLERK, NO LATER THAN TEN (10) CALENDAR DAYS AFTER THE DAY ON WHICH THE DECISION IS MADE.

PURSUANT TO SECTION 65009 (B) (2), OF THE STATE GOVERNMENT CODE "IF YOU CHALLENGE ANY OF THE ABOVE PROJECTS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING(S) DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY PLANNING COMMISSION AT, OR PRIOR TO, THIS PUBLIC HEARING".

**PUBLIC REVIEW OF AGENDA, AGENDA REPORTS, AND MATERIALS:** PRIOR TO THE PLANNING COMMISSION MEETINGS, COPIES OF THE AGENDA, AGENDA REPORTS, AND OTHER MATERIAL ARE AVAILABLE DURING NORMAL WORKING HOURS FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT. IN ADDITION, A LIMITED SUPPLY OF COPIES OF THE AGENDA WILL BE AVAILABLE FOR THE PUBLIC AT THE MEETING.

**OPPORTUNITY TO SPEAK, AGENDA ITEMS:** THE PLANNING COMMISSION WILL PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMISSION ON ITEMS OF BUSINESS ON THE AGENDA, HOWEVER, TIME LIMITS MAY BE IMPOSED BY THE CHAIR AS PROVIDED FOR UNDER THE ADOPTED RULES OF CONDUCT OF PLANNING COMMISSION MEETINGS.

**REVIEW OF TAPE RECORDING OF MEETING:** PLANNING COMMISSION MEETINGS ARE AUDIO TAPE RECORDED. TAPE RECORDINGS ARE AVAILABLE FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT FOR 30 DAYS AFTER THE MEETING.

**COPIES OF AGENDA, AGENDA REPORTS AND OTHER MATERIALS:** PRIOR TO EACH MEETING, COPIES OF THE AGENDA ARE AVAILABLE, AT NO CHARGE, AT CITY HALL DURING NORMAL WORKING HOURS. IN ADDITION, A LIMITED SUPPLY WILL BE AVAILABLE ON A FIRST COME, FIRST SERVED BASIS, AT THE PLANNING COMMISSION MEETINGS. COPIES OF AGENDA, REPORTS AND OTHER MATERIAL WILL BE PROVIDED UPON REQUEST SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT. A COPY FEE OF 25 CENTS PER PAGE WILL BE CHARGED.

ANY MEMBER OF THE PUBLIC MAY SUBMIT A WRITTEN REQUEST FOR A COPY OF PLANNING COMMISSION AGENDAS TO BE MAILED TO THEM. REQUESTS MUST BE ACCOMPANIED BY A CHECK IN THE AMOUNT OF \$25.00 FOR A SINGLE PACKET AND \$250.00 FOR A YEARLY SUBSCRIPTION.



**CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT**  
**Current Projects List as of April 15, 2008**  
**(530) 795-4910, extension 112, [www.cityofwinters.org](http://www.cityofwinters.org)**

<b>PROJECT</b>	<b>DESCRIPTION &amp; PROCESS</b>	<b>LAST ACTION</b>	<b>NEXT ACTION</b>
(1) Winters Highlands, Granite Bay Holdings, LLC, Larry John (916) 960-1656	Application filed to develop 413 single-family and 30 multi-family residential units in northwestern part of city.	Planning Commission approved Design Review for Phase I residences on June 26, 2007.	Amend Development Agreement. Applicant revisions to Final Map and Improvement Plans.
(2) Winters Village, Bob Thompson (West project) (707) 372-9355	Proposal to develop 10 attached single-family residences on the southwest corner of East Main and East Baker Streets.	Applicant in October 2007 decided to defer construction of the project.	Project not active.
(3) Callahan Estates, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 120 single-family residential lots in northwest part of city.	Planning Commission approved Site Plan (landscaping) on December 21, 2005.	Amend Development Agreement. Applicant revisions to Final Map and Improvement Plans.
(4) Creekside Estates, Lynda Fletcher (530) 902-4288	Proposal to develop 40 single-family residential lots at southwest part of city.	City Council approved Tentative Subdivision Map on April 19, 2005.	Applicant revisions to Final Map and Improvement Plans.
(5) Hudson-Ogando, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 72 single-family residential lots in northwest part of city.	Planning Commission approved Site Plan (landscaping) on December 21, 2005.	Amend Development Agreement. Applicant revisions to Final Map and Improvement Plans.
(6) Cottages at Carter Ranch Phase 2, Sacramento Pacific Development, Mark Wiese (916) 853-9800	Proposal to develop 6 single-family residential affordable lots (moderate-income households) north of Rancho Arroyo Detention Facility.	Planning Commission approved Tentative Subdivision Map on November 23, 2004.	Applicant submittal of Final Map and Improvement Plans.
(7) Casitas at Winters, Napa Canyon LLC, Mark Power (707) 253-1339	Proposal for 5-unit tentative subdivision map at a site on West Grant Avenue east of Tomat's restaurant. Tentative Subdivision Map, Planned Development Overlay, and PD Permit.	City Council at its January 15, 2008 meeting took final action by approving the Rezone Ordinance.	Applicant submittal of Final Map and Improvement Plans.

**CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT**  
**Current Projects List as of April 15, 2008**  
**(530) 795-4910, extension 112, [www.cityofwinters.org](http://www.cityofwinters.org)**

(8) Winters II, Community Housing Opportunities Corporation, Ben Rosen (530) 757-4444	Proposal to develop 34-unit apartment complex for low- and very low-income households at 110 East Baker Street.	City issued certificate of occupancy for units and community center on December 18, 2007.	Project complete for City.
(9) Mary Rose Gardens, DAS Homes, Inc., Dave Snow (530) 666-0506	Proposal to develop 26 single-family homes and one duplex unit on the north side of West Grant Avenue west of Cemetery Lane. Tentative Subdivision Map, Planned Development Overlay, PD Permit, Rezone, Inclusionary Housing Agreement, and Development Agreement.	Applicant declined option to purchase project property.	Project not active.
(10) Anderson Place, Eva Brzeski (415) 887-9300	Proposal to develop up to 28 mostly attached single-family residences and 9 commercial spaces at 723 Railroad Avenue.	City Council at its June 19, 2007 meeting took final action on the project by approving the project development agreement.	Amend Development Agreement – CUP for interim use. Applicant submittal of Final Map and Improvement Plans.
(11) Pearse Parcel Map, Thomas Pearse (530) 795-5901	Proposal for 4-unit parcel map at the south end of Third Street.	Planning Commission on October 9, 2007 approved project.	Applicant submittal of Final Map and Improvement Plans.
(12) Winters Commercial, Granite Bay Holdings, LLC, Tyler Wade (916) 580-1855	Proposal to develop 4.52 acres on south side of Grant Avenue directly west of Round Table Pizza complex for 49,500 square feet of commercial and office uses. Site Plan. Application submitted on August 17, 2007 and deemed complete on October 22, 2007.	City Council on December 18, 2007 approved East Street closure at Grant Avenue and Encroachment Permit for diagonal parking and landscaping on East Baker Street.	Applicant submittal of Final Map, Improvement Plans, and building plans.
(13) Valadez, Frank Valadez, Trustee, 530-674-5102	Proposal to change General Plan and Zoning designations for the 1.421-acre parcel (APN 003-391-05) located east of the Winters Cemetery from public-quasi-public to residential use.	Draft Initial Study completed.	Circulation of Initial Study.
(14) Winters Estates Annexation, Winters Estates LLC, Helmut Sommer 707-678-9000	Proposal to annex 80 acres (APNs 030-210-05 & 08) adjacent to County Road 88 and within the City's General Plan Area.	City issuance of incomplete application letter on February 1, 2008.	Applicant response to City's February 1, 2008 incomplete application letter.

**CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT**  
**Current Projects List as of April 15, 2008**  
**(530) 795-4910, extension 112, [www.cityofwinters.org](http://www.cityofwinters.org)**

**AFFORDABLE HOUSING UNITS**

- Project #1:** 26 units for very low-income, 25 units for low-income, and 15 units for moderate-income households.
- Project #2:** 2 units for low-income households.
- Project #3:** 7 units for very low-income, 7 units for low-income, and 4 units for moderate-income households.
- Project #4:** 1 unit for very low-income, 2 units for low-income, and 1 unit for moderate-income households.
- Project #5:** 11 units for very low-income households.
- Project #6:** 6 units for moderate-income households.
- Project #7:** Not known whether residential units will be constructed.
- Project #8:** 34 units for very low-income and low-income households.
- Project #9:** 2 units for very low-income, 1 unit for low-income, and 1 unit for moderate-income households.
- Project #10:** 2 units for very low-income, 1 unit for low-income, and 1 unit for moderate-income households.
- Project #11:** Not applicable.
- Project #12:** Not applicable.
- Project #13:** Not known at this time.
- Project #14:** Not known at this time.



**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON  
TUESDAY, FEBRUARY 12, 2008**

Chairman Vallecillo called the meeting to order at 7:30 p.m.

**PRESENT:** Tramontana, DeVries, Neu, Guelden, Cowan, and Chairman Vallecillo

**ABSENT:** Martinez

**STAFF:** Community Development Director Dan Sokolow, Mayor Woody Fridae, Administrative Assistant Jen Michaelis, Redevelopment & Economic Development Director/Assistant Executive Director Community Development Agency, Cas Ellena

Commissioner DeVries led the Pledge of Allegiance.

**COMMUNICATIONS:**

**Staff Report:** Community Development Director Sokolow noted that the initial study for the Valdez project is to start tomorrow; no hearing date has been set yet. Sokolow also added that the Boat and RV Storage item has been requested to be tabled until a future date to be determined.

**Commission Report:** None.

**Citizen Input:** Woody Fridae, speaking on behalf of the City Council, expressed his thanks to Dan Sokolow for his dedicated years of service. Fridae reminded those in attendance of the dinner on Friday night.

**CONSENT ITEM**

Approve minutes of the January 22, 2008 regular meeting of the Planning Commission. Commissioner Neu made a motion to approve the minutes for the January 22, 2008 meeting of the Planning Commission. Seconded by Commissioner Guelden.

**AYES:** Tramontana, DeVries, Neu, Guelden, Cowan, and Chairman Vallecillo  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** Martinez

Motion passed unanimously with Martinez absent.

**DISCUSSION ITEM**

1. Appointment of Planning Commissioner to serve on the Affordable Housing Steering Committee.

Commissioners concurred that Commissioner Guelden be appointed to the committee.

2. Public Hearing and consideration of Design Review application (2008-DR-02) submitted by Joe Ogando for the façade improvement of the building located at 200 – 208 Railroad Avenue (APN 003-203-12).

Sokolow stated that the Ogando item was moved ahead of the Downtown Streetscape presentation for the convenience of the applicant.

**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON  
TUESDAY, FEBRUARY 12, 2008**

Commissioners concurred.

Sokolow provided an overview of his staff report, proposed building materials, and the scope of the project.

Tramontana asked if the tenants are changing.

Sokolow responded that he did not think the tenants were changing, that this was simply a façade upgrade and the tenants could still operate their businesses during construction.

Applicant Joe Ogando presented his project overview.

Tramontana asked if any bike racks were going to be provided by the façade improvement. Ogando responded that none are planned, but he can look into it. Tramontana provided some advice as to the kind of racks that are preferred by cyclists.

Chairman Vallecillo noted that the window on the Pub storefront would remain, but he would like to see it go for aesthetic reasons.

Guelden noted that the building could sure use an upgrade, likes the property owners working with the City on the project.

Cowan added that he likes the project and that it is a huge improvement.

Neu echoed Vallecillo's comments on the Pub window with the mullions; he would like to see it go as well.

Ogando replied that he is trying to stick strictly to façade work, nothing structural, but could possibly change out the glass on the Pub window, or remove the mullions.

Vallecillo opened the Public Hearing at 8:15PM. There were no comments. The Public Hearing was closed at 8:16PM.

Nue moved to approve the Design Review application (2008-DR-02) submitted by Joe Ogando for the façade improvement of the building located at 200 – 208 Railroad Avenue (APN 003-203-12).

Seconded by Cowan.

AYES: Tramontana, DeVries, Neu, Guelden, Cowan, and Chairman Vallecillo  
NOES: None  
ABSTAIN: None  
ABSENT: Martinez

Motion passed unanimously with Martinez absent.

3. Presentation on Downtown Streetscape Improvement Project.

**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON  
TUESDAY, FEBRUARY 12, 2008**

Redevelopment & Economic Development Director/Assistant Executive Director  
Community Development Agency, Cas Ellena presented the Downtown Streetscape  
Improvement Project PowerPoint.

Tramontana asked about parking space losses.

Ellena explained that there were some losses of spaces.

DeVries asked about wood maintenance issues with the wood items in the project.  
Ellena stated that the wood items were in high traffic areas with lots of eyes on them,  
and other materials were used in more secluded areas. DeVries said that he is  
concerned about vandalism.

Vallecillo said that wood is definitely a long term maintenance issue.

DeVries is in favor of "poured-in-place" seating on the bulb-outs.

Vallecillo would like to see more durable materials and better bike racks.

Guelden would like to see the addition of a directory or town map in the project,  
something like a kiosk with local information and events.

Neu mentioned the abundance of plywood covered windows in downtown and  
suggested possibly using some of that space for community information.

Ellena stated that the department would consider all of the suggestions.

Citizen Bill Biasi added that he is not in favor of the mid-block crossing and would prefer  
that money be spent on improvements at First and Main.

**COMMISSION/STAFF COMMENTS:**

None

Guelden moved to adjourn. Seconded by DeVries.

The meeting was adjourned at 8:45 p.m.

**ATTEST:**

---

Jen Michaelis, CDD Admin

---

Albert Vallecillo, Chairman





**PLANNING COMMISSION STAFF REPORT**  
**April 22, 2008**

**TO:** Chairman and Planning Commissioners

**BY:** Kate Kelly – Planning Manager 

**SUBJECT:** **Public Hearing and consideration of Proposed Amendment to the Anderson Place Development Agreement and a Conditional Use Permit application (2008-CUP-01) submitted by Eva Brzeski for a boat and recreational vehicle storage facility with repair and sales facility located at 723 Railroad Avenue (APN 003-322-20).**

---

**RECOMMENDATION:** Staff recommends that the Planning Commission take the following actions:

- 1) Receive the staff report;
- 2) Conduct the public hearing;
- 3) Confirm CEQA exemption finding – “General Rule Exemption” (15061b3) for the proposed amendment to the Anderson Place Development Agreement;
- 4) Recommend to the City Council approval of the proposed amendment to the Anderson Place Development Agreement;
- 5) Continue consideration of Conditional Use Permit application (2008-CUP-01) submitted by Eva Brzeski to operate a boat and recreational vehicle storage, repair, and sales facility at 723 Railroad Avenue (Assessor Parcel Number 003-322-20) to the May 13<sup>th</sup> Special Planning Commission Meeting or the next available date thereafter.

**BACKGROUND:**

Development Agreement:

Last year, the City Council approved the Anderson Place project and its accompanying Development Agreement (DA) which would result in 28 multi-family residential units and 9 office suites at the project site. Because of the decline in the residential housing market, the applicant has decided to delay development of the residential/office development. As a result, the project timing is no longer consistent with the DA. This is not a circumstance limited to the Anderson Place project. In light of the changed real estate market and economy, the City of Winters is currently

processing amendments to all of the DAs active in the City to address timing issues. Amendments to DAs are provided for under California Government Code Section 65868 and Chapter 15.72.210 of the City of Winters Municipal Code. The following amendments are proposed for the Anderson Place DA:

1. Extend term of DA to 12/31/2016. Correct error in reference to Muni Code.
2. Add standard provision re waivers.
3. Add standard provision re signatures.
4. Add standard provision re severability.
5. Extend life of tentative map to 12/31/2013.
6. Provide developers with discretion when to proceed with development. Development must be completed by 12/31/2016.
7. Change date of valuation of park land from date of recordation of DA to within 6 months of filing of final map, due to the anticipated extended delay.
8. Revise language regarding amount of annuity.
9. Change CDA obligation due to project delay. (Note: The Community Development Agency is not a party to the DA so cannot be bound by this agreement. Once developers are ready to proceed, they should apply for funding and CDA can evaluate at that time.)
10. Clarify City's intention regarding the new water well and bring requirement into consistency with other approved development projects.

Conditional Use Permit: Eva Brzeski, the applicant and property owner, submitted a Conditional Use Permit (CUP) application in December 2007 to use the vacant 27,000 square foot warehouse-type building located at 723 Railroad Avenue for an indoor boat and recreational vehicle storage facility. This item was originally scheduled for consideration by the Planning Commission at its January 22, 2008 meeting; however, the applicant requested that the item be rescheduled to the February 12, 2008 meeting so the project scope could be revised to include outdoor storage of boats and recreational vehicles. On February 9, 2008 the Applicant held a meeting with the project site neighbors to review the design options and seek input from the neighbors. The item was removed from the February 12<sup>th</sup> meeting based on direction from the City Attorney to allow staff and the applicant time to address the status of the Anderson Place Development Agreement. The applicant and staff request that the consideration of the CUP be continued to the May 13<sup>th</sup> Special Planning Commission Meeting to allow the applicant time to address status of the building on the property.

## **DISCUSSION:**

Development Agreement: Staff supports the amendments to the DA. The City and the Applicant entered into the Anderson Place DA, providing for the mixed use development of the property in June 2007. The terms of the DA provided for the final subdivision map to be submitted to the City by December 1, 2007 and the development completed by July 5, 2012. Due to the severe decline in the

residential housing market within the last year, the Applicant has deferred development of the Project and would like to pursue, via the CUP, an alternate interim commercial use of the existing structure on the Property.

In order to allow sufficient time for an increase in the residential housing market, staff recommends amending the DA to adjust the timing for the start and completion of the development. Without these amendments the DA would be in default. The DA provides significant public benefits which staff recommends be preserved. The amendment of the DA will accomplish that goal.

This situation is not unique to the Anderson Place project or even Winters. The development community as a whole is struggling and the City is in the process of amending the development agreements for several of our projects.

This amendment will also allow the City to address a codification issue, insert standardized clauses which were inadvertently neglected in the DA, and to clarify the project's relationship to the new water well.

#### **METHODOLOGY:**

Three actions are required to process the proposed project:

1. Confirmation of CEQA exemption finding – “General Rule Exemption” (15061b3) for the Amendment to the Anderson Place Development Agreement.
2. Recommend approval of Development Agreement Amendment to the City Council.
3. Continue consideration the Conditional Use Permit

#### **APPLICABLE REGULATIONS:** This project is subject to several regulations:

- The California Environmental Quality Act (CEQA)
- State Planning and Zoning Law
- City of Winters General Plan
- City of Winters Municipal Code
- City of Winters Zoning Ordinance

**PROJECT NOTIFICATION:** Public notice advertising for the public hearing on this project was prepared by the Community Development Department's Administrative Assistant in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. Two methods of public notice were used: a legal notice was published in the Winters Express on Thursday, April 10, 2008, and notices were mailed to all property owners who own real property within three hundred feet of the project boundaries at least ten days prior to the April 22, 2008 Planning Commission hearing. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Tuesday, April 15, 2008.

**ENVIRONMENTAL ASSESSMENT:** The proposed amendment to the DA for the Anderson Place Project has been reviewed in accordance with the California Environmental Quality Act (CEQA) and is considered exempt under General Rule exemption 15061(b)(3). Under Section 15061(b)(3) of the CEQA Guidelines, the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared and adopted for the Anderson Place project when it was approved in 2007. All foreseeable environmental impacts have been addressed and reduced to a less than significant level by the provisions of IS/MND. The proposed amendment to the DA simply extends the horizon for the commencement and completion of the development, addresses a codification issue, inserts standardized clauses which were inadvertently neglected in the DA, and clarifies the project's relationship to the new water well.

## **RECOMMENDED FINDINGS FOR AMENDING THE ANDERSON PLACE DEVELOPMENT AGREEMENT**

### **CEQA Findings:**

1. The project qualifies for an exemption from the provisions of CEQA - General Rule Exemption (15061b3)
2. The Planning Commission has considered comments received on the project during the public review process.
3. The exemption finding reflects the independent judgment and analysis of the City of Winters.
4. The Planning Commission hereby confirms General Rule Exemption (15061b3) for amending the Anderson Place Development Agreement.

**RECOMMENDATION:** Staff recommends approval of the project by making an affirmative motion as follows:

**I MOVE THAT THE WINTERS PLANNING COMMISSION RECOMMEND TO THE CITY COUNCIL APPROVAL OF THE PROPOSED FIRST AMENDMENT TO THE ANDERSON PLACE DEVELOPMENT AGREEMENT FOR THE PROPERTY LOCATED AT 723 RAILROAD AVENUE PROJECT (APN: 003-322-20) BASED ON THE IDENTIFIED FINDINGS OF FACT AND BY TAKING THE FOLLOWING ACTIONS:**

- Confirmation of exemption from the provisions of CEQA.

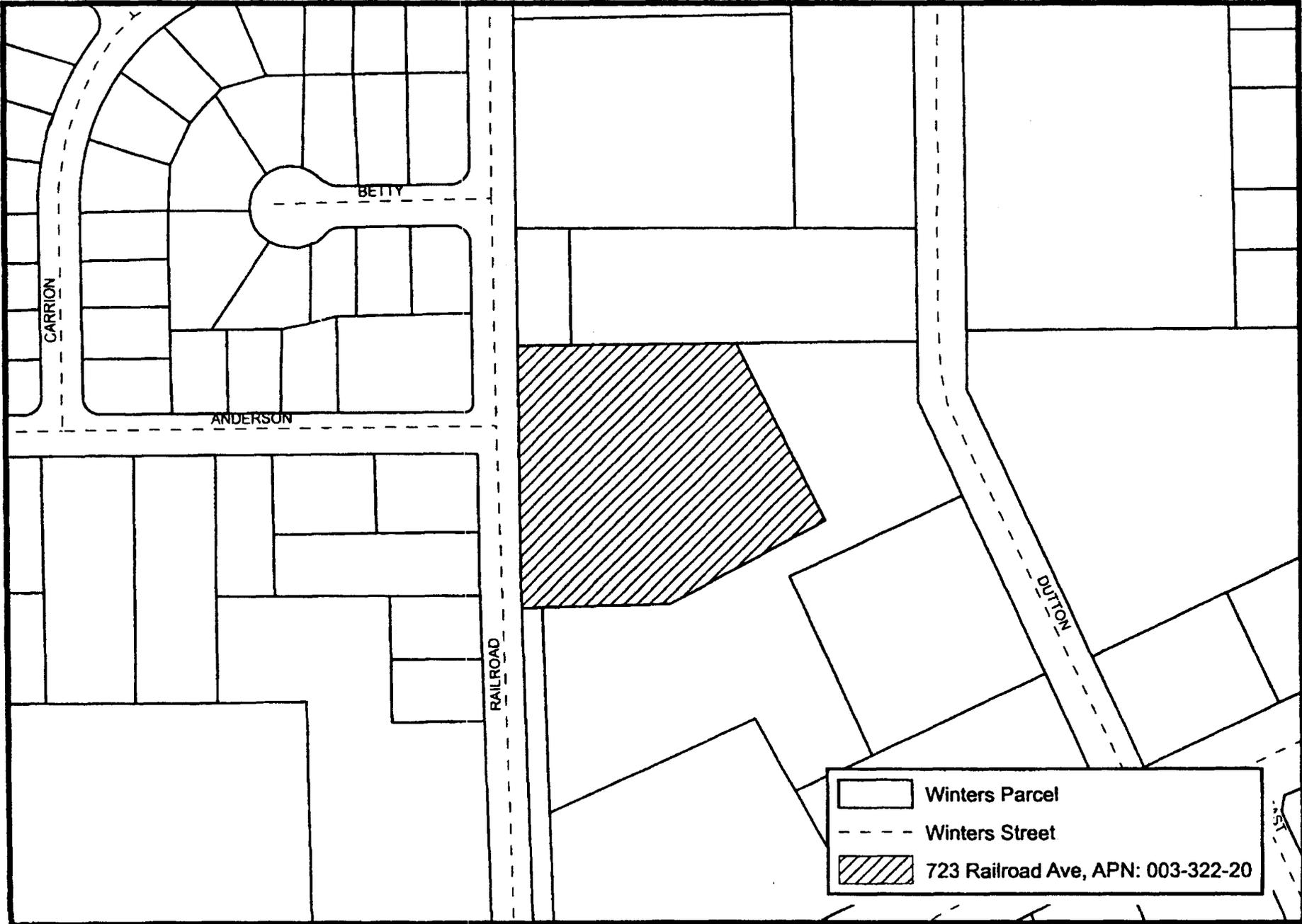
- Recommend to City Council the approval of the Amendment to the Anderson Place Development Agreement

**ALTERNATIVES:** The Commission can elect to not recommend approval of the DA amendment and provide reasons for its position to the City Council.

**ATTACHMENTS:**

1. Location Map for Project
2. Proposed Amendment to the Anderson Place Development Agreement
3. Anderson Place Development Agreement – recorded July 5, 2007
4. Public Hearing Notice (published and mailed copies)

Anderson Place Subdivision Project



0 90 180 360 Feet

**FIRST AMENDMENT  
TO  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF WINTERS  
AND  
G STREET SAN BERNARDINO, LLC AND EVA ILONA BRZESKI  
[ANDERSON PLACE SUBDIVISION]**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (hereinafter referred to as the "**First Amendment**") is entered into as of June \_\_\_\_\_, 2008 ("**Effective Date**"), by and between the CITY OF WINTERS, a municipal corporation, (the "**City**"), and G STREET SAN BERNARDINO, LLC, a Nevada limited liability company ("**G Street**") and EVA ILONA BRZESKI, an individual ("**Brzeski**"). G Street and Brzeski are collectively referred to herein as the "**Developers**".

**Recitals**

- A. The City and the Developers have heretofore entered into a Development Agreement, executed as of July 5, 2007, (the "**Development Agreement**"), providing for the mixed use development of certain real property commonly referred to as the Anderson Place property (the "**Project**") located within the boundaries of the City of Winters. Capitalized terms used but not defined in this First Amendment shall have the meanings given in the Development Agreement.
- B. G Street and Brzeski each have a legal interest in the Property and hold fee title as tenants in common.
- C. Due to the severe decline in the residential housing market within the last year, Developers desire to defer development of the Project, and in the interim, to pursue an alternate short-term commercial use of the existing structure on the Property.
- D. In furtherance of the Project, and in particular, to allow sufficient time for an increase in the residential housing market, the City and the Developers desire to enter into this First Amendment to make certain modifications to the Development Agreement as set forth herein.
- E. City has given the required notice of its intention to adopt this First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan.
- F. On \_\_\_\_\_, 2008, the City of Winters Planning Commission (the "**Planning Commission**"), the initial hearing body for purposes of Development Agreement review, recommended approval of this First Amendment. On \_\_\_\_\_, 2008, the City of Winters City Council adopted its Ordinance No. \_\_\_\_\_ approving this First Amendment and authorizing its execution, and that Ordinance ("**Enacting Ordinance**") became effective on \_\_\_\_\_, \_\_\_\_\_.

## Agreement

### Section 1. Amendment to Section 2.3, Agreement to be Recorded; Effective Date; Term.

Section 2.3, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

b. The term of this Agreement shall expire on December 31, 2016, unless extended by mutual consent of the Parties. It may be terminated as provided in Article 5 of the Development Agreement.

### Section 2. Amendment to Section 2.7, Whole Agreement; Conflict with Municipal Code.

Section 2.7, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

b. The provisions of Title 15, Chapter 15.75 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

### Section 3. Addition of Section 2.10, Waivers.

Section 2.10 is added to the Development Agreement and shall read as follows:

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

### Section 4. Addition of Section 2.11, Signatures.

Section 2.11 is added to the Development Agreement and shall read as follows:

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developers and the City. This Agreement shall insure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

### Section 5. Addition of Section 2.12, Severability.

Section 2.12 is added to the Development Agreement and shall read as follows:

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the

invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of Section 5.2 relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developers from its obligations to indemnify the City under this Agreement.

Section 6. Amendment to Section 3.1, Land Use Entitlements.

Section 3.1, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

b. Under the provisions of Government Code section 66452.6(a), the term of the Anderson Place Tentative Subdivision Map is extended until December 31, 2013.

Section 7. Amendment to Section 3.6, Commencement of Development.

Section 3.6, paragraphs a. and b., of the Development Agreement are replaced in their entirety and shall read as follows:

The Developers shall have sole discretion to determine when the final map for the Anderson Place Subdivision, and accompanying subdivision improvement plans, are submitted for City review and approval.

Section 8. Amendment to Section 4.2, 0.52 +/- Acres of Land.

Section 4.2, paragraph e.1, of the Development Agreement is replaced in its entirety and shall read as follows:

1. The land value will be determined by an appraisal made at the Developers' expense. The Developers shall provide to the City the names of three (3) qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to the Property. The City shall select the appraiser to be used from the list and notify the Developers of its decision. The appraisal shall be presented to the City prior to the recordation of the final map for the Anderson Place Subdivision. The appraisal shall determine the fair market value of 0.52 +/- acres of the Property with the development entitlements specified in this Agreement. The date of value shall be within six (6) months of the recordation of the final map for the Anderson Place Subdivision.

Section 9. Amendment to Section 4.3, Advance Funding of Fees for Construction of New Water Well.

Section 4.3, paragraph d. is added to the Development Agreement and shall read as follows:

d. Condition of Approval 33 (Mitigation Measure No. 15) provides that "The City shall issue building permits only after the new water well is in service, and Condition of

Approval 90 provides that “Based on City water modeling, a new well is needed to serve the development. Per Mitigation Measure #15, no building permits shall be issued until the new well is in service.” This paragraph clarifies the meaning and intent of both of the above Conditions of Approval, by providing that if the City Engineer has determined that an adequate water supply is not available to serve the Anderson Place Subdivision, then the City shall issue building permits only after the new water well is in service. However, if the City Engineer has determined that an adequate water supply is available to serve the Anderson Place Subdivision, then Conditions of Approval 33 and 90 shall not prevent or prohibit the issuance of building permits.

Section 10. Amendment to Section 4.4, Annuity in Lieu of Mello-Roos District.

Section 4.4, paragraph b.1, of the Development Agreement is replaced in its entirety and shall read as follows:

1. At the time of the recordation of the final map for the Anderson Place Subdivision, the City will obtain an updated fiscal impact analysis in order to determine the required amount of the annuity. From the escrow for the sale of each residential unit to a third party, the Developers will pay to the City the amount per residential unit as established by such updated fiscal impact analysis.

Section 11. Amendment to Section 4.7, Affordable Housing.

Section 4.7 of the Development Agreement is replaced in its entirety and shall read as follows:

The City hereby recommends to the Winters Community Development Agency (“CDA”) that the CDA, subject to the availability of funds and subject to the satisfaction by Developers of the conditions set forth in this Section, approve a grant of Two Hundred Thousand Dollars (\$200,000.00) in CDA low and moderate income housing funds to either the Developers or a third party designated by the Developers and acceptable to the City and CDA for the construction of four (4) affordable housing units (comprised of two very low-, one low-, and one moderate-income for-sale affordable housing unit) required for the Project. Prior to the release of any CDA low and moderate income housing funds, the CDA and the Developers or its third party designee shall enter into an agreement governing the grant of funds (the "**Affordable Housing Agreement**"), which shall include requirements that (1) deed restrictions ensuring long-term affordability consistent with the provisions of the City’s inclusionary housing ordinance and the California Community Redevelopment Law shall be recorded against each of the affordable units, and (2) the Developers or third party designee execute a promissory note and deed of trust to be recorded against the affordable units, which shall secure both the CDA's interest in the affordable units and the long term affordability of the affordable units. The Affordable Housing Agreement, deed restrictions, promissory notes and deeds of trust shall be prepared and approved by the CDA and the City. The grant shall be repayable to the CDA in the event that there is a default under the Affordable Housing Agreement, deed restrictions, promissory notes or deeds of trust.

Section 12. Force and Effect

The effective date of this First Amendment shall be the date that this First Amendment is signed by the City as written above. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and in full force and effect.

**SIGNATURE PAGE FOLLOWS**

**IN WITNESS WHEREOF**, the parties hereto have entered into this First Amendment as of the date first above written.

<b>CITY:</b>	<b>DEVELOPERS:</b>
CITY OF WINTERS  _____ Mayor	G STREET SAN BERNARDINO, LLC a California limited liability company  By: _____ Its: _____
APPROVED AS TO FORM:  _____ JOHN C. WALLACE CITY ATTORNEY	EVA ILONA BRZESKI, an individual  _____ EVA ILONA BRZESKI
ATTEST:  _____ NANCI MILLS CITY CLERK	

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

The City of Winters  
318 First Street  
Winters, California 95694  
Attention: City Manager



YOLO Recorder's Office  
Freddie Oakley, County Recorder  
**DOC- 2007-0023896-00**

Acct 118-Winters - NC  
Thursday, JUL 05, 2007 08:06:00  
Ttl Pd \$0.00 Nbr-0000717203  
FRT/X6/1-70

No fee for recording pursuant  
to Government Code Section 27383

---

(Space Above This Line Reserved For Recorder's Use)

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF WINTERS**

**AND**

**G STREET SAN BERNARDINO, LLC AND EVA ILONA BRZESKI**



**A DEVELOPMENT AGREEMENT**  
**BETWEEN THE CITY OF WINTERS AND G STREET SAN**  
**BERNARDINO, LLC AND EVA ILONA BRZESKI RELATING TO THE**  
**DEVELOPMENT OF THE PROPERTY COMMONLY KNOWN AS THE**  
**ANDERSON PLACE PROPERTY**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and G Street San Bernardino, LLC, a California limited liability company, and Eva Ilona Brzeski (the "Developer"), under the authority of § 65864 *et seq.* of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County. The City and the Developer are sometimes referred to herein as the Parties.

**FACTS AND CIRCUMSTANCES**

This Agreement is entered into based on the following facts and circumstances, among others:

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.
2. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Anderson Place Property and further described in Exhibits A and B to this Agreement, is through the use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864)

[entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

3. It is the intent of the Parties in entering into this Agreement to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain vested rights to develop the Anderson Place Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

**THE PARTIES AGREE AS FOLLOWS:**

**TABLE OF CONTENTS**

This Agreement is divided into articles, sections, and subsections as set forth below. The title of an article, section, or sub-section is for the convenience of the Parties only and a title is not intended to alter the content or meaning of any article, section or subsection.

Article 1. Definitions

Article 2. General Provisions

Article 3. Development of the Property

Article 4. Special Development Obligations

Article 5. Default, Remedies, and Dispute Resolution

Article 6. Hold Harmless and Indemnification

**ARTICLE 1**  
**DEFINITIONS**

The following words and phrases used in this Agreement shall have the meanings set forth in this Article. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

Section 1.1 "Agreement" means this Development Agreement.

Section 1.2 "Application fees" means the amount paid by the Developer for the processing of any land use entitlement or for an amendment to this Agreement.

Section 1.3 "Building Permit" means the ministerial permit issued for the construction of a residential housing unit upon the payment of all applicable fees.

Section 1.4 "Anderson Place Property" or "The Property" means the real property which is the subject of this Agreement. It is legally identified as Yolo County Assessor's Parcel No. 003-220-22, and is more specifically shown and described in Exhibits A and B.

Section 1.5 "Anderson Place Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for The Property in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Anderson Place Tentative Subdivision Map #4859 is attached as Exhibit C.

Section 1.6 "Anderson Place Subdivision" means the multi-family residential development created by the Anderson Place Tentative Subdivision Map.

Section 1.7 "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also includes each person duly appointed to carry out a specific function as required in this Agreement. (E.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

Section 1.8 "City of Winters" means the physical boundaries of the City of Winters.

Section 1.9 "Condition of approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

Section 1.10 "Conditions of Approval" means the conditions placed on the approval of the Anderson Place Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

Section 1.11 "Developer" means G Street San Bernardino, LLC, a California limited liability company, and Eva Ilona Brzeski and/or their successor(s) in interest.

Section 1.12 "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in

approving or disapproving a particular activity.

Section 1.13 "Final subdivision map" or "final map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

Section 1.14 "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of The Property for such things as traffic circulation, sewer and water conveyance facilities, and similar matters.

Section 1.15 "Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval.

Section 1.16 "Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

Section 1.17 "Mitigation Measures" means the requirements placed on the development of The Property to cure or lessen the environmental impact of a particular physical activity as identified as part of the analysis done for The Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

Section 1.18 "Off-site improvement" means a public improvement constructed outside the physical boundaries of The Property.

Section 1.19 "On-site improvement" means a public improvement constructed within the physical boundaries of The Property.

Section 1.20 "Party" means either the City or the Developer, or their successors,

as the context may indicate. "Parties" means both the City and the Developer, or their successors.

Section 1.21 "Public Improvements" or "Infrastructure" means facilities constructed for use in accommodating residential use on The Property.

Section 1.22 "Vesting law" means any state or federal law which gives the owner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

Section 1.23 "Affiliated Entity" means any entity where members of the Developer are officers, shareholders or employees of such entity.

## **ARTICLE 2**

### **GENERAL PROVISIONS**

#### Section 2.1 All Exhibits Deemed Incorporated By Reference.

Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

#### Section 2.2 Property to be Developed.

The Property to be developed under this Agreement is the property commonly known in the City of Winters as the Anderson Place Property, Yolo County Assessor's Parcel No. 003-220-22 (consisting of approximately 2.13 acres). A map showing the location and boundaries of The Property is attached as Exhibit A and a legal description describing The Property is attached as Exhibit B. In this Agreement the Anderson Place Property will, in most instances, be referred to simply as "the Property."

Section 2.3 Agreement to be Recorded; Effective Date; Term.

a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5.

b. The term of this Agreement is five (5) years, commencing on the date it is recorded. The term may be extended by mutual consent of the Parties. It may be terminated as provided in Article 5.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of The Property: (a) is for the benefit of and is a burden upon The Property; (b) runs with The Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of The Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.5, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 2.5. In no event shall an owner or tenant of an individually completed residential unit within the Anderson Place Subdivision have any rights under this Agreement.

Section 2.5 Right to Assign; Non-severable obligations.

a. Except as otherwise provided, the Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in

whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

b. No assignment shall be effective until the City, by action of its City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

1. The assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2. The proposed assignee has adequate experience with residential developments of comparable scope and complexity to that being undertaken on The Property and has successfully completed such developments.

c. The special development conditions set forth in Article 4 are not severable, and any sale of The Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

#### Section 2.6 Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and Title 11, Chapter 2, Article 6 (Amendment or Cancellation by Mutual Consent) of the Winters Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal application fees.

Section 2.7 Whole Agreement; Conflict with Municipal Code.

a. This Agreement, together with any subsequent addenda, amendments, or modifications, shall constitute the entire agreement of the Parties as to the development of The Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

b. The provisions of Title 11, Chapter 2 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 2.8 Choice of Law; Venue; Attorneys' Fees; Alternative Dispute Resolution.

a. This Agreement shall be interpreted according to the laws of the State of California. Any litigation concerning its meaning shall be venued in the Superior Court of Yolo County. The prevailing Party in such litigation, as determined by the court, shall be awarded reasonable attorneys' fees in addition to statutory costs.

b. Nothing herein shall preclude the Parties from entering into a separate agreement to resolve any matter concerning this Agreement by a method other than litigation in court, including binding arbitration.

Section 2.9 Notices.

a. Formal written notices, demands, correspondence, and communications between the City and the Developer shall be given if sent to the City and the Developer by any one of the following methods:

1. Via certified U.S. Mail, return receipt requested.
2. Via an overnight mail service of the type normally used by the business community, such as Federal Express, UPS Overnight, and California Overnight.
3. By facsimile, provided a "hard" copy is sent at the same time by regular U.S. Mail.

b. The written notices, demands, correspondence, and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate. Notices to the City shall be given as follows:

City of Winters  
318 First Street  
Winters, CA 95694  
Attn: City Manager  
Telephone (530) 795-4910 x 110  
FAX (530) 795-4935

c. Notices to the Developer shall be given as follows:

G Street San Bernardino, LLC  
6151 W. Century Blvd., Suite 300  
Los Angeles, CA 90045  
Attn: Jan Brzeski  
Telephone (310) 846-1754  
FAX (310) 626-9748

**ARTICLE 3**  
**DEVELOPMENT OF THE PROPERTY**

Section 3.1 Land Use Entitlements.

a. The Property shall be developed under the following land use entitlements, all of which have been adopted or approved by the City Council:

1. Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Resolution No. 2007-09 adopted on April 3, 2007).

2. This Development Agreement (Ordinance No. 2007-05 adopted June 19, 2007 and effective on July 19, 2007, (the "Enacting Ordinance")).

3. Zoning Ordinance amendment to rezone 0.71 acres from O-F to O-F PD Overlay and 1.42 acres from C-2 to C-2 PD Overlay (Ordinance No. 2007-03 adopted April 17, 2007 and effective on May 18, 2007).

4. Anderson Place Tentative Subdivision Map, with Findings of Fact and Conditions of Approval, dividing The Property into 24 residential lots to create 28 residential units and 9 office suites, an internal roadway/parking areas ("Lot A"), a pedestrian pathway area ("Lot B"), subdivision feature/green space area ("Lot C"), and second internal roadway/parking area ("Lot D"). (Resolution No. 2007-10 adopted on April 3, 2007).

5. A Planned Development Permit (Ordinance No. 2007-03 adopted April 17, 2007 and effective on May 18, 2007).

6. Amendment of the Circulation Master Plan (May 19, 1992) and Standard Street Cross Sections (adopted October 2, 2001; City Council

Resolution 2001-61) to allow Anderson Avenue to be constructed to Collector Street improvement standards with a 50-foot right of way, 40-foot face of curb to face of curb roadway section, and 5-foot sidewalks each side to the existing Railroad Avenue roadway and to allow interim Railroad Avenue improvements to include interim landscaping within the future roadway on east side of Railroad Avenue, with a 10-foot concrete pedestrian/bike path from the northern terminus of the development to the southern terminus of the development (Resolution No. 2007-10 adopted on April 3, 2007).

7. Conditional Use Permit to allow the construction of multi-family housing in the O-F and C-2 Zones (Resolution No. 2007-10 adopted on April 3, 2007).

8. A Demolition Permit to remove one existing structure on The Property (Resolution No. 2007-10 adopted on April 3, 2007).

9. Site Plan for the design of the residences and office suites and the conceptual landscaping for the subdivision feature/green space area ("Lot B"), the Railroad Avenue frontage, and internal areas (Resolution No. 2007-10 adopted on April 3, 2007).

b. Under the provisions of Government Code § 66452.6(a), the term of the Anderson Place Subdivision Tentative Subdivision Map is co-terminus with the term of this Agreement.

Section 3.2 Consistency with General Plan.

The City finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the General Plan of the City of Winters, as amended.

Section 3.3 Vested Rights of Developer.

a. Unless otherwise provided in this Agreement, the Developer shall have the vested right to develop the Property in accordance with the land use entitlements described in Section 3.1 above, and in conformity with the City rules, regulations, policies and ordinances in effect on the date of adoption of the Enacting Ordinance, regardless of subsequent amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or any other ordinance, rule, or regulation adopted by the City. This vested right shall include:

1. The right to the number of residential lots, dwelling units, and the density of development (dwelling units per acre) of those units, as shown on the Anderson Place Tentative Subdivision Map.

2. Exclusion from:

a) Subsequently enacted building moratoria.

3. The right to connect each dwelling unit to sewer and water services, provided all improvements regarding such services are made and all applicable fees are paid.

4. The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established in the Conditions of Approval for the Anderson Place Tentative Subdivision Map.

5. The Mitigation Measures.

b. The vested rights set forth in Subdivision a. do not apply to changes affecting development of the Property as mandated by state and/or federal laws effective after the date this Agreement is recorded. In the event of such changes, the City will permit the development of the Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 Rights Retained by the City.

a. Except as specifically provided in section 3.3, all regulations of the City as expressly provided by state law, federal law, and/or local ordinance, resolution, or rule shall pertain to the development of the Property. Such regulations include, but are not limited to:

1. Discretionary approvals. (The only discretionary approval contemplated at this time is site plan review (design review) pursuant to the Zoning Code.)

2. Subdivision standards in effect when a final subdivision map is approved.

3. The California Building Code, National Fire Protection Act, and local building code standards in effect at the time a building permit for a specific dwelling unit is issued.

4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for

building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

b. The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to the Property under its general police power, provided they are of general applicability to all developments of a similar nature in the City of Winters.

Section 3.5 Other Vesting Laws Inapplicable.

a. It is the intent of the Parties that the provisions of this Agreement shall supersede any provision of state or federal law pertaining to the vested rights of the Developer to develop the Property, whether those laws are currently in force or become effective after this Agreement is recorded. The laws in effect as referenced in the preceding sentence include, but are not limited to, provisions of the Government Code pertaining to Development Agreements (§ 65864 *et seq.*) and Development Rights [vesting tentative maps] (§ 66498 *et seq.*).

b. Notwithstanding subsection a., however, to the extent that a state and/or federal law becomes effective after this Agreement is recorded shall be made specifically applicable to the vested rights of landowners generally in the development of their properties, such state and/or federal law shall prevail.

c. The Developer shall not make any application to develop the Property, in whole or in part, under any vesting law, unless the right to do so is

specifically granted by state and/or federal law which becomes effective after the date of the recording of this Agreement.

**Section 3.6 Commencement of Development.**

a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within 150 days after this Agreement is recorded, submit for review/approval by the City the final map for the Anderson Place Subdivision and accompanying subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, inclement weather, acts of God, natural disasters, acts of the state and/or federal government, a referendum of the ordinance adopting this Agreement, or third party litigation challenging the validity of this Agreement. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.

b. Any time limit prescribed for any action required by this Agreement shall be extended by the number of days during which circumstances beyond the control of the Developer preclude the action from being taken.

**Section 3.7 Installation of Public Improvements.**

Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Anderson Place Subdivision. When the final map for the Anderson Place Subdivision is approved, the Developer shall enter into a separate written agreement with the City by which

it contracts to build and dedicate the public improvements required. Security for the construction of the improvements shall be provided as required by law.

Section 3.8 Property for Public Improvements; Offsite Improvements.

a. The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Anderson Place Tentative Subdivision Map, acquire the real property rights necessary to construct or otherwise provide the public improvements contemplated by this Agreement.

b. In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the final subdivision map for the Anderson Place Subdivision is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public improvements as required by this Agreement, or b) if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire the Property interests. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the Property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the Property

acquired, and for purposes of eminent domain, the City's attorneys' fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the Property owner against the City.

Section 3.9 Reimbursement for Oversizing of Public Improvements; Advanced Funding of Certain Improvements; Credit for Improvements Installed.

a. In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of the Anderson Place Subdivision. These improvements will benefit other properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

b. There are two sources from which the Developer may be reimbursed for oversizing:

1. By way of a separate agreement between the City and the Developer which will provide that when a particular property benefiting from the oversizing is developed, the City will require the benefiting property to reimburse the Developer its *pro rata* share of the cost of the oversizing. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. By way of the payment to the Developer from impact fees for a particular type of infrastructure (e.g., sewers) collected by the City from other properties developed in the City.

c. In any instance in which oversizing is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the prorata share to be borne by the Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

d. The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing properties or from mitigation fees as described in subsection b.1. When reimbursement is from mitigation fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

1. If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

2. If a benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its owners.

e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a building permit is issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a building permit is issued. The amount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the building permit.

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as determined by the City Engineer. (Example: If a fee of \$1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of \$20,000, then the Developer will be credited with having paid that fee for 20 building permits.)

1. The City Engineer shall have the exclusive right to interpret this section in case of any disagreements concerning its applicability.

### Section 3.10 Subsequent Discretionary Approvals.

a. To the extent any discretionary approvals are required to develop the Property after this Agreement is recorded, the Developer shall apply for those approvals in the same manner as any other person applying for land use entitlements from the City. All application fees then applicable for the type of land use entitlement(s) sought shall apply. The City will review these applications in

good faith within a reasonable time to insure that the Developer may proceed to develop The Property in the manner contemplated by this Agreement.

b. The only remaining discretionary approval which is contemplated at this time is site plan review (design review) under the Zoning Ordinance.

Section 3.11 Review of Agreement.

Reviews by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in Title 11, Chapter 2, Article 7 (Review) of the Winters Municipal Code.

Section 3.12 Compliance with Government Code § 66006.

As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of The Property.

**ARTICLE 4**

**SPECIFIC DEVELOPMENT OBLIGATIONS**

Section 4.1 Schools.

a. The Developer acknowledges and agrees that the mitigation of the impact of The Anderson Place at Winters Subdivision on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that its intention entering into this Agreement is to mitigate the impact on schools to the greatest reasonable extent, in accordance with the terms of an agreement negotiated between the

Developer and the Winters Joint Unified School District. A copy of the agreement is attached as Exhibit E.

b. The Developer shall enter into an agreement with the Winters Joint Unified School District ("School District"), substantially in the form of Exhibit E that provides, among other matters, that the Developer will pay to the School District:

1. For each of the 28 residential units in the Anderson Place Subdivision, payment of \$3.06 per square foot of residential construction for each residential unit, payable at the time of issuance of a building permit; and

2. For all units in the Anderson Place Subdivision (including the units referenced in subparagraph 1 above), except the very low income and low income affordable units, payment of \$3.06 per square foot of residential construction for each residential unit, payable at the close of escrow.

The Developer has represented to the City that it intends to fully and faithfully perform this agreement with the School District, and the City has relied upon this representation in entering into this Development Agreement. A failure to perform the agreement, or amendments thereto, with the School District by the Developer shall be deemed to be a default of this Development Agreement and subject to the provisions of Article 5.

Section 4.2 0.52 +/- Acre Park.

a. Developer shall provide a 0.52 +/- acre neighborhood park ("the Park Obligation"). The Park Obligation consists of three components:

1. Providing land.
2. Providing infrastructure.
3. Planning, developing, and equipping the park.

b. The Parties acknowledge that it is in the best interests of the community that the City accept a sum of money which represents the monetary value of the Park Obligation rather than have the Developer include a fully operational 0.52 +/- acre park within the Anderson Place Subdivision. The payment of the Park Obligation by the Developer is in lieu of the payment of any park impact fees as provided by City ordinance.

c. Developer agrees to satisfy the Park Obligation as follows.

1. At the time of filing the final map for the Anderson Place Subdivision a payment of one hundred percent (100%) of the amount calculated by the City Engineer as set forth in e., below.

2. An additional fifty percent (50%) of the amount calculated under 1., above, payable as follows:

- a) The additional fifty percent (50%) shall be divided by the number of market rate units in the Anderson Place Subdivision (24 units). The resulting amount shall be paid each time a building permit is issued for one of the 24 market rate units.

- b) If at the end of thirty (30) months from the recording of the final map for the Anderson Place Subdivision, the full amount under this subsection 2. has not been fully paid, then the Developer shall pay the remaining

amount owing within ten (10) business days of being notified by the City to do so. (Example: If at the end of thirty (30) months, the Developer has obtained twenty (20) building permits for market rate units and has paid fees under this subsection, then the Developer, upon notice from the City, shall pay the fees owed under this subsection for the remaining four (4) market rate units.)

d. Once all amounts owed under c. above have been paid, the Developer will have satisfied the Park Obligation.

e. The Park Obligation shall be computed by the City Engineer as follows:

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three (3) qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to The Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City within ninety (90) days thereafter, unless the Parties agree to a different date. The appraisal shall determine the fair market value of 0.52 +/- acres of The Property with the development entitlements specified in this Agreement. The date of value shall be the date of the recording of this Agreement.

2. The estimated cost of the infrastructure improvements will be calculated by the City Engineer using the per acre cost of Sixty Thousand Dollars (\$60,000).

3. The estimated cost of the development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer using the per acre cost of Two Hundred Twenty-Nine Thousand Five Hundred Dollars (\$229,500).

4. To the total determined by adding the costs determined under 1., 2., and 3., above, shall be added five percent (5%) for administration, including, but not limited to, the use of eminent domain by the City as necessary to acquire park land.

Section 4.3 Advance Funding of Fees For Construction of New Water Well.

a. The Parties acknowledge that the City intends to construct a new water well near the northwest corner of the intersection of West Grant Avenue and West Main Street. In order to provide sufficient funds for the City to commence construction of this facility, the Developer shall, concurrently with the filing of the final subdivision map for the Anderson Place Subdivision pay to the City the following development fee.

1. A water facilities fee at its then current rate for all 28 residential units in the Anderson Place Subdivision.

b. Each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit.

c. If, at the time of the actual issuance of a building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.

Section 4.4 Annuity in Lieu of Mello-Roos District.

a. The Developer agrees that the City will establish, and the Developer will fund, an annuity to offset the projected fiscal deficit to the General Fund of the City created by the development of The Anderson Place Subdivision per the Economic & Planning Systems reports titled "City of Winters – Anderson Place Revised Fiscal Impact Analysis", dated January 22, 2007, and "Anderson Place Fiscal Impact Analysis", dated September 15, 2006. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.

b. The funding of the annuity will be created and funded as follows:

1. From the escrow for the sale of each residential unit to a third party the Developer will pay to the City the sum of Seven Thousand Three Hundred Fifty Dollars (\$7,350.00).

2. The City will invest the amounts received under this section in an annuity, or other similar investment, which will create a stream of income to be paid into the City's General Fund to pay for the increase in the cost of municipal services resulting from the development of the Anderson Place Subdivision

Section 4.5 Payments to Public Safety Facility and Library Fund.

a. Prior to recording of the final map for the Anderson Place Subdivision the Developer shall pay to the City the sum of Twenty-Five Thousand Dollars (\$25,000.00). This amount shall be kept in a specific designated account and used solely for constructing the new Public Safety Facility in the City of Winters.

b. Prior to recording of the final map for the Anderson Place Subdivision the Developer shall pay to the City the sum of Twenty Thousand Dollars (\$20,000.00). This amount shall be kept in a specific designated account and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.

Section 4.6 Energy Efficiency.

In order to obtain energy efficiency in each unit with the Anderson Place Subdivision, to the maximum extent possible the techniques identified in the July 27, 2004 Planning Commission staff report on the "Proposed Energy Resolution" shall be utilized; provided, however, that the following techniques are mandatory:

a. Photovoltaic solar energy systems capable of producing 2.4 peak rated direct current (DC) kilowatts shall be installed on seven of the proposed buildings for The Project. The market rate units without photovoltaic solar energy systems shall be pre-wired for such systems and these systems shall be offered as an option to prospective buyers of these units.

b. All units shall be constructed to the Energy Star Standards as defined by the U. S. Environmental Protection Agency.

c. Tankless water heaters shall be installed in all residential units. The tankless water heaters shall not be counted towards meeting the Energy Star Standards.

d. All units shall be built with low emission furnaces.

e. No unit shall be built with any dark colored roofing material.

Section 4.7 Affordable Housing.

The Winters Community Development Agency (CDA) has authorized, subject to satisfaction by developer of the conditions set forth in this Section, a grant of Two Hundred Thousand Dollars (\$200,000.00) in redevelopment agency low and moderate income housing funds to either the developer or a third party designated by the developer and acceptable to the City and CDA for the construction of the two very low-, one low-, and one moderate-income for-sale affordable housing units required for the project provided that the developer applies for and receives the first building permit for a residential structure within 18 months of the City Council's approval of the project development agreement. Prior to and as a condition on the release of CDA low and moderate income housing funds, the CDA and the developer or its third party designee shall enter into an agreement governing the grant of funds (the "Affordable Housing Agreement"), which shall include requirements that (1) deed restrictions ensuring long-term affordability consistent with the provisions of the City's inclusionary housing ordinance and the California Community Redevelopment Law shall be recorded against each of the affordable units, (2) the developer or third party designee shall execute a promissory note and deed of trust to be recorded against the affordable units, which shall secure both the CDA's interest in the affordable units and the long term affordability of the affordable units. The Affordable Housing Agreement, deed restrictions, promissory notes and deeds of trust shall be prepared and approved by the CDA and the City. The grant shall be repayable to the CDA in the event that there is a default under the Affordability Agreement, deed restrictions, promissory notes or deeds of trust.

Should circumstances beyond the control of the Developer preclude the Developer from applying for and receiving the first building permit for a residential structure within 18 months of the City Council's approval of the project development agreement, then the CDA and City shall determine, in their sole discretion, whether it is appropriate to grant the developer an extension of time in which the developer may receive its first building permit, and still receive the Affordable Housing Assistance contemplated by this Section. For purposes of Section 4.7, "circumstances beyond the control of the Developer" shall include, but are not limited to, the failure of Well #7 to be in operation, acts of God, natural disasters, and acts of the State and/or federal government. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally. The CDA and City have sole discretion to determine whether an extension of time is merited based on circumstances beyond the control of the Developer, and the appropriate length of such extension.

## ARTICLE 5

### DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

Section 5.1 Application of Article. The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

Section 5.2 City's Remedies.

a. The City's remedies under this Agreement are as follows:

1. Termination of the Agreement after giving the Developer the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of The Anderson Place Subdivision pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. Specific performance as provided in subsection c.

4. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5. An action for damages as provided in subsection d.

b. Default by the Developer.

1. Notice of Default. With respect to a default by the Developer under this Agreement, the City shall first submit to the Developer a

written notice of default identifying with specificity those obligations of the Developer which have not been performed. Upon receipt of the notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default. The Developer shall complete the cure of the default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy the default(s), provided Developer has continuously and diligently pursued such remedy at all times until such default(s) is cured.

2. Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code section 65868 and Section 11-2.802 of the Winters Municipal Code.

3. Modification or Termination of Agreement. If, after the public hearing, the City Council determines Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement.

c. Specific Performance. The City may seek specific performance to compel the Developer to do any, or all, of the following:

1. To complete or demolish any uncompleted improvements which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such

improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion.

2. To dedicate and properly complete any public improvements which are required by this Agreement.

3. To complete, demolish or make safe and secure any uncompleted private improvements located on The Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by the Developer in its sole discretion.

d. The City may institute an action for damages for the amount of any money owed to it under Article 4, or the cost of performing any act required of the Developer under Article 4, or the cost to complete any public improvements required to be installed under the final map (or any phase, if applicable) for The Anderson Place Subdivision.

### Section 5.3 Developer's Remedies.

a. The Developer's remedies under this agreement are as follows:

1. An action for specific performance of an obligation of the City after giving the City the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of The Anderson Place Subdivision pending a

judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

b. Default and Notice of Default. With respect to a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City has continuously and diligently pursued such remedy at all times until such default(s) is cured.

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim

any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorneys' fees for actions under a., above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

## **ARTICLE 6**

### **HOLD HARMLESS AND INDEMNIFICATION**

#### **Section 6.1     Limitation of Legal Relationship.**

a.     The Parties represent and declare that this Agreement creates no partnership, joint venture, or other legal entity between them.

b.     In entering into this Agreement, the City is acting under the statutory and/or police powers which it holds as a municipal corporation of the State of California and which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

c.     In entering into this Agreement, the Developer is acting in a purely private capacity as an owner of real property within the City of Winters, which property is subject to the jurisdiction of the City acting in the capacity set forth in subsection b.

#### **Section 6.2     No Liability for Acts of the Developer.**

a.     It is expressly understood that the development of The Anderson Place Subdivision is an undertaking that may create for the Developer liability to

third parties, including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of residential units, building contractors and sub-contractors, and suppliers. The Developer understands and agrees that the City would not execute this Agreement if, in so doing, it created for the City any liability to any third party.

b. Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers, agents, and employees from any claim of injury to person or property arising out of the operations of the Developer in the development of The Anderson Place Subdivision under the terms of this Agreement or otherwise.

c. Notwithstanding anything in Article 5 to the contrary, the City shall have any remedy available to it at law and/or equity to enforce the provisions of this section or to collect damages for any breach of it.

Section 6.3 Duty to Defend Challenges to this Agreement.

a. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

b. The Parties agree to cooperate jointly to defend any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

c. In the event of any such challenge, each Party shall bear its own attorneys' fees and other litigation expenses.

d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses

against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

e. Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter. However, nothing herein obligates the Developer, should the City tender its defense to the Developer, to defend the action if it determines that it is in its best interests not to do so.

**REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK**

**SIGNATURE PAGE TO FOLLOW**

**DEVELOPER  
G STREET SAN BERNARDINO,  
LLC AND EVA ILONA BRZESKI**

By: [Signature]

Its: Developer

Dated: 6/19/07

**CITY OF WINTERS**

By: [Signature] (Harold R. Anderson)  
Acting Mayor

Dated: 7/2/07

Attest: [Signature]  
City Clerk

Approved as to form:

[Signature]  
John Wallace, City Attorney

None  
Attorney for Developer

.....

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Yuba

On 6/19/07 before me, Sueely Shirley, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe," Notary Public)

personally appeared Eva Mona Brzeski  
Name(s) of Signer(s)

- personally known to me
- (or 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.



WITNESS my hand and official seal.

Place Notary Seal Above

Sueely Shirley  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

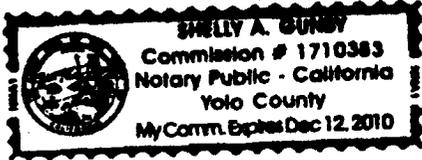
County of Yuba

On 7/2/07 before me, Shelly A. Gundy, Notary Public  
Date Name and Title of Officer (e.g., "John Doe, Notary Public")

personally appeared Harold Anderson  
Name(s) of Signer(s)

- personally known to me
- (or 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.



Place Notary Seal Above

WITNESS my hand and official seal.  
Shelly A. Gundy  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer -- Title(s): \_\_\_\_\_
- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer -- Title(s): \_\_\_\_\_
- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**LIST OF EXHIBITS**

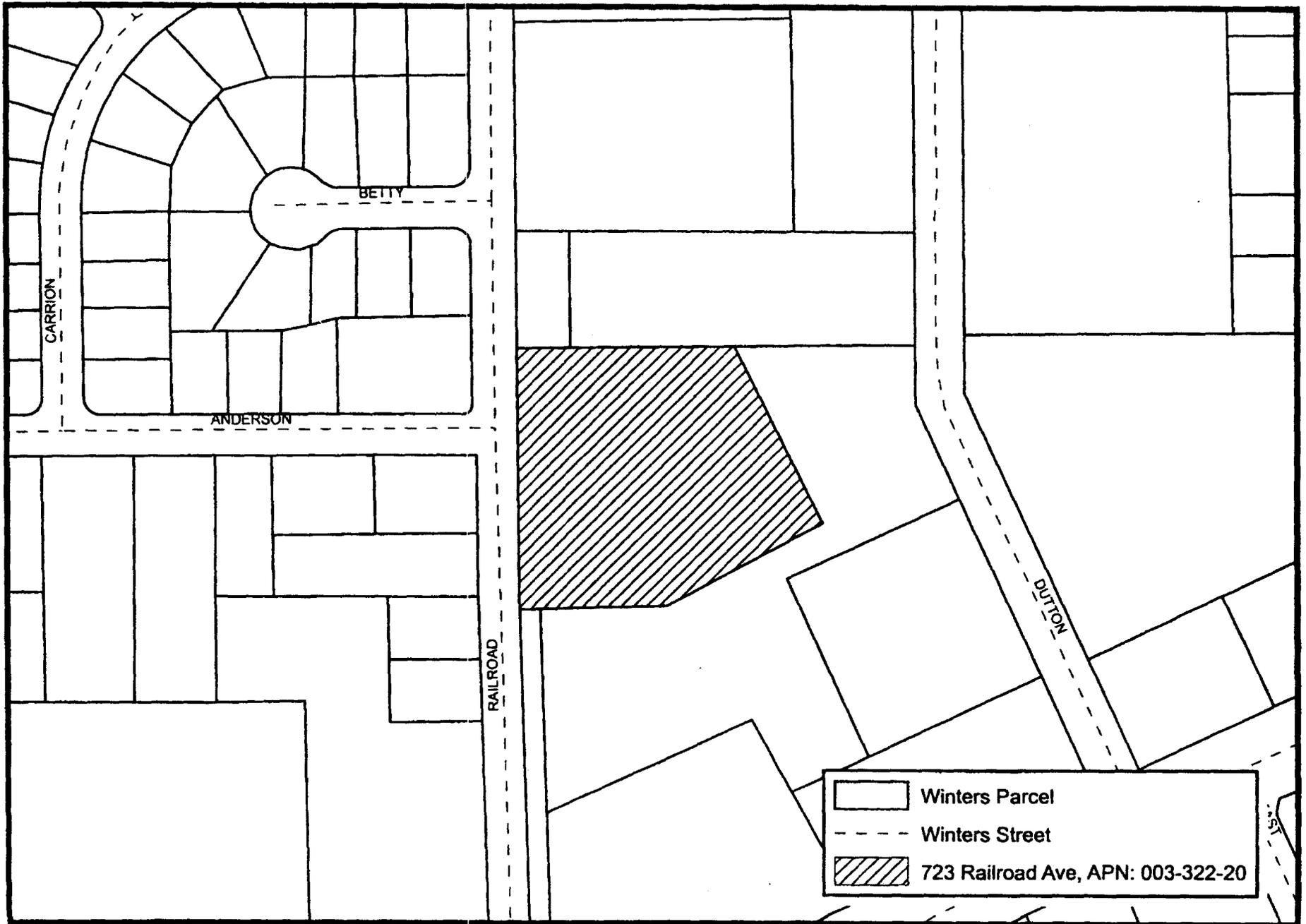
- EXHIBIT A        Map of Anderson Place Property
- EXHIBIT B        Legal Description of Anderson Place Property
- EXHIBIT C        Anderson Place Tentative Subdivision Map
- EXHIBIT D        Conditions of Approval, including Mitigation Measures
- EXHIBIT E        School Agreement

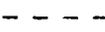
.....

This Agreement was adopted by Ordinance No. 2007-05 of the City Council of the City of Winters. Ordinance No. 2007-05 was adopted on June 19, 2007 and is effective on the date it is recorded with the Yolo County Recorder.

**EXHIBIT A**  
**Map of Anderson Place Property**

# Anderson Place Subdivision Project



	Winters Parcel
	Winters Street
	723 Railroad Ave, APN: 003-322-20

0 90 180 360 Feet

**EXHIBIT B**

**Legal Description of Anderson Place Property**

**LEGAL DESCRIPTION**

Real property in the City of Winters, County of Yolo, State of California, described as follows:

PARCEL 1, AS SHOWN AND DELINEATED ON PARCEL MAP NO. 3763, RECORDED OCTOBER 19, 1990 IN BOOK 9 OF PARCEL MAPS, PAGE 104, YOLO COUNTY RECORDS.

EXCEPTING THEREFROM, FROM AN EASTERLY PORTION OF SAID LAND, ALL PETROLEUM, OIL, NATURAL GAS AND PRODUCTS DERIVED THEREFROM, WITHIN OR UNDERLYING SAID LAND, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED BY SOUTHERN PACIFIC COMPANY, ET AL, IN DEED RECORDED OCTOBER 9, 1945 IN BOOK 225 AT PAGE 170, OFFICIAL RECORDS.

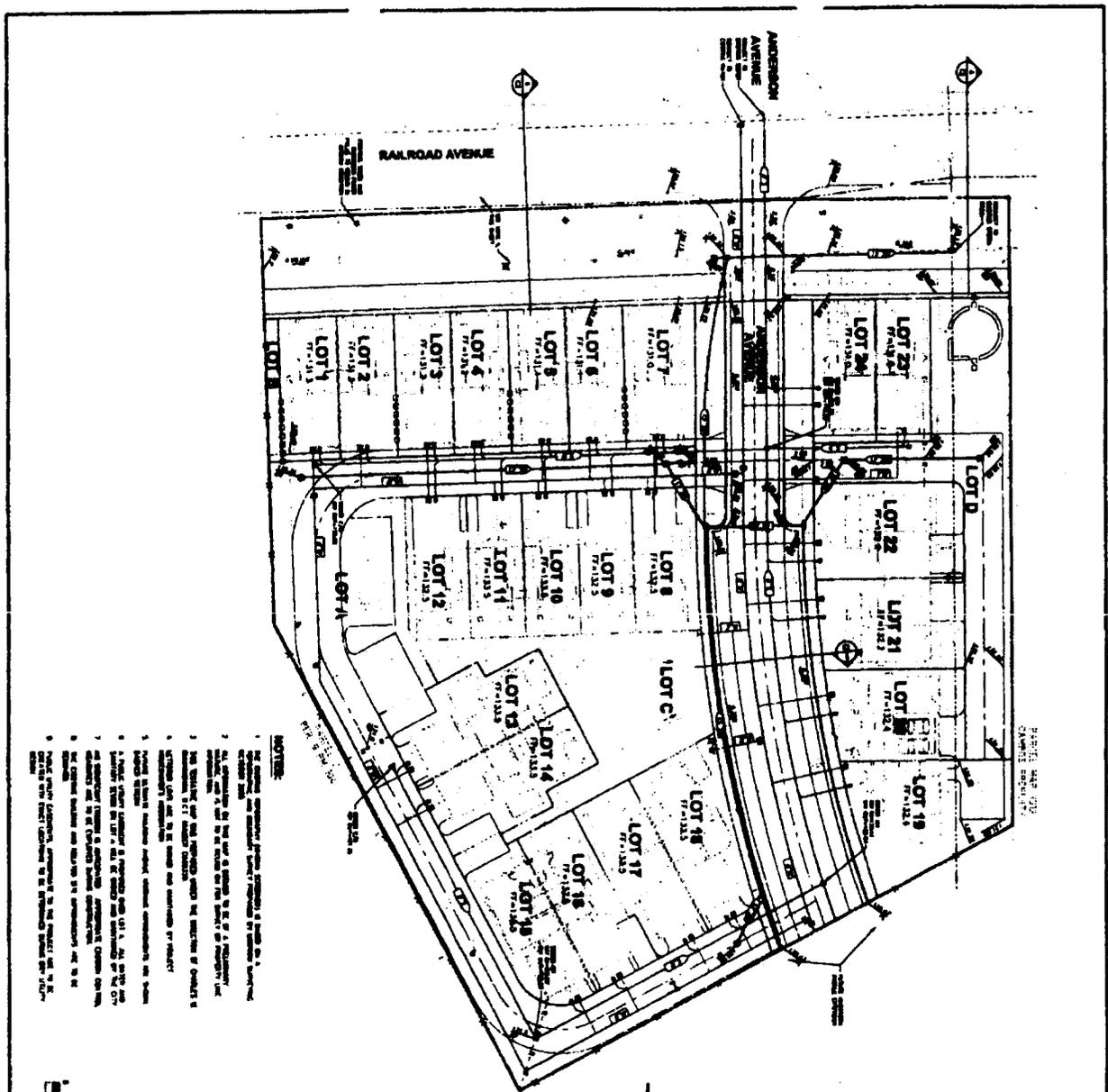
ALSO EXCEPTING THEREFROM, FROM THE REMAINDER OF SAID LAND, ALL MINERALS AND MINERAL RIGHTS, INTERESTS AND ROYALTIES, INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALIC OR OTHER SOLID MINERALS, IN AND UNDER SAID LAND, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY, RECORDED NOVEMBER 24, 1987 IN BOOK 1904 AT PAGE 343, OFFICIAL RECORDS.

APN: 003-322-20

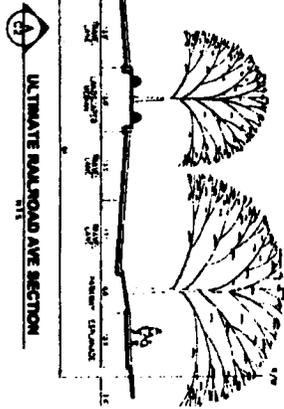
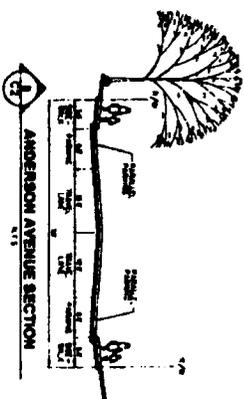
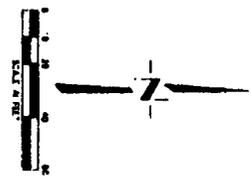
**EXHIBIT C**

**Anderson Place Tentative Subdivision Map**





- NOTES:**
1. THE ENGINEER HAS CONDUCTED A VISUAL SURVEY OF THE PROPERTY AND HAS FOUND IT TO BE SUITABLE FOR THE PROPOSED SUBDIVISION.
  2. ALL DIMENSIONS ARE IN FEET AND INCHES TO THE CENTER OF CURVES OR TO THE CENTER OF GRADES.
  3. THE SURFACE OF THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.
  4. THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.
  5. THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.
  6. THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.
  7. THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.
  8. THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.
  9. THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.
  10. THE PROPOSED ROADS SHALL BE GRADED TO THE CENTER OF GRADES.



APPROVED BY: \_\_\_\_\_  
 DATE: \_\_\_\_\_  
 ENGINEER: \_\_\_\_\_

**ANDERSON PLACE**  
**TENTATIVE SUBDIVISION MAP NO. 4858**  
**WATER, SEWER, GRADING AND DRAINAGE PLAN**  
**WINTERS CALIFORNIA**

**DOMINIQUE ENGINEERS**  
 1111 WINTERS AVENUE  
 WINTERS, CALIFORNIA 95694  
 PHONE: (916) 835-1111  
 FAX: (916) 835-1112  
 WWW: WWW.DOMINIQUEENGINEERS.COM

NO.	DATE	DESCRIPTION
1	11/15/05	PRELIMINARY PLAN
2	01/10/06	REVISED PLAN
3	03/15/06	REVISED PLAN
4	05/15/06	REVISED PLAN
5	06/15/06	REVISED PLAN
6	07/15/06	REVISED PLAN
7	08/15/06	REVISED PLAN
8	09/15/06	REVISED PLAN
9	10/15/06	REVISED PLAN
10	11/15/06	REVISED PLAN
11	12/15/06	REVISED PLAN
12	01/15/07	REVISED PLAN
13	02/15/07	REVISED PLAN
14	03/15/07	REVISED PLAN
15	04/15/07	REVISED PLAN
16	05/15/07	REVISED PLAN
17	06/15/07	REVISED PLAN
18	07/15/07	REVISED PLAN
19	08/15/07	REVISED PLAN
20	09/15/07	REVISED PLAN
21	10/15/07	REVISED PLAN
22	11/15/07	REVISED PLAN
23	12/15/07	REVISED PLAN
24	01/15/08	REVISED PLAN
25	02/15/08	REVISED PLAN
26	03/15/08	REVISED PLAN
27	04/15/08	REVISED PLAN
28	05/15/08	REVISED PLAN
29	06/15/08	REVISED PLAN
30	07/15/08	REVISED PLAN
31	08/15/08	REVISED PLAN
32	09/15/08	REVISED PLAN
33	10/15/08	REVISED PLAN
34	11/15/08	REVISED PLAN
35	12/15/08	REVISED PLAN
36	01/15/09	REVISED PLAN
37	02/15/09	REVISED PLAN
38	03/15/09	REVISED PLAN
39	04/15/09	REVISED PLAN
40	05/15/09	REVISED PLAN
41	06/15/09	REVISED PLAN
42	07/15/09	REVISED PLAN
43	08/15/09	REVISED PLAN
44	09/15/09	REVISED PLAN
45	10/15/09	REVISED PLAN
46	11/15/09	REVISED PLAN
47	12/15/09	REVISED PLAN
48	01/15/10	REVISED PLAN
49	02/15/10	REVISED PLAN
50	03/15/10	REVISED PLAN
51	04/15/10	REVISED PLAN
52	05/15/10	REVISED PLAN
53	06/15/10	REVISED PLAN
54	07/15/10	REVISED PLAN
55	08/15/10	REVISED PLAN
56	09/15/10	REVISED PLAN
57	10/15/10	REVISED PLAN
58	11/15/10	REVISED PLAN
59	12/15/10	REVISED PLAN
60	01/15/11	REVISED PLAN
61	02/15/11	REVISED PLAN
62	03/15/11	REVISED PLAN
63	04/15/11	REVISED PLAN
64	05/15/11	REVISED PLAN
65	06/15/11	REVISED PLAN
66	07/15/11	REVISED PLAN
67	08/15/11	REVISED PLAN
68	09/15/11	REVISED PLAN
69	10/15/11	REVISED PLAN
70	11/15/11	REVISED PLAN
71	12/15/11	REVISED PLAN
72	01/15/12	REVISED PLAN
73	02/15/12	REVISED PLAN
74	03/15/12	REVISED PLAN
75	04/15/12	REVISED PLAN
76	05/15/12	REVISED PLAN
77	06/15/12	REVISED PLAN
78	07/15/12	REVISED PLAN
79	08/15/12	REVISED PLAN
80	09/15/12	REVISED PLAN
81	10/15/12	REVISED PLAN
82	11/15/12	REVISED PLAN
83	12/15/12	REVISED PLAN
84	01/15/13	REVISED PLAN
85	02/15/13	REVISED PLAN
86	03/15/13	REVISED PLAN
87	04/15/13	REVISED PLAN
88	05/15/13	REVISED PLAN
89	06/15/13	REVISED PLAN
90	07/15/13	REVISED PLAN
91	08/15/13	REVISED PLAN
92	09/15/13	REVISED PLAN
93	10/15/13	REVISED PLAN
94	11/15/13	REVISED PLAN
95	12/15/13	REVISED PLAN
96	01/15/14	REVISED PLAN
97	02/15/14	REVISED PLAN
98	03/15/14	REVISED PLAN
99	04/15/14	REVISED PLAN
100	05/15/14	REVISED PLAN

**RECEIVED**  
**JUN 6 2006**  
**CITY OF WINTER**

## **EXHIBIT D**

### **Conditions of Approval, including Mitigation Measures**

# **FINDINGS OF FACT AND CONDITIONS OF APPROVAL FOR THE ANDERSON PLACE PROJECT**

## **FINDINGS OF FACT**

### **Findings for Adoption of Mitigated Negative Declaration**

1. The City Council has considered the proposed Mitigated Negative Declaration before making a decision on the project.
2. The City Council has considered comments received on the Mitigated Negative Declaration during the public review process.
3. The City Council finds that the environmental checklist/initial study identified potentially significant effects, but: a) mitigation measures agreed to by the Applicant before the mitigated negative declaration and initial study were released for public review would avoid the effects or mitigate the effects to a point where clearly no significant impact would occur; and b) there is no substantial evidence, in light of the whole record before the City, that the project as revised to include the mitigation measures may have a significant effect on the environment.
4. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of Winters.
5. The Mitigated Negative Declaration has been prepared in compliance with CEQA and the State CEQA Guidelines, and as amended/revised is determined to be complete and final.
6. The custodian of the documents, and other materials, which constitute the record of proceedings is the Community Development Director. The location of these items is the office of the Community Development Department at City Hall, 318 First Street, Winters, California 95694.
7. The Mitigation Monitoring Plan is hereby adopted to ensure implementation of mitigation measures identified in the Mitigated Negative Declaration. The City Council finds that these mitigation measures are fully enforceable as conditions of approval of the project, and shall be binding on the Applicant, future property owners, and affected parties.
8. The City Council hereby adopts The Anderson Place Subdivision Mitigated Negative Declaration.

### **Findings for PD Overlay and PD Permit**

1. The project, as modified and conditioned, is consistent with the General Plan and the purposes of Section 17.48.010 (Planned Development Overlay Zone – Purpose) of the Winters Municipal Code.
2. Deviations from specified provisions of the basic zoning district on the property have been justified as necessary to achieve an improvement design for the development and/or the environment. The development complies with the remaining applicable provisions of the basic zoning district on the property.
3. The proposed development, as modified and conditioned, is desirable to the public comfort and convenience.
4. The requested plan, as modified and conditioned, will not impair the integrity or character of the neighborhood nor be detrimental to the public health, safety, or general welfare.

5. Adequate utilities, access roads, sanitation, and/or other necessary facilities and services will be provided or available.
6. The development, as modified and conditioned (including execution of the Development Agreement) will not create an adverse fiscal impact for the City in providing necessary services.

#### **Findings for Tentative Subdivision Map (G.C. 66474)**

1. The proposed map is consistent with the General Plan.
2. The design and improvement of the proposed map is consistent with the General Plan.
3. The site is physically suitable for the type of development.
4. The site is physically suitable for the proposed density of development.
5. The design of the subdivision and the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. The design of the subdivision and type of improvements will not cause serious public health problems.
7. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision,

#### **Findings for Development Agreement**

1. The DA is consistent with the objectives, policies, general land uses and programs specified in the General Plan.
2. The DA is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located.
3. The DA is in conformity with and will promote public convenience, general welfare and good land use practice.
4. The DA will not be detrimental to the health, safety and general welfare.
5. The DA will not adversely affect the orderly development of property or the preservation of property values.
6. The DA will meet the intent of Section 15.72.100(a) (Public Benefits) of the Winters Municipal Code.
7. The DA is consistent with Chapter 15.72 (Development Agreements) of the Winters Municipal Code.

#### **CONDITIONS OF APPROVAL**

The following conditions of approval are required to be satisfied by the Applicant/developer prior to Final Map, unless otherwise stated.

##### **General**

1. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval

of this project, the project Applicant shall defend, indemnify, and hold harmless the City or its agents, officers and employees, from liability, damages, penalties, costs or expense in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of Winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project Applicant shall defend such action at Applicant's sole cost and expense which includes court costs and attorney fees. The City shall promptly notify the Applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the subdivider in good faith approves the settlement, and the settlement imposes not direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning commission, any advisory agency to the City, local district and the City Council.

2. All conditions identified herein shall be fully satisfied prior to acceptance of the first Final Map unless otherwise stated.
3. The project is as described in the October 30, 2006 Planning Commission staff report. The project shall be constructed as depicted on the maps and exhibits included in the October 30, 2006 Planning Commission staff report, except as modified by these conditions of approval. Substantive modifications require a public hearing and Council action.

#### **General Plan Requirements**

4. Pursuant to General Plan Policy II.C.1 and VI.F.2, energy efficient design shall be used. Pursuant to Policy II.C.2 of the Housing Element, energy conservation and weatherization features shall be incorporated into the home design. At a minimum this shall include: a) maximization of energy efficient techniques as identified in the July 27, 2004 Planning Commission staff report on "Proposed Energy Resolution", b) attainment of EPA Energy Star Standards in all units, c) low emission furnaces in all units, and d) avoidance of dark colored roofing on all units.
5. Pursuant to General Plan Policy II.D.4 and IV.A.1 necessary public facilities and services shall be available prior to the first occupancy of the project.
6. Pursuant to General Plan Policy IV.A.4 (second sentence), the developer shall pay in-lieu fees for the parkland not provided on site, or at the City's discretion may construct needed improvements according to City specification in lieu of paying the fees.
7. Pursuant to General Plan Policy VI.C.7, drought-tolerant and native plants, especially valley oaks, shall be used for landscaping roadsides, parks, schools, and private properties. Pursuant to General Plan Policy VI.C.8, drainage-detention areas shall incorporate areas of native vegetation and wildlife habitat.
8. Pursuant to General Plan Policy IV.B.14, there shall be a water meter on each new hook-up.
9. Pursuant to General Plan Policy IV.C.2, adequate sewer service shall be provided prior to the issuance of any individual building permit.
10. Pursuant to General Plan Policy IV.J.2, all new electrical and communication lines shall be installed underground.
11. Pursuant to General Plan Policy VI.A.6, grading shall be carried out during dry months, when possible. Areas not graded shall be disturbed as little as possible. Construction and grading areas, as well as soil stockpiles, should be covered or temporarily revegetated when left for long periods. Revegetation of slopes shall be carried out immediately upon completion of grading. Temporary drainage structures and sedimentation basins must be installed to prevent sediment from entering and thereby degrading the quality of downstream surface waters, particularly Putah Creek. The full cost of any necessary mitigation measures shall be borne by the project creating the potential

impacts. Pursuant to General Plan Policy VII.B.3, should the City allow any grading to occur during the rainy season, conditions shall be implemented to ensure that silt is not conveyed to the storm drainage system.

12. Pursuant to General Plan Policy VI.E.6, construction-related dust shall be minimized. Dust control measures shall be specified and included as requirements of the contractor(s) during all phases of construction of this project and shall be included as a part of the required construction mitigation plan for the project.
13. Pursuant to General Plan Policy VII.A.1, VII.A.2, and VII.C.4 all site work and construction activities shall be in accordance with the requirements of the City, and other applicable local, regional, state, and federal regulations.
14. Pursuant to General Plan Policy VII.C.1, necessary water service, fire hydrants, and access roads shall be provided to the satisfaction of the Fire Chief and Fire Protection District standards.
15. Pursuant to General Plan Policy VII.C.2, a minimum fire-flow rate of 1,500 gallons per minute is required for all residential uses.
16. Pursuant to General Plan Policy VIII.D.2, street trees shall be planted along all streets, in accordance with the City's Street Tree Plan and Standards. All trees shall be of a type on the approved master street tree list and shall be a minimum of fifteen gallons in size with a mature tree canopy of at least a thirty-foot diameter within fifteen years. The intent is that majestic street tree species that create large canopies at maturity will be required in all medians and streetside landscape strips. The goal is create maximum shade canopy over streets and sidewalks. The fruitless mulberry trees on the project's Railroad Avenue frontage shall be removed and replaced with trees from the approved master street tree list. The conceptual landscape plan for the subdivision feature/green space area (Lot C), Railroad Avenue frontage, residential units, and other areas shall be submitted to the Public Works and Community Development Departments for review and final approval. Landscaping of the project shall be completed prior to occupancy of the residential units and office suites.
17. Pursuant to General Plan Policy VIII.D.4, a permanent mechanism for the ongoing maintenance of street trees is required, to the satisfaction of the City Manager and City Finance Director.
18. Pursuant to General Plan Policy VIII.D.7, all lighting including street lighting, shall be designed, installed, and maintained to minimize excess light spillage, unnecessary brightness and glare, and degradation of night sky clarity.

#### **Negative Declaration Mitigation Measures**

19. **Mitigation Measure #1:** Outdoor light fixtures shall be low-intensity, shielded and/or directed away from adjacent areas and the night sky. All light fixtures shall be installed and shielded in such a manner that no light rays are emitted from the fixture at angles above the horizontal plane. High-intensity discharge lamps, such as mercury, metal halide and high-pressure sodium lamps shall be prohibited. Lighting plans shall be provided as part of facility improvement plans to the City with certification that adjacent areas will not be adversely affected and that offsite illumination will not exceed 2-foot candles.

Prior to issuance of a building permit, the Applicant shall submit a photometric and proposed lighting plan for the project to the satisfaction of the Community Development Department to ensure no spillover light and glare onto adjoining properties.

20. **Mitigation Measure #2:**

- a. Construction equipment exhaust emissions shall not exceed Yolo-Solano Air Quality Management District ("District") Rule 2-11 Visible Emission limitations.
- b. Construction equipment shall minimize idling time to 10 minutes or less.
- c. The prime contractor shall submit to the District a comprehensive inventory (i.e. make, model, year, emission rating) of all the heavy-duty off-road equipment (50 horsepower or greater) that will be used an aggregate of 40 or more hours for the construction project. District personnel, with assistance from the California Air Resources Board, will conduct initial Visible Emission Evaluations of all heavy-duty equipment on the inventory list.

An enforcement plan shall be established to weekly evaluate project-related on-and-off-road heavy-duty vehicle engine emissions opacities, using standards as defined in the California Code of Regulations, Title 13, Sections 2180 – 2194. An Environmental Coordinator, CARB-certified to perform Visible Emissions Evaluations (VEE), shall routinely evaluate project related off-road and heavy duty on-road equipment emissions for compliance with this requirement. Operators of vehicles and equipment found to be exceed opacity limits will be notified and the equipment must be repaired within 72 hours.

Construction contracts shall stipulate that at least 20% of the heavy-duty off-road equipment included in the inventory be powered by CARB certified off-road engines as follows:

175 hp – 750 hp	1996 and newer engines
100 hp – 174 hp	1997 and newer engines
50 hp – 99 hp	1998 and newer engines

In lieu of or addition to this requirement, the applicant may use other measures to reduce particulate matter and nitrogen oxide emissions from project construction through the use of emulsified fuel and or particulate matter traps. These alternative measures, if proposed, shall be developed in consultation with District staff.

**21. Mitigation Measure #3:**

- a. Nontoxic soil stabilizers according to manufacturer's specifications shall be applied to all inactive construction areas (previously graded areas inactive for ten days or more).
- b. Ground cover shall be reestablished in disturbed areas quickly.
- c. Active construction sites shall be watered at least three times daily to avoid visible dust plumes.
- d. Paving, applying water three times daily, or applying (non-toxic) soil stabilizers shall occur on all unpaved access roads, parking areas and staging areas at construction sites.
- e. Enclosing, covering, watering daily, or applying non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) shall occur.
- f. A speed limit of 15 MPH for equipment and vehicles operated on unpaved areas shall be enforced.
- g. All vehicles hauling dirt, sand, soil, or other loose materials shall be covered or shall be maintained at least two feet of freeboard.
- h. Streets shall be swept at the end of the day if visible soil material is carried onto adjacent public paved roads.

22. **Mitigation Measure #4:** Wood burning appliances installed in the homes constructed as part of the project shall only use either pellet-fueled heaters, U.S. EPA Phase II certified wood burning heaters, or a gas fireplace. Installation of open hearth wood burning fireplaces is prohibited.
23. **Mitigation Measure #5:** If cultural resources (historic, archeological, paleontological, and/or human remains) are encountered during construction, workers shall not alter the materials or their context until an appropriately trained cultural resource consultant has evaluated the situation. Project personnel shall not collect cultural resources. Prehistoric resources include chert or obsidian flakes, projectile points, mortars, pestles, dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or adobe foundations or walls, structures and remains with square nails, and refuse deposits often in old wells and privies.
24. **Mitigation Measure #6:** Special preparation of subgrades and reinforcement of foundations and floor slabs shall be conducted in full and as described in the Geotechnical Engineering Report 723 Railroad Avenue Residential (June 7, 2006) for the proposed project.
25. **Mitigation Measure #7:** Prior to demolition activities, the 27,000 square foot warehouse shall be sampled for the presence of lead-based paint and asbestos-containing materials. If the building surfaces are determined to contain concentrations of lead at or above regulatory limits, then removal in accordance regulations shall be required prior to demolition activities. If building materials are found to contain asbestos, then removal of the asbestos-containing materials in accordance with applicable regulations shall be required prior to demolition activities.
26. **Mitigation Measure #8:** All aspects of the project shall be subject to design review to ensure compatibility with the surrounding area and satisfaction of the Community Design Guidelines and other applicable principles of good neighborhood design. Prior to issuance of a building permit for each phase of construction of the project, the builder shall submit full architectural renderings, including building elevations and floor plans, for design review and approval.
27. **Mitigation Measure #9:** A solid noise barrier 13-feet in height shall be constructed on the southerly property line and a solid noise barrier 10-feet in height shall be constructed on the easterly property line prior to occupancy of the residential units and combined with a 10 dB noise level reduction (correction) in order to comply with the City's exterior noise standards. The barriers should be constructed of concrete masonry (CMU) units, solid concrete panels, earth berms, or any combination of these. Proposed designs/materials for the barriers shall be reviewed and approved by a qualified acoustical consultant prior to construction to ensure that they achieve the required reduction in exterior noise levels.
28. **Mitigation Measure #10:** In order to achieve compliance with the City's interior noise level standards for the residential units along the southerly property line of the project site, STC 40 rated window assemblies shall be required for all second and third floor windows with a view of the Double M Trucking facility. In order to achieve compliance with the City's interior noise level standards for the residential units along the easterly property line of the project site, STC 35 rated window assemblies shall be required for all second floor windows with a view of the Double M Trucking facility. Air conditioning or other suitable mechanical ventilation shall be provided for all residential and office units to allow residents and office users to close windows for the desired acoustical isolation. The building plans for these residences shall be reviewed and approved by a qualified acoustical professional to identify the acoustical treatments necessary to meet the City's interior noise level standards.
29. **Mitigation Measure #11:** A disclosure statement shall be provided to all prospective homebuyers disclosing that the Double M Trucking facility is located adjacent to and the Mariani Nut Company facilities near the Anderson Place Subdivision project and noise from both the Double M and Mariani facilities will be experienced at the Anderson Place project.
30. **Mitigation Measure #12:** The applicant shall fund the preparation of a fiscal impact analysis to examine project impacts on the City's general fund. The applicant shall enter into a Development

Agreement with the City that includes provisions acceptable to the City Council for mitigating any projected fiscal deficit. This may include an on-going Mello-Roos Community Facilities District (CFD) to fund eligible services, a Lighting and Landscaping District which could fund eligible park and landscaping expenses, establishment of an annuity the interest proceeds of which would cover the projected deficit, or other acceptable mechanisms.

31. **Mitigation Measure #13:** The applicant shall pay park mitigation fees to satisfy the obligation for 0.62-acre of developed parkland. Fees shall include both the value of the land and improvements that would otherwise be constructed if the parkland was provided on-site.
32. **Mitigation Measure #14:** The proposed systems for conveying project sewage, water, and drainage shall be finalized and approved by the City Engineer prior to final map. The project is required to fund and construct off-site improvements necessary to support the development. Such improvements could include, but not be limited to a water well, water lines, sewer lines and storm drainage lines. Should property acquisition or additional CEQA clearance be required for off-site improvements, this will be the responsibility of the developer.
33. **Mitigation Measure #15:** The City shall issue building permits only after the new water well is in service.

#### **Community Development**

34. Construction activities shall be limited to 7:00 am to 7:00 pm, Monday through Friday only (holidays excluded) in compliance with the City's Noise Ordinance and Standard Specifications. The Applicant shall submit a Construction Noise Control Plan for review and approval by the City prior to acceptance of Final Map. This plan shall address job site noise control and establish protocols for addressing noise complaints. Job site signage with 24-hour contact information for noise complaints shall be included.
35. Foundations shall be poured in place, onsite. No pre-cast foundations will be permitted. This shall be stipulated in all construction contracts.
36. All address numbering shall be clearly visible from the street fronting the property. All buildings shall be identified by either four (4) inch illuminated numbers or six (6) inch non-illuminated numbers on contrasting background. Because the project contains residential units that will be individually owned and will utilize zero lot lines, additional addressing requirements may be necessary as determined by the Fire Department. Naming of streets shall be completed by the Street Naming Committee and the addressing shall be approved by a committee comprised of the Community Development Department, the Fire Department, the Police Department, and the Postal Service.
37. The Applicant shall pay all development impact fees, fees required by other entities, and permit fees.
38. The Applicant shall be responsible for any additional costs associated with the processing of this project including but not limited to: plan check, inspections, materials testing, construction monitoring, and other staff review and/or oversight including staff time necessary to ensure completion/satisfaction of all conditions of approval and mitigation measures. The Applicant shall, on a monthly basis, reimburse the City for all such costs. Project Applicant shall pay all development impact fees adopted by the City Council and shall pay fees required by other entities.
39. The Developer shall obtain the following approvals from the Central Valley Regional Water Quality Control Board, as appropriate: 1) coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activities; 2) compliance with post construction storm water Best Management Practices pursuant to the NPDES General Permit for Small Municipal Separate Storm Sewers Systems; 3) 401 Water Quality Certification for wetlands impacts; 4) Dewatering Permit under Waste Discharge Requirements General Order for Dewatering and Other Low Threat Discharges to Surface Waters Permit.

40. The main electrical panel for each residence and shall be located at the exterior of the residence and capable of total electrical disconnect by a single throw. This same requirement shall apply to each office suite unless waived by the Fire and Community Development Departments.
41. A minimum one-hour occupancy separation shall be required for common walls separating residential units. A minimum one-hour occupancy separation shall be required also for common walls separating commercial and residential units. Wall construction shall be approved by the Fire and Community Development Departments.
42. All wall assemblies separating dwelling units shall comply with Sound Transmission Control per 2001 California Building Code Section 1208.
43. A deed restriction shall be recorded against the nine lots containing office suites to preclude their use as and conversion to residential rental space. The deed restriction shall also preclude the installation of a gas or electric cooking appliance and a bathtub or shower in the office suites. The deed restriction shall be recorded concurrently with the Final Map.
44. The applicant shall form a homeowners association for the project. A draft of the conditions, covenants, and restrictions (CC&Rs) necessary for the association shall be provided to City staff for review and approval. The CC&Rs shall be recorded concurrently with the Final Map.

#### **Design Review**

45. Prior to recordation of the Final Map, a deed restriction shall be recorded against each property that precludes conversion of garage area to livable areas.
46. Units on opposing sides of a street shall be compatible in terms of design and color.
47. Lights along local streets shall not exceed 20-feet in height and shall be spaced to meet illumination/safety requirements. Lights along collector and arterial streets shall be as low as feasible in order to maintain pedestrian scale. Historic-style street lamps shall be used along all streets including the private internal streets.
48. Exterior colors on residential units shall not be restricted.
49. Landscaping and signage shall be consistent with the applicable requirements of Chapters 17.76 (Landscaping and Design) and 17.80 (Signs) of the Winters Municipal Code.
50. The developer shall offer universal design features in residential units pursuant to State Law and shall provide prospective buyers with a copy of the State's most current "New Home Universal Design Option Checklist". A copy of the checklist shall be provided to the Winters Community Development Department prior to its use.
51. Details for the sound barrier and landscaping along the west and south sides of the project shall be provided for City review and approval during a subsequent Site Plan (Design Review) for the project.

#### **Affordable Housing**

52. Prior to recordation of the Final Map, an inclusionary housing agreement shall be prepared and executed for the identified income-restricted units/properties. Deed restrictions shall be recorded against four lots or four residential units to ensure permanent affordability. All agreements necessary for the affordable housing units shall be reviewed and approved by City staff. Of the four affordable units, two shall be restricted to very low-income households, one shall be restricted to a low-income household, and one shall be restricted to a moderate-income household.
53. The construction of the affordable units shall keep pace or exceed the construction of the market rate units.

54. Pursuant to Policy II.A.13 of the Housing Element, the affordable units shall be visually indistinguishable from the market-rate units.

#### **Street Improvements**

55. All proposed roads within the subdivision shall comply with the City's Public Works Improvement Standards and Construction Specifications, dated September 2003 and as amended, unless otherwise approved by the City. Other than Anderson Avenue and Railroad Avenue, all other streets shall be privately owned streets.
56. Anderson Avenue shall be constructed to Collector Street improvement standards with a 50-foot right of way, 40-foot face of curb to face of curb and 5-foot sidewalks each side to the existing Railroad Avenue roadway.
57. Anderson Avenue at the intersection of Railroad Avenue – Developer shall construct roadway and curb, gutter, and sidewalk improvements to the existing Railroad Avenue roadway to the satisfaction of the City Engineer.
58. Railroad Avenue:
- a) Interim Railroad Avenue improvements to include interim landscaping within the future roadway on east side of Railroad Avenue, with a 10-foot concrete pedestrian/bike path from the northern terminus of this development to the southern terminus of the development.
  - b) Developer shall design and construct permanent and temporary pedestrian and bicycle improvements on Railroad Avenue from the project site to Grant Avenue (SR 128). On the east side of Railroad Avenue, improvements shall consist of constructing a temporary off-street Class I pedestrian/bicycle asphalt concrete (AC) path from the project site south boundary to Grant Avenue. The path shall be a minimum of 8 feet wide within the existing right of way.
  - c) No parking shall be allowed on Railroad Avenue.
  - d) Developer shall install roadway striping and markings as required by the City Engineer.
59. Local Streets: Local streets shall provide for ADA compliant sidewalk turnouts where sidewalk widths do not meet ADA requirements. All sidewalks at driveway locations shall be 6-inch thick Portland Cement Concrete (PCC).
60. Tentative Map Anderson Avenue Street Cross Section, dated June 5, 2006. Conditions and Changes shall be made as follows: ***Anderson Avenue shall be extended to existing Railroad Avenue with full collector roadway improvements with 40-foot curb to curb roadway width and 5-foot sidewalks on each side.***
- a) Street Cross section details as modified by these conditions of approval, including all intersection geometric design, complying with the conditions of approval, shall be revised on tentative map, submitted to the City, and approved by the City Engineer prior to submitting a final map and improvement plans.
  - b) A signing and striping, and stop plan is required and shall be approved by the City Engineer. All signing and striping shall be in accordance with the City of Winters Public Improvements Standards and Construction Standards.
  - c) Street light types shall be those historic types as approved by the City.
61. The internal roadway in the C-2/southerly portion of the project shall be one-way, have a minimum roadway width of 20-feet and minimum vertical clearance of 14-feet, and be signed and striped for no parking. The internal roadway for in the O-F/northerly portion of the project shall have a minimum roadway width

approved by the Winters Fire Department, have a minimum vertical clearance of 14-feet, and be signed and striped for no parking.

### **Storm Drainage and Site Grading**

62. A comprehensive storm drainage plan shall be prepared by a registered civil engineer for project watershed(s), including the plan area. The plan shall identify specific storm drainage design features to control increased runoff from the project site. The drainage plan shall demonstrate the effectiveness of the proposed storm drainage system to prevent negative impacts to existing upstream and downstream facilities and to prevent additional flooding at off-site downstream locations. All necessary calculations and assumptions and design details shall be submitted to the City Engineer for review and approval. The design features proposed by the applicant shall be consistent with the most recent version of the City's Storm Drainage Master Plan criteria and City Public Works Improvement Standards. The plan shall incorporate secondary flood routing analysis and shall include final sizing and location of on-site and off-site storm conduit channels, structures. The Storm Drainage Plan shall be submitted for approval prior to submittal of the final map and/or construction drawings for checking. The applicant shall pay the cost associated with all improvements required by the plan.
63. A topographic survey of the entire site and a comprehensive grading and drainage plan prepared by a registered civil engineer, shall be required for the development. The plan shall include topographic information on adjacent parcels. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any. A statement shall appear on the site grading and drainage plan, which shall be signed by a registered civil engineer or land surveyor and shall read, "I hereby state that all improvements have been substantially constructed as presented on these plans". Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
64. The Tentative map Grading and Drainage plan showing grading and drainage information including topographic information, drainage routing, pipe slopes and sizing and locations and excluding topographic information, and overland drainage routing are preliminary only and do not constitute approval in any way. Final approval for the grading and Drainage Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.
65. On-site Drainage utilities within the private streets shall be privately owned.
66. Construction materials for storm drainpipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP).
67. The differential in elevation between rear and side abutting lot lines shall not exceed twelve inches (12") without construction of concrete or masonry block retaining walls. Deviation from this condition may be allowed subject to approval by the City Engineer.
68. Drainage fees shall be paid prior to issuance of a building permit.
69. All perimeter parcels and lots shall be protected against surface runoff from adjacent properties in a manner acceptable to the City Engineer.
70. If disposal and sharing of the excavated soil from the construction of the Development occurs, prior to approval of the first Final Map, Applicant shall prepare a written agreement with the other participating property owners and submit to the City.
71. All projects shall include implementation of post-construction best management practices (BMP). Post construction BMP's shall be identified on improvement plans and approved by the City Engineer.
72. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit.

73. Applications/projects disturbing less than one acre of soil shall implement BMP's to prevent and minimize erosion. The improvement plans for construction of less than one acre shall include a BMP to be approved by the City Engineer.
74. An erosion and sedimentation control plan shall be included as part of the improvement plan package. The plan shall be prepared by the applicant's civil engineer and approved by the City Engineer. The plan shall include but not be limited to interim protection measures such as benching, sedimentation basins, storm water retention basins, energy dissipation structures, and check dams. The erosion control plan shall also include all necessary permanent erosion control measures, and shall include scheduling of work to coordinate closely with grading operations. Replanting of graded areas and cut and fill slopes is required and shall be indicated accordingly on plans, for approval by City Engineer.
75. Where possible landscaped slopes along streets shall not exceed 5:1; exceptions shall require approval of the City Engineer. All other slopes shall comply with the City of Winters Public Works Improvements Standards. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes.
76. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.
77. Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.
78. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.
79. Construction equipment and engines shall be properly maintained.
80. If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.
81. Construction practices will minimize vehicle idling.
82. Potentially windblown materials will be watered or covered.
83. Construction areas and streets will be wet swept.

#### **Wastewater and Sewer Collection System**

84. The Applicant shall obtain a no-cost Wastewater Discharge Permit from the Public Works Department prior to the issuance of a Building Permit.
85. The property shall be connected to the City of Winters sewer system, with a separate sewer lateral and cleanout required for each parcel, in accordance with City of Winters Public Improvement Standards and Construction Standards.
86. On site sewer utilities within the private streets shall be privately owned.
87. A Tentative Map Sewer Collection System Plan shall be submitted for approval by the City Engineer prior to submittal of the final map and/or construction drawings for checking. A registered civil engineer for project shall prepare the sewer collection system plan. The plan shall include final sizing and location of on-site conveyance facilities, structures, and engineering calculations.
88. The Tentative Map Sewer Plan showing sewer routing, pipe slopes and sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Sewer Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.
89. Construction of sewer mains deeper than 16-feet at the bottom of the pipe shall be connected to laterals by parallel mains and connections at manholes.

## **Water Infrastructure**

90. Based on City water modeling, a new well is needed to serve the development. Per Mitigation Measure #15, no building permits shall be issued until the new well is in service.
91. The Tentative Map Water Plan showing water routing, sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Water Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval. Applicant shall comply with making changes to water system distribution pipe sizes and alignments based on the results of the specific water modeling performed for the development. If required, Applicant shall pay for all required water modeling for identifying water infrastructure needs to serve its development and shall construct offsite water improvements to connect to the City water distribution system.
92. The property shall be connected to the City of Winters water system, with a separate water lateral and meter required for each parcel, in accordance with City of Winters Public Improvement Standards and Construction Standards.
93. On site water utilities within private streets shall be privately owned.
94. At the time the Final Map is approved, the applicant will be required to pay the appropriate City connection fees. All domestic water services will be metered. Water meters shall be installed on all water services to the satisfaction of the City Engineer.
95. Per City of Winters Cross Connection Control Program, all types of commercial buildings and landscape irrigation services are required to maintain an approved backflow prevention assembly, at the applicant's expense. Service size and flow-rate for the backflow prevention assembly must be submitted. Location of the backflow prevention assembly shall be per the City of Winters Public Improvements Standards and Construction Standards. Prior to the installation of any backflow prevention assembly between the public water system and the owner's facility, the owner or contractor shall make application and receive approval from the City Engineer or his designated agent.
96. Per the City of Winters Cross Connection Control Program, fire protection systems are required to maintain approved backflow prevention, at the applicant's expense. Required location, service size and flow-rate for the fire protection system must be submitted. Actual location is subject to the review and approval of the Public Works Department, Fire Department, and Community Development Department.
97. The City of Winters Plan Review Fee applies and is due upon submittal of the maps and plans for review.
98. FINAL PLANS, PERIODIC TESTS FOR FIRE HYDRANTS: All final plans for fire hydrant systems and private water mains supplying a fire hydrant system shall be submitted to the City of Winters Fire Department for approval prior to construction of the system. The applicant shall install fire hydrants on the project's Railroad Avenue frontage, Anderson Avenue frontages, along the internal roadways, and potentially in other locations. The number and locations of the fire hydrants shall be determined by the Fire Chief. All fire protection systems and appurtenances thereto shall be subject to such periodic tests as required by the City of Winters Fire Department.
99. WATER PRESSURE: All water lines and fire hydrant systems must be approved by the Fire Chief and operating prior to any construction taking place on the site. Prior to issuance of building permits, water flow must be measured and certified for adequacy by the Winters Fire District. The minimum residual pressure shall be 20 PSI.
100. REFLECTORS FOR FIRE HYDRANTS: Any fire hydrant installed will require, in addition to the blue reflector noted in Standard Drawings, an additional blue reflector and glue kit that is to be supplied to the City of Winters Fire Department for replacement purposes.

101. All construction, new or remodeling, shall conform to the most current Uniform Fire Codes, the Winters Fire Prevention Code, and section of the National Fire Codes that the Winters Fire Chief or his/her agent may find necessary to apply.
102. Forty-eight hours notice shall be given to the Winters Fire District prior to any site inspections.
103. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.
104. When the fire protection facilities are in the City of Winters, the developer shall contact the Winters Fire District Chief or his/or agent prior to construction for a pre-construction meeting.
105. All required fire accesses that are to be locked shall be locked with a system that is approved by the Fire Chief or his/her agent.
106. Submit four sets of plans for each fire suppression sprinkler system to the Fire Department for review and approval prior to the issuance of each building permit.
107. All buildings shall have fire suppression sprinkler systems meeting or exceeding NFPA 13 and local Fire Department standards. Water laterals shall be appropriately sized to accommodate sufficient water flows for fire suppression sprinkler systems. All occupants of each of the project's buildings shall be notified of a water flow in that building's fire suppression system; the Winters Fire Department shall approve the type, locations, and audible decibel level of the internal water flow alarms. Each of the project's buildings shall have an external horn and strobe unit that is approved by the Winters Fire Department. Individual fire department connections shall be installed for each of the project's buildings.

Backflow devices for each Fire Department connection shall be approved by the City Engineer and the Winters Fire Department. Each device shall be fitted with OS&Y valves at each end. Each system shall be supervised so the general water flow can be detected and water flow to each office or residential unit can be detected. Supervised systems shall be monitored on a 24-hour basis, 7 days per week by an approved monitoring station that can then report the water flow situation to the Fire Department's dispatch center.

#### **General Public Works and Engineering Conditions**

108. The conditions as set forth in this document are not all inclusive. Applicant shall thoroughly review all City, state, and federal planning documents associated with this tentative map and comply with all regulations, mitigations and conditions set forth.
109. Closure calculations shall be provided at the time of initial map check submittal. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the map shall be directly verifiable by information shown on the closure calculation print out. The point(s) of beginning shall be clearly defined and all lot acreage shall be shown and verifiable from information shown on the closure calculation print out. Additionally, the square footage of each lot shall be shown on the subdivision map. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
110. A subdivision map shall be processed and shall be recorded prior to issuance of a building permit. The Developer shall provide, to the City Engineer, one recorded Mylar copy and four print copies of the Final Map from the County, prior to issuance of the first building permit.
111. U.S. Post Office mailbox locations shall be shown on the improvement plans subject to approval by the City Engineer and Postmaster.
112. A registered landscape architect shall design public landscape and privacy wall improvements and improvements shall be per City Standards, as applicable.

113. Applicant shall make every attempt to submit joint trench/utility/composite plans for review, prior to approval of the Final Map and improvement plans. Construction will not be allowed to proceed prior to submittal of the joint trench/utility/composite plans for City review.
114. All existing and proposed utilities (electric, phone/data, and cable) including the overhead utilities on the project's Railroad Avenue frontage shall be installed underground per the subdivision ordinance and shall meet the policies, ordinances, and programs of the City of Winters and the utility providers.
115. Street lighting location plan shall be submitted and approved by the City Engineer, prior to approval of improvement plans and final recordation of Map.
116. Roads must be constructed and paved prior to issuance of any building permit. Under specific circumstances, temporary roads may be allowed, but must be approved by the City Engineer and Fire Department.
117. Occupancy of residential units shall not occur until on-site and off-site improvements have been accepted by the City Council and the City has approved as-built drawings, unless otherwise approved by the City Engineer and Community Development Director. Applicants, and/or owners shall be responsible to so inform prospective buyers, lessees, or renters of this condition.
118. If relocation of existing facilities is deemed necessary, the applicant shall perform the relocation, at the Applicant's expense unless otherwise provided for through a reimbursement agreement. All public utility standards for public easements shall apply.
119. A Subdivision Improvement Agreement shall be entered into and recorded prior construction of improvements, issuance of any building permits, or recordation of a Final Map.
120. At the time of making the survey for the Final Map, the engineer or surveyor shall set sufficient durable monuments to conform to the standards described in Section 8771 of the Business and Professions Code. All monuments necessary to establish the exterior boundaries of the subdivision shall be set or referenced prior to recordation of the Final Map.

#### **Easements and Right of Way**

121. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way.
122. The Applicant shall facilitate, with City cooperation, the abandonment of all City easements and dedications currently held but no longer necessary as determined by the City.
123. A ten (10) foot public utility easement back of sidewalk, adjacent to all public streets within the development shall be dedicated to the City. Additional easements shall be dedicated as requested by the utility companies and approved by the City.

#### **Reimbursements for Applicant Installed Improvements**

124. Applicant shall pay appropriate reimbursements for benefiting improvements installed by others, in the amount and at the time specified by existing reimbursement agreements.
125. Project proponents shall enter into the City wide Landscape and Lighting Maintenance District, in order to maintain and provide for the future needs of parks, open space, street lighting, landscaping, sound walls, and other related aspects of development. The project proponent is responsible for all costs associated with this condition. The project proponent shall fulfill this condition prior to the sale of any buildable lots or parcels within the project area.
126. Prepare, and submit for approval, a utility site plan prior to preparation of full improvement plans.

127. Prepare improvement plans for any work within the public right-of-way and submit them to the Public Works Department for review and approval. The improvement plan sheets shall include the title block as outlined in the City of Winters Public Improvements Standards and Construction Standards. This submittal is separate from the building permit submittal. The Developer shall provide, to the City Engineer, one Mylar original and four sets of the improvement plans and electronic media (AutoCAD .DWG or DXF on Zip Disk or Compact Disk), for approval of plans by the City Engineer.
128. Conform to County Health regulations and requirements for the abandonment of a septic tanks and water wells.
129. Existing public and private facilities damaged during the course of construction shall be repaired by the subdivider, at his sole expense, to the satisfaction of the City Engineer.
130. The area of each lot, in square feet, shall be calculated and shown on the Final Map.
131. Encroachment permits if necessary shall be acquired from Yolo County, Caltrans, and PG&E.
132. All utility poles that are to be relocated in conjunction with this project shall be identified on the improvement plans, with existing and proposed locations indicated.
133. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers.
134. If improvements are constructed and/or installed by a party or parties other than the Applicant, which improvements benefit Applicant's property, prior to issuance of a building permit (approval of the final map) on Applicant's property, Applicant shall pay a proportionate share of the costs of said improvements, including interest, prior to the issuance of building permit(s) (approval of the Final Map) to Applicant.

ANDERSON PLACE/TM COAs CC FINAL 3Apr07

**EXHIBIT E**  
**School Agreement**

When Recorded, Return to:

Winters Joint Unified School District  
909 West Grant Avenue  
Winters, CA 95694

Exempt: Government Code §5103

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT  
BETWEEN EVA I. BRZESKI AND G STREET SAN BERNARDINO, LLC, AND  
WINTERS JOINT UNIFIED SCHOOL DISTRICT

This Memorandum of Mutual Benefit Agreement is entered into on this 13<sup>th</sup> day of June, 2007, by and between Winters Joint Unified School District, of Yolo County, California, body politic, with an office at 909 West Grant Avenue, Winters, California, (hereinafter referred to as "District"), and Eva I. Brzeski and G Street San Bernardino, LLC, ("Developer") the owner and developer of certain real property hereinafter referred to as the Anderson Place Parcel (Yolo County Assessor's Parcel No. 003-322-20-31) and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

1. District and Developer entered into a Mutual Benefit Agreement ("Agreement") on the 13<sup>th</sup> day of June, 2007, for the purpose of reaching an agreement covering developer-mitigation impact fees necessitated by the expected impact on the District by the proposed construction and occupancy occurring on, in or about the property described on Exhibit "A." All of the foregoing is set forth in the Agreement.
2. The Term of the Agreement is indefinite with no termination date.
3. The Property which is the subject of the Agreement is described in Exhibit "A" attached hereto.
4. The duties, promises and covenants set forth in the Agreement are binding upon and inure to the benefit of the parties and their heirs, successors, assigns and personal representatives and shall constitute covenants which shall run with the land.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Mutual Benefit Agreement as of the day and year first above written.

Winters Joint Unified School District

By: Dale J. Mitchell  
Name: Dale J. Mitchell  
Title: Superintendent

Eva I Brzeski and G Street  
San Bernardino, LLC

By: Eva I Brzeski  
Name: Eva I Brzeski  
Title: N.A.

-1-

By: Jan B. Brzeski  
Name: Jan B. Brzeski  
Title: Managing Member  
G Street San Bernardino, LLC

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT

Page 2 of 2

State of California

County of Orange

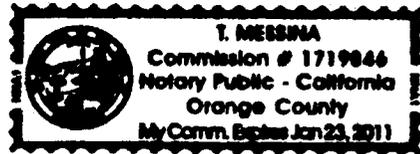
On June 13, 2007, before me, T. Messina, Notary Public, Notary Public, personally appeared Jan B. Brzeski, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

T. Messina  
Notary Public

(SEAL)

My commission expired: 1/23/11



State of California

County of MARIN

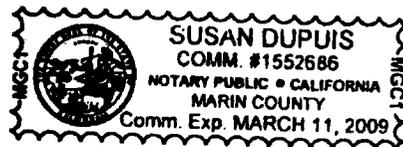
On JUNE 14, 2007, before me, SUSAN DUPUIS, Notary Public, personally appeared EVA I. BRZESKI, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Susan Dupuis  
Notary Public

(SEAL)

My commission expired: 3-11-09



MEMORANDUM OF MUTUAL BENEFIT AGREEMENT

Page 2 of 2

State of California  
County of Yolo

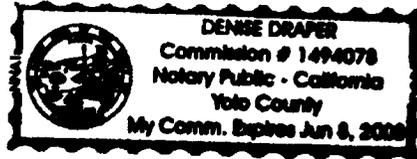
On June 20, 2007, before me, Denise Draper,  
Notary Public, personally appeared Dale J. Mitchell,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person  
whose name is subscribed to the within instrument and acknowledged to me that he executed the  
same in his authorized capacity, and that by his signature on the instrument, the person, or the  
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Denise Draper  
Notary Public

(SEAL)

My commission expired: June 8, 2008



State of California  
County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person  
whose name is subscribed to the within instrument and acknowledged to me that he executed the  
same in his authorized capacity, and that by his signature on the instrument, the person, or the  
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expired: \_\_\_\_\_

**MUTUAL BENEFIT AGREEMENT BETWEEN**  
**EVA I. BRZESKI AND G STREET SAN BERNARDINO, LLC**  
**AND**  
**WINTERS JOINT UNIFIED SCHOOL DISTRICT**

THIS MUTUAL BENEFIT AGREEMENT ("Agreement") is entered into this 13<sup>th</sup> day of June, 2007, by and between

Eva I. Brzeski and G Street San Bernardino, LLC,  
hereinafter referred to as "*Developer*"

whose address is  
6151 W. Century Blvd., Suite 300  
Los Angeles, CA 90045

and

WINTERS JOINT UNIFIED SCHOOL DISTRICT

Yolo County, California, hereinafter  
referred to as "the District"

whose address is  
909 West Grant Avenue, Winters, CA 96594

**RECITALS:**

A. WHEREAS, *Developer* is the owner and developer of certain real property commonly referred to as Anderson Place Parcel located in the City of Winters, California described on Exhibit "A", attached hereto and incorporated herein by reference (Yolo County Assessor's Parcel No. 003-322-20-31) (hereinafter "Anderson Place Parcel"); and

B. WHEREAS, the Anderson Place Parcel is located within the boundaries of the District; and

C. WHEREAS, *Developer* represents to the District that it proposes to construct residential dwelling units on the Anderson Place Parcel consisting of a total of Twenty-eight (28) single family residential units. Of these 28 residential units, Two (2) shall be constructed for very low-income households and One (1) shall be constructed for low to moderate-income households; and

D. WHEREAS, the District's facilities are currently at capacity and the District has the authority to levy fees on developers to mitigate the impact that future development will have on the District's school facility needs within certain limits prescribed by law; and

E. WHEREAS, the District is currently levying fees pursuant to Government Code section 65995.5 ("Level II fees"); and

F. WHEREAS, *Developer* and the City of Winters ("the City") are intending to enter into a development agreement ("the Development Agreement") concerning the development of the Anderson Place Parcel, which, among other things, will provide for the voluntary payment by *Developer* of additional impact fees to the District of the equivalent of Level III fees on Twenty-Five (25) residential units in the Anderson Place Parcel; and

G. WHEREAS, *Developer* and the District desire to set forth the agreements between them in writing so that this agreement ("Agreement") may be enforced by the District.

**NOW, THEREFORE**, in consideration of the terms and conditions herein set forth, the District and *Developer* do hereby agree as follows:

1. *Developer* agrees to mitigate the impact on District facilities as a result of the development of the Anderson Place Parcel by the payment directly to the District of the sum of Six and 12/100 Dollars (\$6.12) per square foot of residential construction, which will be payable in two installments as follows:

A. Payment of the sum of Three and 06/100 (\$3.06) covering the square footage of residential construction for each residential unit, to be payable to the District prior to the time a building permit is issued.

B. Payment of the additional sum of Three and 06/100 (\$3.06) covering the square footage of residential construction for each residential unit to be payable at the close of escrow on the sale of each single family residential unit.

2. The payments described in paragraph 1 shall be paid on the Twenty-Five (25) market rate and affordable residential units within the Anderson Place Parcel.

3. This Agreement and specifically paragraph 1, shall not apply to the Three (3) residential units in the Project constructed specifically for very low and low income persons, it being acknowledged by the parties that those residential units would remain subject to the statutory Level II fees in the amount of Three and 06/100 Dollars (\$3.06) per square foot of residential construction.

4. *Developer* shall not be required to pay directly to the District any fees or charges in addition to the payments described in Paragraph 1. Nothing contained herein shall prevent the District from seeking other means of mitigation or additional funding for school facilities from other sources, but nothing herein obligates the District to do so. In addition, nothing contained herein shall prevent the City from requiring other impact fees from *Developer* for purposes other than school impact mitigation which may also benefit District properties.

5. A. It is anticipated that an executed copy of this Agreement will be attached as an exhibit to the Development Agreement between *Developer* and the City.

B. The District shall provide *Developer* and/or its successors in interest with two appropriate releases within a reasonable time for each residential unit for which *Developer* has paid the fees agreed upon in this Agreement as follows:

1) The first release shall be conditioned upon the payment in full of Level II fees as described in Paragraph 1A and shall serve to authorize the City to issue a building permit.

2) The second release shall be provided after the payment of the fee described in Paragraph 1 B.

C. The City has advised both the District and *Developer* that no building permit will be issued until *Developer* has paid the required Level II fees pursuant to Paragraph 1 A above and the District has notified the City of such payment by delivering a copy to the City of the release specified in B. 1) of this paragraph 5.

D. The District shall provide a release from the recorded memorandum of this Agreement to *Developer*, or to an escrow holder designated by *Developer*, when *Developer* has paid the District the additional fees for a residential unit, described in Paragraph 1 B.

E. No fee shall be required for issuance of a building permit for subdivision improvements (including, but not limited to utilities, curb, gutter, sidewalk, roads, alleys, grading, walls or monuments).

6. *Developer* acknowledges that the payments established in this Agreement are in excess of the Level II fees the District is authorized by statute to impose and agrees that it is entering into this Agreement voluntarily and that it waives any right to protest, challenge or object to the payments as set forth in this Agreement.

7. The District acknowledges that the legal limitations on the amount of payments established in this Agreement may be hereafter be amended or adjusted by legislative or administrative action, or may be invalidated or augmented as a result of court action, and agrees that it waives any right to school impact fees from *Developer*, its successors or assigns, other than as provided for in this Agreement

8. This Agreement is for the benefit of the Anderson Place Parcel and is intended to preserve its value and enhance its development. *Developer* agrees that for the benefit of the District, the City, and for itself, that it will construct and pay for any and all road improvements (including, in addition to the traveled way, such items as shoulders, bike lanes, sidewalks, and utilities) along any District property which may be required by the City or otherwise, and that it will not seek reimbursement for such improvements from the District.

9. A. The parties agree that the Anderson Place Parcel shall be held, transferred and encumbered, subject to the provisions of this Agreement, which is for the use and benefit of each and every person or entity who now or in the future owns any portion or portions of said real property. This Agreement and all rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives. *Developer* shall be permitted to sell or assign all or any portion of the properties described in Exhibit A to any other individual, partnership, corporation, licensed contractor, or limited liability company for purposes of development of residential lots or residences on such lots, subject to said assignee assuming all *Developer's* obligations hereunder.

B. A Memorandum of this Agreement in the form of Exhibit "B" to this Agreement shall be recorded in the Office of the County Recorder of Yolo County, California. Such Memorandum shall be executed by the parties before a notary, and shall constitute a covenant which shall run with the land; provided however, as to any lot within the Anderson Place Parcel on which a dwelling unit has been constructed, and for which an occupancy permit has been issued, and escrow for the sale to a third party has closed, this Agreement shall be deemed terminated and of no further force or effect.

C. Upon *Developer's* payments as described in Paragraph 1 hereof, District agrees to execute any documents necessary or convenient including, but not limited to a lien release and escrow instructions in order to release any lien existing on said lot by virtue of this Agreement or the Memorandum of Agreement referenced herein.

10. The parties acknowledge that in consideration of the payments as provided in this Agreement, the Anderson Place Parcel will be exempt from and excluded from inclusion in any landowner Mello-Roos Community Facilities District formed by the District for the purposes of financing the acquisition and development of school facilities. This section is not intended to prevent the school district from using State funds under the Leroy Greene Lease Purchase Act or other applicable legislation including, but not limited to, land donations, general obligation bonds, or other sources of funding to finance the acquisition, design, construction, or reconstruction of school facilities.

11. Should any suit brought by either party against the other for the enforcement of any rights of either party against the other pursuant to the provisions of this Agreement, or by reason of any alleged breach of any of the provisions of this Agreement or arising from this Agreement, then the successful party in such action shall be entitled to receive from the unsuccessful party all costs incurred in connection with such suit, including a reasonable allowance for attorneys' fees incurred by the successful party.

12. All notices or other communications to be given hereunder shall be in writing and shall be deemed received when personally delivered by commercial courier or otherwise, or three business days after deposit in the United States mail, postage prepaid, addressed as follows:

*Developer:*

Eva I. Brzeski and G Street San Bernardino,  
LLC  
6151 W. Century Blvd., Suite 300  
Los Angeles, CA 90045  
Attn: Eva Brzeski

District:

Winters Joint Unified School District  
909 West Grant Avenue  
Winters, CA 96594  
Attn: Dr. Dale J. Mitchell, Superintendent

13. Should the provisions of State law preclude the District from levying statutory developer fees or remove the statutory limits on developer fees, this Agreement shall be considered a current obligation of *Developer* for each and every residential unit planned for the Anderson Place Parcel whether or not a building permit has been issued notwithstanding any change in the law.

14. *Developer's* obligations to make any payment under the terms of this Agreement is expressly conditioned upon approval by the City of a Development Agreement between the City and *Developer*. Should this condition not be satisfied then this Agreement shall be void, and of no further force and effect. The District shall in that event execute a release of the Memorandum of Agreement.

15. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

16. This Agreement and all rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives.

17. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all previous negotiations among them. Except as otherwise expressly provided, neither this Agreement nor any of its terms may be amended, modified or waived except by written agreement. This Agreement shall, however, be construed in light of and in conjunction with the Mutual Benefit Agreement between the City of Winters and the District.

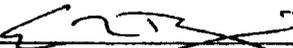
18. This Agreement shall be governed and construed in accordance with the laws of the State of California.

19. This Agreement shall be effective on the same date as the Development Agreement between *Developer* and the City is recorded in the Office of the County Recorder of Yolo County.

Winters Joint Union School District

Eva I. Brzeski and G Street  
San Bernardino, LLC

By:   
Name: Dale J. Mitchell  
Title: Superintendent

By:   
Name: Eva I. Brzeski  
Title: NA

By: Jan B. Brzeski  
Name: Jan B. Brzeski  
Title: Managing Member  
G Street San Bernardino, LLC

# EXHIBIT A-1

Real property in the City of Winters, County of Yolo, State of California, described as follows:

PARCEL 1, AS SHOWN AND DELINEATED ON PARCEL MAP NO. 3763, RECORDED OCTOBER 19, 1990 IN BLOCK 9 OF PARCEL MAPS, PAGE 104, YOLO COUNTY RECORDS.

EXCEPTING THEREFROM, FROM AN EASTERLY PORTION OF SAID LAND, ALL PETROLEUM, OIL, NATURAL GAS AND PRODUCTS DERIVED THEREFROM, WITHIN OR UNDERLYING SAID LAND, WITHOUT THE RIGHT OF SURFACT ENTRY, AS RESERVED BY SOUTHERN PACIFIC COMPANY, ET AL, IN DEED RECORDED OCTOBER 9, 1945 IN BOOK 225 AT PAGE 170, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, FROM THE REMAINDER OF SAID LAND, ALL MINTERALS AND MINERAL RIGHTS, INTERESTS AND ROYALTIES, INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALIC OR OTHER SOLID MINTERALS, IN AND UNDER SAID LAND, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY, RECORDED NOVEMBER 24, 1987 IN BOOK 1904 AT PAGE 343, OFFICIAL RECORDS.

APN: 003-322-20



## Notice of Public Hearing

Notice Of Public Hearing To Take Action On Proposed Amendment To The Anderson Place Development Agreement And A Conditional Use Permit Application (2008-CUP-01) Submitted By Eva Brzeski For A Boat And Recreational Vehicle Storage Facility with Repair and Sales Located At 723 Railroad Avenue (APN 003-322-20).

Applicant: Eva Brzeski, Applicant and Owner

Description of the Project: Indoor and outdoor boat and recreational vehicle storage, repair and sales at 723 Railroad Avenue. Landscaping, fencing, and other methods will be used to screen the view of tall vehicles from the street, Railroad, adjacent to the project site. The site, 723 Railroad (APN 003-220-22), is approximately 2.13 acres in size. Approximately one-third of the site has a General Plan land use designation of Office (OF) while the remaining two-thirds is designated Central Business District (CBD). Approximately one-third of the site is zoned Office (O-F) while the remaining two-thirds is zoned Central Business District (C-2). Personal storage requires a conditional use permit in the C-2 Zone. No storage will be permitted in the O-F portion of the site. In order to proceed with the project the following City approvals are needed:

β Amendment of the Anderson Place DA to extend the term to 2016.

β Conditional Use Permit to allow for storage, repair and sales of boats and recreational vehicles.

Project Location: 723 Railroad Avenue, Assessor Parcel Number 003-220-22.

Environmental Determination: General Rule Exemption (15061b3)

Public Hearing: A public hearing will be held to consider action on the project on Tuesday, April 22, 2008 before the Planning Commission. This meeting will start at 7:30 p.m. at the City Council Chambers located on the first floor of City Hall at 318 First Street, Winters, California.

The Planning Commission will make a recommendation on the amendment of the Development Agreement to the City Council and take action on the Conditional Use Permit for the storage, repair and sales of boats and recreational vehicles.

in compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact Kate Kelly at (530) 795-4910, ext. 113. Please make your request as early as possible and at least one-full business day before the start of the hearing.

The City does not transcribe its hearings. If you wish to obtain a verbatim record of the proceedings, you must arrange for attendance by a court reporter or for some other means of recordation. Such arrangements will be at your sole expense.

If you wish to challenge the action taken on this matter in court, the challenge may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission prior to the public hearing.

Availability of Documents: The project file is available for public review at the Community Development Department, Winters City Hall, 318 First Street, Winters, CA 95694. Copies of the Staff Report will be available on the City's website at [http://cityofwinters.org/administrative/admin\\_boards.htm](http://cityofwinters.org/administrative/admin_boards.htm)

For more information regarding this project, please contact Kate Kelly at (530) 795-4910, extension 113.

Published April 10, 2008





**PLANNING COMMISSION  
STAFF REPORT**

**TO:** Chairman and Planning Commissioners  
**FROM:** Jeff Fisher, Contract Planner  
**SUBJECT:** Public Hearing and consideration of a city initiated Zoning Code Text Amendment to exclude Rotary Park from the requirements of Zoning Code Section 17.96.030.

---

**RECOMMENDATION:** Staff recommends that the Planning Commission take the following actions: (1) receive the staff report; (2) conduct the public hearing; and (3) make a recommendation to the City Council to adopt a Zoning Code Text Amendment which would exclude Rotary Park from the requirements of Zoning Code Section 17.96.030 which requires "on-sale liquor establishments" to be located a minimum distance of 200 feet from public parks.

**BACKGROUND:** The Community Development Department has been in discussions with a private party who has expressed interest in operating a micro-brewery in the Central Business District (CBD) of downtown Winters. The potential site is located at 7 East Main Street (APN 003-224-04). This site is located approximately 142 feet from Rotary Park. Rotary Park is located on East Main Street, between Railroad Avenue and Elliott Street (APN 003-222-24).

Staff supports the possibility of such a business in the CBD for a variety of reasons. However, since no application for a use permit to allow a brewery has been filed with the city, neither this staff report nor the subsequent public hearings are intended to discuss or make recommendations regarding the proposed brewery. This staff report and the subsequent public hearings are intended to discuss a recommendation to amend the Zoning Code which would allow a private party to submit an application for a use permit to operate a brewery in the Central Business District

**DISCUSSION:** Upon review of the Zoning Code, staff determined that a brewery at this site would not be permitted due to its proximity to Rotary Park. According to Zoning Code Section 17.96.030, "on-sale liquor establishments" in the Central Business District (CBD) are not permitted to operate within a distance of 200 feet from a public park. The Zoning Code Section is as follows:

*"No on-sale liquor establishments shall be maintained within five hundred (500) feet such consideration points as schools (public and private); established*

*churches or other places of worship; hospitals, clinics, or other health care facilities; public parks and playgrounds and other similar uses, except that veterans' clubs, fraternal organizations and bona fide restaurants may be closer than five hundred (500) feet from one another or any of the reference points. The distance of five hundred (500) feet shall be measured between the nearest entrances used by patrons of such establishments along the shortest route intended and available for public passage to other such establishments, or to the nearest property line of any above referenced consideration points. The separation requirement shall be reduced to two hundred (200) feet for operations located within the central business district."*

It is staff's interpretation that the intent of this Zoning Code section and its separation requirement was to keep children from being exposed to alcoholic beverages. However, it is also staff's interpretation that Rotary Park is not a "park" in the traditional sense of the term. Unfortunately, the Zoning Code does not contain an official definition of a park in its "Introductory Provisions and Definitions" Section (Chapter 17.04). That being said, staff believes that Rotary Park should not be considered a "park" in that there are no facilities (play structures, ball fields, etc.) specifically intended for and utilized by children, as are seen in the city's other traditional parks. Rotary Park is primarily used for concerts, festivals, weddings, and other civic events, many of which are supplemented with alcoholic beverage vendors. There are no amenities at Rotary Park which can be considered as attractions for children. Staff believes that the uses of Rotary Park are more consistent with those of a public square or city plaza than those of a park.

Furthermore, there is an existing "on-sale liquor establishment" located directly across Railroad Avenue from Rotary Park. Although that bar is considered a "legal, non-conforming use", it is located within the required 200 feet separation area denoted in the Zoning Code. Therefore, there is precedent for "on-sale liquor establishments" in the immediate vicinity of Rotary Park. The Community Development Department has not received any evidence that there is a direct correlation between the proximity of such establishments to Rotary Park and children's exposure to alcoholic beverages.

For these reasons, staff recommends that Zoning Code Section 17.96.030 be amended to exclude Rotary Park from the separation requirement as reflected in the proposed revision as follows:

*"No on-sale liquor establishments shall be maintained within five hundred (500) feet such consideration points as schools (public and private); established churches or other places of worship; hospitals, clinics, or other health care facilities; public parks and playgrounds and other similar uses, except that veterans' clubs, fraternal organizations and bona fide restaurants may be closer than five hundred (500) feet from one another or any of the reference points. The distance of five hundred (500) feet shall be measured between the nearest entrances used by patrons of such establishments along the shortest route intended and available for public passage to other such establishments, or to the nearest property line of any above referenced consideration points. The separation requirement shall be reduced to two hundred (200) feet for operations located within the central business district. The separation requirement shall not*

be applicable to Rotary Park.”

**REQUIRED ACTIONS:**

Two actions are required by the Planning Commission to process the city initiated Zoning Code Text Amendment:

1. Confirmation of CEQA exemption finding – General Rule Exemption Section 15061[b](3).
2. Confirmation of the findings for a Zoning Code Text Amendment and recommendation to the City Council to adopt the city initiated Zoning Code Text Amendment.

**APPLICABLE REGULATIONS:**

This project is subject to the following regulations:

- The California Environmental Quality Act (CEQA)
- State of California Planning and Zoning Law
- City of Winters General Plan
- City of Winters Zoning Ordinance

**PROJECT NOTIFICATION:** Public notice advertising for the public hearing on this project was prepared by the Community Development Department’s Administrative Assistant in accordance with notification procedures set forth in the City of Winters’ Municipal Code and State Planning Law. Two methods of public notice were used: a legal notice was published in the Winters Express on Thursday, April 10, 2008, and notices were mailed to all property owners who own real property within 300 feet of the project boundaries at least 10 days prior to the April 22, 2008 Planning Commission hearing. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Wednesday, April 16, 2008.

**ENVIRONMENTAL ASSESSMENT:** The Zoning Code Text Amendment has been reviewed in accordance with the California Environmental Quality Act (CEQA) is considered categorically exempt under CEQA Guidelines General Rule Exemption Section 15061[b](3).

**CEQA Findings:**

1. The project qualifies for an exemption from the provisions of CEQA, General Rule Exemption Section 15061[b](3) in that the proposed Zoning Code Text Amendment allows for continued operation of existing businesses and “on-sale liquor establishments” will be subject to a conditional use permit and CEQA review will occur on a project by project basis.
2. The Planning Commission has considered comments received on the project during the public review process.
3. The exemption finding reflects the independent judgment and analysis of the City of Winters.
4. The Planning Commission hereby confirms a General Rule Exemption - Section 15061[b](3) for the City of Winters Zoning Code Amendment.

## **Zoning Code Text Amendment Findings:**

1. The proposed Zoning Code Text Amendment is generally consistent with the goals, policies, and objectives of the General Plan in that no conflicts have been identified.
2. The proposed Zoning Code Text Amendment will not adversely affect surrounding properties in that there is an existing “on-sale liquor establishment” within 200 feet from Rotary Park. Therefore, there is precedent for “on-sale liquor establishments” in the immediate vicinity of Rotary Park. The Community Development Department has not received any evidence that there is a direct correlation between the proximity of such establishments to Rotary Park and children’s exposure to alcoholic beverages.
3. The proposed Zoning Code Text Amendment will not be detrimental to public health, safety, and the general welfare and serves the goals and purposes of the Zoning Code.

## **STAFF RECOMMENDATION**

Staff recommends approval of the project by making an affirmative motion as follows:

**I MOVE THAT THE WINTERS PLANNING COMMISSION RECOMMEND THAT THE CITY COUNCIL ADOPT THE ZONING CODE TEXT AMENDMENT BASED ON THE IDENTIFIED FINDINGS OF FACT AND BY TAKING THE FOLLOWING ACTIONS:**

- Confirmation of exemption from the provisions of CEQA.
- Confirmation of Zoning Code Text Amendment findings.

## **ALTERNATIVES:**

The Commission can elect to modify any aspect of the approval or to deny the city-initiated Zoning Code Text Amendment. If the Commission chooses to deny the request, the Commission would need to submit findings for the official record that would illustrate the reasoning behind the decision to deny the request.

## **ATTACHMENTS:**

1. Public Hearing Notice (published and mailed copies)



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Chairman and Commissioners  
**DATE :** April 22, 2008  
**FROM:** Jeff Fisher, Contract Planner  
Cas Ellena, Redevelopment & Economic Development Director *CE*  
**SUBJECT:** Partial Vacation of East Abbey Street between Railroad Avenue and Elliot Street General Plan Consistency Report

---

**RECOMMENDATION:** 1) Accept Consistency Report regarding the partial vacation of East Abbey Street between Railroad Avenue and Elliot Street; and 2) Submit Consistency Report to the City Council for consideration.

**BACKGROUND:** The block in downtown Winters referred to as “Main Street Village” is a 1.823-acre block (Assessor Parcel Numbers 003-224-01, 02, 03, and 04) bordered by Railroad Avenue on the west, East Abbey Street on the north, Elliot Street on the east, and East Main Street on the south (the “Block”). This Block currently has the greatest potential for in-fill development in downtown Winters. The Community Development Agency (“CDA”) owns the westerly most parcel on the Block fronting Railroad Avenue between East Main Street and Abbey Street (“CDA Parcel”). The CDA is currently negotiating a Disposition and Development Agreement (“DDA”) with Monticello Investors (the “Developer”) for the development of a mixed-use project (the “Project”) on the CDA Parcel. The southern side of the remainder of the block has been developed within the last several years and the northern side of the remainder of the Block has recently changed ownership and also offers potential for in-fill development.

On March 4, 2007, the City Council considered a proposed concept to further assist the development of the Block (attached as Exhibit A) which includes: 1) vacation of an approximate 30 foot by 90 foot section of the south west section of East Abbey Street between Railroad Avenue and Elliot Street to allow additional building footprint on the CDA Parcel; 2) retention of the north west section of East Abbey Street between Railroad Avenue and Elliot Street for vehicle ingress and egress access off of Railroad Avenue and for ingress/egress access to the Block and to the Mariani property on the north side of East Abbey; and 4) retention of the remainder of East Abbey between Railroad Avenue and Elliot Street for the development of diagonal public parking and an easterly one-way street.

On March 4, 2007, the City Council approved Resolution No. 2008-06, authorizing a Notice

of Intent regarding a reconfiguration and partial vacation of East Abbey Street between Railroad Avenue and Elliot Street and accordance with Government Code Section 65402, directed the Planning Commission to prepare a report on the conformity of the partial vacation with the General Plan.

**SUMMARY:** Staff has prepared the requested General Plan Consistency Report, attached as Exhibit B (“Consistency Report”) which finds that the partial vacation of the section of East Abbey described above is consistent with the applicable General Plan Element Policies.

**ATTACHMENTS:** 1) Exhibit A “Reconfiguration”; 3) Exhibit B “Consistency Report”

ROAD AVE.

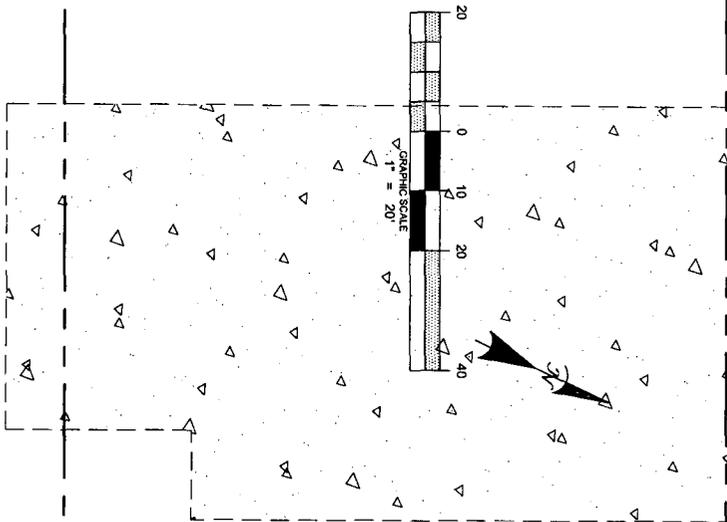
CITY OF WINTERS

ello Development

PARKING DRIVEWAY

EX. DRIVEWAY

E. ABBEY ST.



N 10264 4860  
E 10165 0493

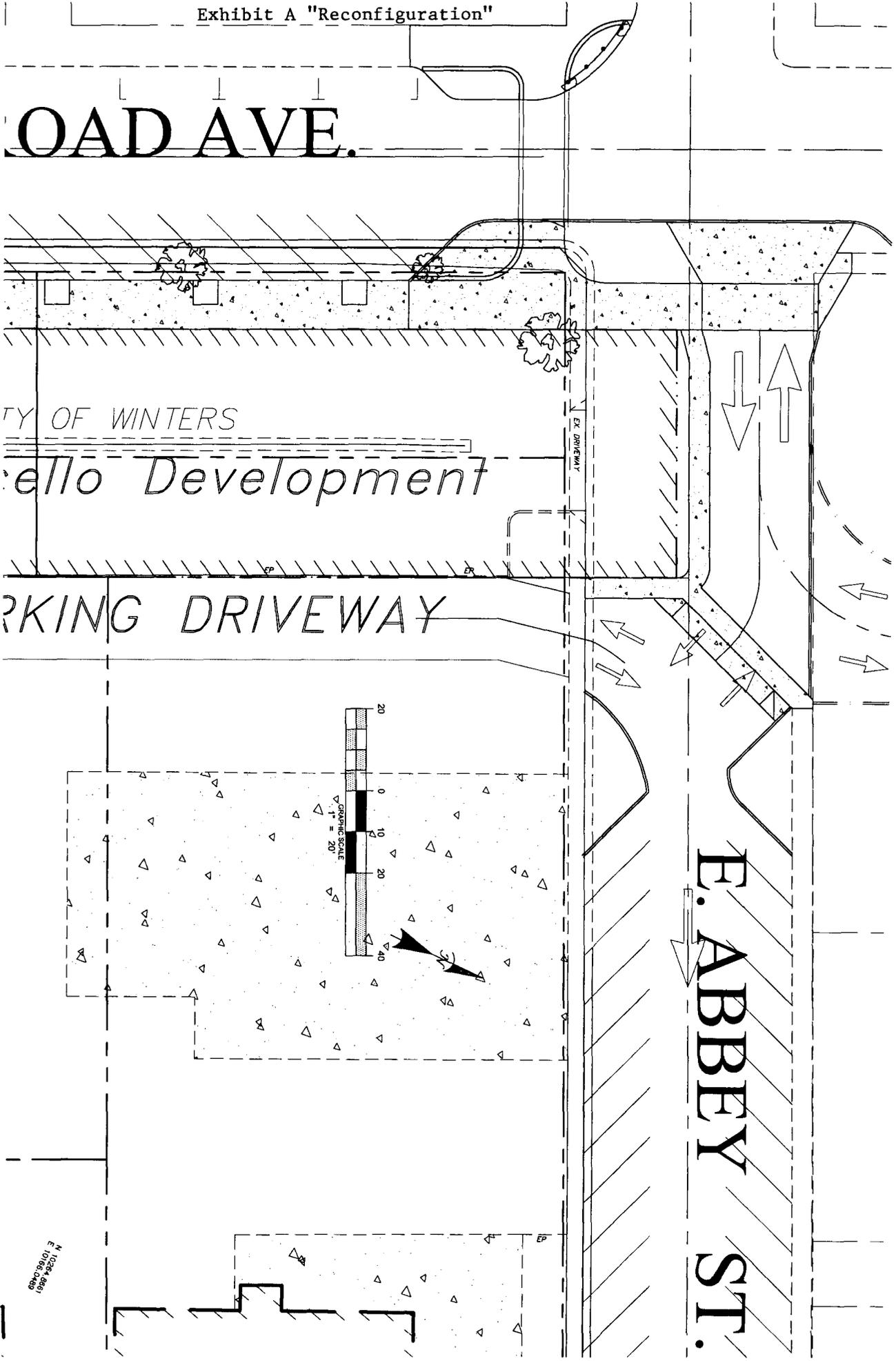


Exhibit B "Consistency Report"

**East Abbey Street Reconfiguration and Partial Vacation General Plan Consistency Review**

The following summarizes the General Plan policies of the City of Winters that are applicable to the proposed partial vacation of a section of Abbey Street in downtown Winters. This is accompanied by a consistency finding of how the project responds to the particular General Plan policy.

General Plan Policy	Consistency Finding
<b>Land Use Element</b>	
<p><b>I.A.3.</b> The City shall encourage development to occur in a sequence that promotes the efficient use and extension of public facilities and services.</p>	<p>Development at this site will be infill development utilizing existing public facilities and services.</p>
<p><b>I.A.6</b> The City shall promote the development of employment uses that improve the city's current jobs-housing balance.</p>	<p>Development at this site will be of a mixed use variety, creating opportunities for jobs and housing.</p>
<p><b>I.B.2</b> The City shall promote infill development and the conversion of industrial buildings and properties to commercial uses in the Central Business District.</p>	<p>The project will promote infill development in the Central Business District by providing public parking areas.</p>
<p><b>I.B.6.</b> The City shall support the revitalization of the Central Business District (CBD) by upgrading physical infrastructure, such as sidewalks, curbs, street lighting, water, sewer, and drainage facilities. The City shall also work with utility companies in undergrounding overhead utility lines in the Central Business District.</p>	<p>The project will facilitate the revitalization of the CBD by providing improved sidewalks, curbs, drainage facilities, and the addition of approximately 30 public parking spaces.</p>
<p><b>I.D.3.</b> The City's first priority for new commercial development shall be the Central Business District.</p>	<p>The project is located in the Central Business District and will facilitate infill commercial development in the Central Business District.</p>
<p><b>General Plan Circulation Plan Diagram and Standards:</b></p> <p>Abbey Street is designated as a Secondary Collector Street. Secondary Collector Streets provide for two 12-foot travel lanes, 4-foot to 8-foot shoulders for bike lanes and/or parking, and 16-foot sidewalk/landscaped areas.</p>	<p>The project will not change the Secondary Collector Street designation/status or the required standards of East Abbey Street.</p>

<b>Transportation and Circulation Element</b>	
<p><b>III.A.1.</b> The City shall endeavor to maintain a Level of Service "C" or better, as defined by the <i>1985 Highway Capacity Manual</i> or subsequent revisions, on all streets and intersections within the city.</p>	<p>The proposed project has been reviewed by the City Engineer. The City Engineer has stated that the project will not reduce the Level of Service below "C".</p>
<p><b>III.A.2.</b> Streets shall be dedicated, constructed, widened, extended, and modified according to City standards specified in Part I of this <i>Policy Document</i>. Dedication and improvement of full rights - of-way may not be required in existing developed areas where the City determines that such improvements are either infeasible or undesirable. The City may allow other deviations from these standards if the City determines that safe and adequate public access and circulation, including pedestrian convenience, are preserved by such deviations.</p>	<p>All aspects of the project's improvements are designed in accordance with the City Public Works Department Improvement Standards and shall be approved by the City Engineer.</p>
<p><b>III.A.3</b> To identify the potential impacts of new development on traffic service levels, the City shall require the preparation of traffic impact analyses at the sole cost expense of the developer for developments with 20 or more lots or units.</p>	<p>If deemed appropriate, an initial study will be prepared to determine the necessity for a traffic impact analysis for any development proposing 20 or more lots or units.</p>
<p><b>III.A.9.</b> The City shall require street designs consistent with principles of interconnected network path design. The City shall insure that there are multiple, local-street access points to all developments throughout the city. The City shall insure that direct access to all local streets from primary and secondary collectors is maintained. At the discretion of the City, alleys may be used in conjunction with the overall street layout.</p>	<p>The project will result in a modification of the existing street grid but it is considered a minor modification since East Abbey Street will still have ingress and egress ability, vehicles traveling east can drive through and vehicles traveling west will still be able to reach Railroad Avenue via Elliot Street.</p>
<p><b>III.A.10.</b> Street designs should promote pedestrian and bicycle travel and should emphasize safety over travel speed and capacity. Collector streets should not be used as separators of neighborhoods.</p>	<p>The street realignment design will not in any way restrict pedestrian and bicycle travel. Non-vehicle access will be improved with the addition of new sidewalks and bicycle lanes.</p>
<p><b>III.A.12.</b> The City shall encourage the use</p>	<p>The project is consistent with the</p>

<p>of curb corner radii that slow traffic turning movements and minimize pedestrian crosswalk lengths, but are consistent with fire truck turning needs.</p>	<p>requirements and standards of the Winters Fire Department.</p>
<p><b>III.A .13.</b> On-street truck parking shall be prohibited where such parking restricts adequate sight distances or otherwise poses a potentially hazardous situation.</p>	<p>The project does not include areas for truck parking and the 30 additional parking spaces provided are not sized to accommodate truck parking.</p>
<p><b>III.A.14</b> Industrial and commercial development shall be planned so that truck access through residential areas is avoided.</p>	<p>The project will not alter existing truck routes, nor create the necessity for new truck routes through residential areas.</p>
<p><b>III.A.15.</b> The City shall ensure through a combination of traffic impact fees and other funding mechanisms that new development pays its share of the costs of circulation improvements.</p>	<p>Upon approval of any new development, project conditions of approval shall ensure that new development pays its share of the costs of circulation improvements.</p>
<p><b>III.F.1</b> The City shall require provision of adequate off-street parking in conjunction with all new developments. To the extent possible, parking shall be located behind buildings, out of view from the street. When it is not possible for parking lots to be placed behind buildings, the City shall require screening to mitigate the visual impact of the lots while providing for continued police surveillance. As much as possible, parking lots should not be located at intersections.</p>	<p>The project will in-effect create an off-street public parking area to accommodate future development. The parking area will be set back from the intersection of Abbey Street and Railroad Avenue.</p>
<p><b>III.G.1</b> The City shall maintain a safe and convenient system of pedestrian and bicycle routes that encourages walking or bicycling as an alternative to driving. The pedestrian bicycle system shall connect all residential areas, schools, and shopping and employment areas in the city. The bicycle system shall favor on-street bike lanes over separated bike paths. New development shall be required to pay its share of the costs for development and maintenance of this system.</p>	<p>The project will not effect the existing pedestrian and bicycle routes. The creation of the parking area will also promote pedestrian activity to the Central Business District.</p>
<p><b>III.G.6</b> The City shall require inclusion of bicycle parking facilities at all new major public and quasi-public facilities and commercial and employment sites. Major employers shall be encouraged to provide showers and lockers in their facilities to</p>	<p>In accordance with the Zoning Code, the inclusion of bicycle and locker facilities will be included as a requirement for all new development as a condition of project approval.</p>

encourage biking.	
<b>Public Facilities and Services</b>	
<b>IV.A.1</b> The City shall ensure, insofar as possible, that public facilities and services are developed and operational as they are needed to serve new development.	Adequate operational public services are existing at the site to accommodate new development.
<b>IV.G.1.</b> The City shall encourage the Fire Protection District to maintain an overall fire insurance (ISO) rating of five or better for the city of Winters, but in no event should the ISO rating be allowed to fall below 6. The goal for average response time for Priority 1 (emergency) calls should be five minutes.	The project will be designed in accordance with the requirements of the Winters Fire Department. According to the Fire Department, the project will not effect the response times for Priority 1 emergency services.
<b>Natural Resources</b>	
<b>VI.C.3.</b> Unless there are overriding considerations as defined in the California Environmental Quality Act, the City shall not approve any project that would cause significant unmitigatable impacts on rare, threatened, or endangered wildlife or plant species.	The project is determined to be Categorical Exempt from any CEQA analysis, meaning no unmitigatable impacts are anticipated on rare, threatened, or endangered wildlife or plant species.
<b>VI.C.9.</b> Large, older and historically-significant trees should not be removed unless they are diseased or represent an unavoidable obstacle to development. Development should be designed and constructed to avoid adverse impacts on such trees.	The project description does not include the removal of any existing trees.
<b>VI.E.6.</b> The City shall require for both public and private projects that construction-related dust be minimized. Larger projects that create a potential for generating a significant amount of construction-related dust shall be required to include dust control measures as part of their construction mitigation plans.	The project shall conform to the standard specifications related to earthwork contained in the City Public Works Improvement Standards Section 12-2.