



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, September 2, 2008
7:30 p.m.
AGENDA

Members of the City Council

*Michael Martin, Mayor
Woody Fridae, Mayor Pro Tempore
Harold Anderson
Cecilia Aguilar-Curry
Tom Stone*

*John W. Donlevy, Jr., City Manager
John Wallace, City Attorney
Nanci Mills, City Clerk*

PLEASE NOTE – The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Mayor or Councilmembers. Public comments time may be limited and speakers will be asked to state their name.

Roll Call

Pledge of Allegiance

Approval of Agenda

PUBLIC COMMENTS

At this time, any member of the public may address the City Council on matters, which are not listed on this agenda. Citizens should reserve their comments for matter listed on this agenda at the time the item is considered by the Council. An exception is made for members of the public for whom it would create a hardship to stay until their item is heard. Those individuals may address the item after the public has spoken on issues that are not listed on the agenda. Presentations may be limited to accommodate all speakers within the time available. Public comments may also be continued to later in the meeting should the time allotted for public comment expire.

CONSENT CALENDAR

All matters listed under the consent calendar are considered routine and non-controversial, require no discussion and are expected to have unanimous Council support and may be enacted by the City Council in one motion in the form listed below. There will be no separate discussion of these items. However, before the City Council votes on the motion to adopt, members of the City Council, staff, or the public may request that specific items be removed from

the Consent Calendar for separate discussion and action. Items(s) removed will be discussed later in the meeting as time permits.

- A. Minutes of a Regular Meeting of the Winters City Council Held on Tuesday, August 19, 2008 meeting of the Winters City Council (pp 1-4)
- B. Request for street closure on East Main Street between Railroad Avenue and Elliott Street for Festival de la Comunidad/Community Festival on Sunday, Sept. 28, from 1-8 p.m. (pp 5-7)
- C. Update of bid offering for slurry seal coating of City streets (pp 8-11)
- D. RESOLUTION 2008-41, A Resolution of the City Council of the City of Winters establishing Environmentally Preferable Purchasing and Practices for the City of Winters (pp 12-14)

PRESENTATIONS

Proclamation in Commemoration of UC Davis' 100 Year Centennial
(pp 15)

DISCUSSION ITEMS

- 1. Hold a Public Hearing to consider final action on the Proposed Storm Drainage Master Plan Update; Adoption of a CEQA Negative Declaration for the project; Adoption of the Moody Slough Sub-basin Drainage Report and the Putah Creek/Dry Creek Sub-basins Drainage Report, and together these two drainage reports constitute the 2008 Winters Storm Drainage Master Plan, and will amend and supersede the 1992 Storm Drainage Master Plan; Adoption of the Moody Slough and Putah Creek/Dry Creek Sub-basins Storm Drainage Cost Allocation Report, establishing cost burdens for storm drainage development fees; Amendment of the General Plan to add new policies to the Land Use Element and the Public Facilities and Services Element; and Direction to revise and finalize the Flood Overlay Area Storm Drainage Development Impact Fee Nexus Study establishing storm drainage development fees (pp 16-27)
- 2. Hold a Joint Public Hearing Between the City Council and the Community Development Agency (CDA) to Consider Disposition and Development Agreement with Monticello Investors LLC for the Disposition and Development of CDA Property and certain Right-of-Way Property at Railroad Avenue Between Main and Abbey Streets (pp 28-151)
- 3. Hold a Public Hearing regarding the Valadez General Plan Amendment and Rezone, Application #2007-01-GPA; Adopt the

- Draft Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; Approve a General Plan Amendment that redesignates APN 003-391-05 from Recreation and Parks (RP) to Medium Density Residential (MR); and Approve a Zoning Ordinance Amendment that rezones APN 003-391-05 from Parks and Recreation (P-R) to Single-Family Residential (R-2) (pp152-219)
4. Choice of Sign Designs at Four City Parks (pp 220-225)
 5. Major Projects for 2008-09 - A review of major projects occurring within the City to include facilities, water, sewer, creek and street projects (pp 226-232)
 6. Swimming Pool Update (pp 233-235)
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COMMUNITY DEVELOPMENT AGENCY

1. Letter of Protest submitted by C&C Construction regarding the Bid Award to Maxistone, Inc. dba: Maxicrete, Inc. for the Downtown Pedestrian Improvement Project, Phase 1, Project 06-07 (pp 236-256)
 2. Joint Public Hearing Between the City Council and the Community Development Agency (CDA) to Consider Disposition and Development Agreement with Monticello Investors LLC for the Disposition and Development of CDA Property and certain Right-of-Way Property at Railroad Avenue Between Main and Abbey Streets (pp 257-265)
 3. Public Hearing to Consider Adopting the Winters Community Development Project Implementation Plan for Fiscal Years 2008/2009 through 2012/2013 (pp 266-314)
 4. Major Projects for 2008-09 - A review of major projects occurring within the CDA Downtown Project Area (pp 315-316)
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CITY MANAGER REPORT

COUNCIL/STAFF COMMENTS

INFORMATION ONLY

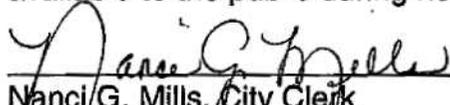
1. Hispanic Advisory Committee Update of Activities (pp 317-319)

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the September 2, 2008, regular meeting of the Winters City Council was personally delivered to

each Councilmember's mail boxes in City Hall and posted on the outside public bulletin board at City Hall, 318 First Street on August 28, 2008, and made available to the public during normal business hours.


Nanci G. Mills, City Clerk

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General Notes: Meeting facilities are accessible to persons with disabilities. To arrange aid or services to modify or accommodate persons with disability to participate in a public meeting, contact the City Clerk.

Staff recommendations are guidelines to the City Council. On any item, the Council may take action, which varies from that recommended by staff.

The city does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.

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Winters Library – 201 First Street

City Clerk's Office – City Hall – 318 First Street

During Council meetings – Right side as you enter the Council Chambers

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Wednesday at 10:00 a.m.

Videotapes of City Council meetings are available for review at the Winters Branch of the Yolo County Library.



Minutes of the Regular Meeting
of the Winters City Council
Held on Tuesday, August 19, 2008

Mayor Michael Martin called the meeting to order at 7:30 p.m.

Those present were Council Members Cecilia Aguiar-Curry, Harold Anderson, Woody Fridae, Tom Stone and Mayor Martin. Also present were City Manager John W. Donlevy, Jr., City Attorney John Wallace and Community Development Director Nelia Dyer.

The Pledge of Allegiance was led by Dave

Approval of Agenda: Council Member Fridae made a motion to approve the agenda with no changes. Seconded by Council Member Stone. Motion carried unanimously.

PUBLIC COMMENTS

Dion Parks, 717 Hemenway, spoke of his wariness of the Safe Routes to School Project, stating he believed that the plan presented to him was different than the plan that had been approved. Asa Utterback of Ponticello Enterprises indicated there had been a change regarding the graded channel within the sidewalk. A continuous flow line was present so the graded channel was not needed, adding this was a more desirable design and less expensive. Council Member Stone recognized that the residents on Hemenway are concerned about overflow and Council Member Anderson asked if a standard slope of 1/4% was being used. Asa Utterback confirmed a slope of 1/4%, which meets the standard. Mayor Martin asked Asa to speak with the residents who were present to answer any questions they might have about the sidewalk construction. Council Member Aguiar-Curry recommended that in the future residents be made aware of any changes to an approved project. Council Member Fridae also requested that the Mayor and Council Members be notified via e-mail of any changes to an approved project.

CONSENT CALENDAR

- A. Minutes of a Special Joint Meeting and Workshop of the Winters City Council and the Winters Planning Commission Held on Tuesday, July 29, 2008

- B. Minutes of a Regular Meeting of the Winters City Council Held on Tuesday, August 5, 2008
- C. Claim Against the City of Winters -- Valerio
- D. Claim Against the City of Winters -- Mejia

City Manager Donlevy gave a brief overview. Council Member Aguiar-Curry made a motion to approve the consent items. Seconded by Council Member Fridae. Motion carried unanimously.

PRESENTATIONS

Kurt Balasek of the Water Resource Association (WRA) gave an informational presentation including the WRA's organizational process, early and recent WRA accomplishments, an overview of the recent Integrated Regional Water Management Process (IRWMP), the IRWMP's foundational and integrated actions and current and future priorities.

City Manager Donlevy requested the Community Development Agency be opened at this time to address the single discussion item.

Agency Director Fridae and Agency Member Anderson stepped down due to a possible conflict of interest.

Agency Member Martin opened the meeting of the Community Development Agency at 8:28 p.m.

COMMUNITY DEVELOPMENT AGENCY - DISCUSSION ITEM

1. Bid Award Downtown Pedestrian Improvement Project--Phase I

City Manager Donlevy gave an overview, indicating that of the six bids received, Maxistone, Inc. dba: Maxicrete, Inc. submitted the lowest bid, and was the only bid below the Engineer's Estimate. City Manager Donlevy did cite an irregularity in Maxicrete's bid, but after review by legal staff it was determined that the irregularity would not have an impact or change the award of the bid. City Manager Donlevy requested the Community Development Agency award the contract to Maxistone, Inc. dba: Maxicrete, Inc. and authorize the City Manager to execute the contract on the Agency's behalf.

Agency Member Martin made a motion to waive the irregularity in the bid submitted by Maxicrete, Inc. for construction of the subject project as a minor

irregularity and accept Maxicrete's bid, award the construction contract for the Downtown Streetscape Improvement Project Phase I, Project 06-07, to Maxistone, Inc. dba: Maxicrete, Inc. of Fairfield in the amount of \$863,762.80, authorize expenditures in the amount of \$921,000, and authorize the City Manager to execute the construction contract on the City's behalf, and to authorize the City Manager to execute a consultant contract for inspection services with an outside consulting service up to the amount of \$70,000 on the City's behalf. Seconded by Agency Member Aguiar-Curry. Motion carried unanimously 3-0, with Agency Director Fridae and Agency Member Anderson absent.

Agency Member Martin closed the meeting of the Community Development Agency at 8:37 p.m.

Agency Director Fridae and Agency Member Anderson returned to their seats at this time.

CITY COUNCIL - DISCUSSION ITEMS

1. Review Councilmember Liaison Assignments

The 2008/2009 Liaison & Committee Assignments were reviewed by City Manager Donlevy and Council Members. All those present were in agreement of the changes made.

2. Lease of Halau Hula O Lei Hali'a Dance Studio

Council Members Anderson and Fridae stepped down due to a possible conflict of interest.

City Manager Donlevy gave an overview of the potential lease of 305 First Street, listing the existing as well as potential revenue sources. In addition to the uses outlined in the staff report, the City would also utilize this space for business, social and well as City-related events.

Council Member Aguiar-Curry made a motion to authorize the lease of the space at 305 First Street. Seconded by Council Member Stone. Motion carried unanimously 3-0, with Council Members Anderson and Fridae absent.

CITY MANAGER REPORT: City Manager Donlevy introduced Nelia Dyer, the new Community Development Director, who comes to Winters from Folsom at a good time. Mayor Martin welcomed Nelia to Winters.

COUNCIL/STAFF COMMENTS:

Council Member Anderson will be attending a SACOG board meeting where a significant piece of legislature, the Steinberg bill, is being endorsed.

Council Member Fridae invited those present to an informal gathering at his home tomorrow night from 5:30-7:00 p.m. to meet and talk with Democratic Representative Mike Thompson. Also, the residents who have been vocal about the tree removal on Hemenway Street have legitimate concerns and have a right to speak their minds. He was pleased that some of the trees were not cut down as originally planned and believed the end result looked better than he thought it would.

Council Member Stone reminded everyone of the Chamber of Commerce's Earthquake Festival scheduled for Friday, August 22. There have been \$2,000 - \$3,000 more in sponsors and booths over last year. The Chamber will be selling beer and Berryessa Gap wine at the event.

Council Member Aguiar-Curry indicated the Community Festival is coming along, which has been scheduled for Sunday, September 28 at Rotary Park from 2:00 - 7:00p.m., where there will be a carnitas cook-off, bands, music, kids games and much more. For a \$50 entry fee, 100 pounds of meat will be provided to those who wish to enter the cook-off.

Mayor Martin attended the Yolo County Fair and spoke with a PG&E representative, who would like to attend the Earthquake Festival and the Community Festival and offer trees to residents at no cost in order to provide shade. It was confirmed that the type of trees to be given away are included on the City's Master Tree List.

INFORMATION ONLY: None

EXECUTIVE SESSION: None

ADJOURNMENT:

Mayor Martin adjourned the meeting at 9:32 p.m.

Michael Martin, MAYOR

Attest:

Nanci G. Mills, City Clerk



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members

DATE: Sept. 2, 2008

THROUGH: John W. Donlevy, Jr., City Manager

FROM: Dawn Van Dyke, Management Analyst/Grant Writer 

SUBJECT: Request for street closure on East Main Street between Railroad Avenue and Elliott Street for Festival de la Comunidad/Community Festival on Sunday, Sept. 28, from 1-8 p.m.

RECOMMENDATION: That the City Council approve the request for street closure.

BACKGROUND: The Winters Hispanic Advisory Committee is planning the second annual festival: Festival de la Comunidad/Community Festival, as an element of outreach to the Winters community. The festival will be held from 2-7 p.m. in Rotary Park. Music, family activities, performances and a carnitas cook off are planned. In order to allow for maximum flexibility for the event, the committee is requesting closure of East Main Street from Railroad Avenue to Elliott Street, from 1-8 p.m.

FISCAL IMPACT: Possible impact to businesses on the north side of East Main Street, but could be offset by influx of visitors to the area.

ATTACHMENTS: Street closure request forms.



City of Winters Request for Street Closure

This application is for citizens or groups that have occasion to request that streets be temporarily closed for such things as bicycle races, running contests, block parties and other such events requiring the re-routing of traffic. For a parade or amplified sound an additional permit is required.

A request to close streets shall be filed with the Police and Public Works Departments at least ten (10) business days prior to the date the street would be closed.

There shall be no closure of the following streets without Council approval:

1. Main Street
2. Railroad Street
3. Grant Avenue
4. Valley Oak Drive
5. Abbey Street

Request to close these streets shall be processed in much the same manner except that the request shall be submitted to the City Council by the Police Department. Requests to close the streets herein listed shall be submitted at least thirty (30) business days prior to the street closure.

Requests for street closures that are not submitted by the minimum time lines may be granted only by the Winters City Council.

Name: <u>Dawn Van Dyke</u>	Organization: <u>Hispanic Advisory Committee</u>
Address: <u>318 First St.</u>	Mailing Address: <u>Same</u>
Telephone: <u>4910 x108</u>	Today's Date: <u>8-22-08</u>
Streets Requested: <u>East Main St. between Railroad Ave and Elliot Street</u>	
Date of Street Closure: <u>Sept 29, 2008</u>	Time of Street Closure: <u>1-8 pm</u>
Description of Activity: <u>Hispanic Advisory Committee Festival de la Comunidad / Community Festival</u>	
Services Requested of City: <u>City sponsored event</u>	
<p>APPROVED: <u>[Signature]</u> Police Department <u>[Signature]</u> Public Works Department</p>	



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council members

DATE September 2, 2008

THROUGH: John W. Donlevy, Jr., City Manager 

FROM: Elliot Landes, Associate

SUBJECT: Update of bid offering for slurry seal coating of selected streets.

PROJECT and BUDGET:

Staff is about to offer for bids the slurry seal treatment of 30% of the city's streets. Council approved this job at the April 15, 2008 meeting, in resolution 2008-15. The city now has the funds in hand for this project.

Slurry seal is a coating of oil and small aggregate. It is inexpensive and widely recommended as an extremely cost-effective maintenance procedure. It typically adds five to seven years of life to street surfaces that are seven to 10 years of age.

The treatment will be used on five areas of town, with street surfaces seven to 10 years old. The list of streets is attached below.

The total area is 140,000 square yards. Based on City Engineer Asa Utterback's analysis, the City proposes to:

- Use \$108,000 for course leveling and spot repairs for streets in the designated areas that need it;
- Use \$270,000 to slurry seal the bulk of the designated areas, including the areas that received spot repairs and course leveling;
- Use \$22,000 for project management and overhead.

Utterback's analysis is attached.

FISCAL IMPACT: None: costs to be paid out of Prop. 1B funds.

ATTACHMENTS: Streets list, engineer's analysis and street map.

Streets list:

Area	Street	Part
1	Quail Pl. Southdown Ct. Suffolk Pl. Southdown T. Hampshire Ct. Columbia Way Dorset Ct. Kennedy Dr. Eisenhower Way Hoover St. Roosevelt Ave. Taft Ct.	
2	Main St. Ivy Ct. Lupine Way Aster Way Ivy Loop Snapdragon St. Ficus Way Foxglove Circle Cemetary Dr. Luis Pl. Plum Pl. Pear Pl. Apricot Ave.	North of Grant ave. South of orchard
3	Niemann St. Village Circle Berryessa Ct. Hillview Lane Almeria Ave. Martinez Way Malaga Way	
4	Walnut Lane Colby Lane Almond Lane Broadview Lane Orchard Lane East Baker	
5	st. White Oak Lane East Main St. Madrone Ct. Creedside Way Toyon Lane Blue Oak Lane Manzanita Way Redbud Lane Maple Lane Wildrose Lane White Oak Lane	East of Morgan East of Morgan

Analysis:

Overview Data for Prop 1B Project scoping

City Manager directed staff to use all \$400K on the seal coat preventative maintenance project...to avoid focusing all of the work in 1 or 2 areas (spread the wealth across the city, so to speak)...(see the highlighted map provided by John D)

Available Funds \$
= 400,000

Funds Assigned to Seal \$
Coat Work = 400,000

Average Seal
Coat Width = 36

Average Unit Costs for:

Slurry Seal Raw =	\$ 0.25	per SF
Slurry Seal Project =	\$ 0.30	per SF
Cape Seal (Conventional) =	\$ 0.65	per SF
1" Leveling Course =	\$ 0.80	per SF

Overhead to develop & manage \$
 Seal Coat Project = 22,000
 \$
 Funds Available for Construction = 378,000

Available \$\$ does this amount of
 Slurry Seal : 1,260,000 SF
 Same as above in SY : 140,000 SY
 Equivalent of above in LF of road : 35,000 LF of road
 Equivalent of above in miles : 6.63 miles

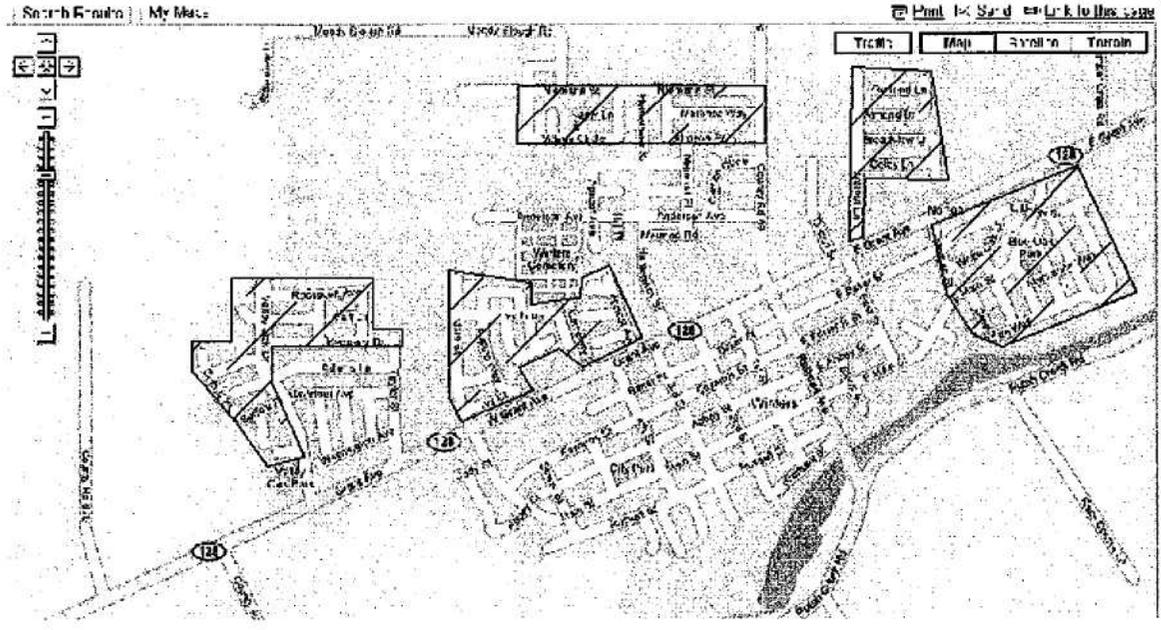
Since some priority streets may need more intensive work, revise target to cover lesser amount of area and use remainder for more serious rehab.

Limit target slurry seal list to :	100,000	SY	4.73	miles of road
	or		
		or	25,000	LF of road

Above slurry seal amount will \$
 commit : 270,000.00
 \$
 ...leaving : 108,000.00 available for other treatments

The above amount of : \$ 108,000.00
 \$
 at a unit cost of : 1.45
 will cover : 8,280 SY
 ...or : 2,100 LF of road
 ...a.k.a. : 0.40 miles of road

Map of street areas:





**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members

DATE: Sept. 2, 2008

THROUGH: John W. Donlevy, Jr., City Manager 

FROM: Dawn Van Dyke, Management Analyst/Grant Writer 

Carol Scianna, Management Analyst

SUBJECT: Resolution 2008-41-- A Resolution of the City Council of the City of Winters establishing Environmentally Preferable Purchasing and Practices for the City of Winters.

RECOMMENDATION: That the City Council adopt Resolution 2008-41, establishing Environmentally Preferable Purchasing and Practices (EPPP) for the City of Winters.

BACKGROUND: The City of Winters has launched its EARTH Initiative, addressing environmental challenges in the areas of Energy, Agriculture, Recycling and conservation, Transportation alternatives and Habitat. One element of the EARTH Initiative included community workshops where priorities for addressing the challenges were established. In the area of Recycling and conservation, one of the top priorities was the establishment of policies to reduce waste through the use of recycled/low impact and compostable materials wherever feasible.

In addition, state and federal funding sources are revising their policies to include the requirement of a locally adopted EPPP in order to qualify for funding.

Staff has researched practices and policies as outlined by the State of California and incorporated several guidelines for use within the City of Winters and as it works with outside sources.

FISCAL IMPACT: As the EPPP is intended to encourage and support rather than mandate purchasing practices, no fiscal impact is anticipated.

ATTACHMENTS: Resolution 2008-41

RESOLUTION 2008-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS ESTABLISHING ENVIRONMENTALLY PREFERABLE PURCHASING AND PRACTICES FOR THE CITY OF WINTERS

WHEREAS The City of Winters has established its own program to bring attention to climate change issues entitled the **E.A.R.T.H.** Initiative, which seeks to address challenges in each of five areas: Energy, Agriculture, Recycling and conservation, Transportation alternatives and Habitat; and

WHEREAS the City of Winters has adopted the Yolo County Climate Change Compact; and

WHEREAS the City of Winters has already adopted several local recycling programs including single-stream recycling, battery recycling and used oil recycling; and

WHEREAS waste reduction and recycled content product (RCP) procurement practices are an important step in helping to reduce waste and the amount of material sent to landfills; and

WHEREAS the City of Winters understands that purchasing policies can also have a beneficial effect on the environment and human health; and

WHEREAS features of environmentally preferable purchasing and practices include but are not limited to: energy efficiency, durability, recycled content, low/zero air emissions and hazardous substances, water efficiency, easy/non-hazardous maintenance, low life-cycle cost and packaging, distribution efficiency, responsible manufacturing, and end of life management to keep items out of landfills;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Winters establishes the following Environmentally Preferable Purchasing Practices for the City of Winters:

- Work to create an organizational culture that supports waste reduction and recycled content product (RCP) procurement practices in all aspects of its business operations wherever feasible.
- Show leadership in waste reduction and procurement practices by bringing forward ideas to improve internal business functions as they relate to the environment and human health, and, wherever feasible, implementing and continuing those ideas having the greatest potential for achieving a positive impact.

- Optimize the procurement of recycled-content products. If price, quality and availability are comparable, the City shall strive to purchase recycled-content products rather than non-recycled content products. Additionally, wherever feasible, the City shall seek opportunities to promote and facilitate the purchase of recycled content products in internal business functions and within the community.
- Wherever feasible, practice waste reduction in all procurement decisions, purchasing products that are recyclable, reusable and/or durable.
- Wherever feasible, optimize waste reduction with suppliers, contractors and customers by encouraging service providers, building maintenance or other outside sources used by the City to use recycled content, recyclable or reusable products or practice waste reduction measures.

PASSED AND ADOPTED by the City Council, City of Winters, this 2nd day of September, 2008 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Michael Martin, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK



**A PROCLAMATION BY THE CITY COUNCIL OF THE CITY OF WINTERS
TO COMMEMORATE UC DAVIS' CENTENNIAL**

Whereas, In October of 1908 the first students arrived on the campus of the newly established University Farm adjacent to the township of Davis to take courses in agriculture; and

Whereas, The University Farm has, over the past 100 years, grown and evolved to become the campus of a major research university, the University of California, Davis; and

Whereas, For a century the University of California, Davis has made innumerable contributions to the arts, languages, and sciences, and during that time has provided a quality education to hundreds of thousands of students, including many from the local region; and

Whereas, The university's growth, stature and achievements are a source of great and continuing pride for the entire Sacramento region and the State of California; and

Whereas, The university continues to contribute, consistent with its mission as a land grant institution, to the quality of life, the support of commerce, expansion of medical services, and enhancement and protection of the natural environment; and

Whereas, UC Davis faculty include 21 members of the National Academy of Sciences, 13 members of the American Academy of Arts and Sciences, seven members of the National Academy of Engineering, five members of the Institute of Medicine, three members of the Royal Society, two members of the American Academy of Arts and Letters, two Pulitzer Prize winners, and two MacArthur Fellows; and

Whereas, UC Davis' contributes more than \$3 billion each year to the California economy, and is uniquely positioned to continue pioneering new advances in such critical fields as energy research, climate change, medicine, veterinary science, law, engineering, agriculture, enology and viticulture; and

Whereas, UC Davis has invited the entire region to celebrate the occasion of its Centennial and to participate in the many activities planned to commemorate this auspicious date over the course of the coming year;

Therefore, be it resolved, that the City of Winters does hereby congratulate UC Davis on the anniversary of its Centennial, and expresses its best wishes and hopes for the university's continued success, and;

Therefore, be it further resolved, that the City of Winters does commend UC Davis for a century-long tradition of providing a quality education to the youth of California and for fostering productive and vital partnerships with the region, state, nation and world.

PASSED AND ADOPTED this 2nd day of September 2008.

Council Member Cecilla Aguiar-Curry

Council Member Woody Fridae

Council Member Harold Anderson

Council Member Tom Stone

Mayor Michael Martin

City Manager John W. Donlevy, Jr.

ATTEST: City Clerk Nanci G. Mills



CITY COUNCIL STAFF REPORT
September 2, 2008 Meeting

TO: Honorable Mayor and Councilmembers
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: Heidi Tschudin, Contract Planner
SUBJECT: Adoption of 2008 Winters Storm Drainage Master Plan

RECOMMENDATION

That the City Council take the following actions:

- Approval of Resolution No. 2008-35 finalizing and approving the Negative Declaration for the project.
- Approval of Resolution No. 2008-36 adopting the "Moody Slough Subbasin Drainage Report" (August 2005) and the "Putah Creek/Dry Creek Subbasins Drainage Report" (August 2005) together as the 2008 Winters Storm Drainage Master Plan thereby amending and superseding the 1992 Storm Drainage Master Plan.
- Approval of Resolution No. 2008-36 adopting the "Moody Slough and Putah Creek/Dry Creek Subbasins Storm Drainage Cost Allocation Report" (August 2005)" establishing cost burdens for the storm drainage development fees.
- Approval of Resolution No. 208-36 amending the General Plan to add the following new policies to the Land Use Element and the Public Facilities and Services Element:

Policy I.A.12: At such time as the City Council determines that Policies I.A.9 and IV.D.4 have been satisfied, including approval of a fee schedule or financing program, the 964-acre FOZ area may only be developed as provided in Policies I.A.13 through I.A.15, and Policies IV.D.6 and IV.D.7.

Policy I.A.13: As a way to improve the citywide job/housing balance, new job-producing non-residential development may develop within the FOZ, consistent with General Plan and zoning land use designations.

Policy I.A.14: New residential development may only occur in the FOZ area south of Moody Slough if

it is determined to be "infill" development which is characterized by all of the following:

- Contiguous to other existing development.
- Consistent with the General Plan and zoning land use designations.
- Supported by a finding that the project is necessary because it would specifically provide critical roadway and infrastructure connections, not otherwise feasibly achievable, as determined by the City.

Residential projects which advance the City's goals and policies for affordable housing shall have priority.

Policy I.A.15: With the exception of housing incidental to the non-residential development (e.g. manager quarters; watchman quarters; etc.) new residential development is not allowed north of Moody Slough Road until such time as all of the following occurs:

- The citywide jobs/housing balance has significantly improved as determined by the City Council. This shall require demonstration of an acceptable match between housing prices and job wages, as well as a balance between the number of jobs and the number of houses. Licensed home occupations may be included.
- The storm drainage improvements specified in the updated Storm Drainage Master Plan have appropriate CEQA clearance thus allowing construction to commence, and until a time table for construction has been developed and approved by Council with a finding that the construction schedule will result in timely operation of the ultimate facilities in a manner that avoids drainage and or flooding impacts from development that would be allowed to proceed.
- The area is subject to a Specific Plan process consistent with State law.

Policy IV.D.6: All development allowed to proceed within the General Plan flood overlay zone, in advance of implementation of storm drainage improvements specified in the updated Storm Drainage Master Plan, must address interim drainage and flooding requirements in a manner found acceptable by the City Engineer, and in a manner that furthers and is not inconsistent with the updated Storm Drainage Master Plan. To the extent feasible as determined by the City, interim improvements shall implement logical component parts of the storm drainage improvements identified in the updated Storm Drainage Master Plan.

Interim drainage/flooding solutions that do not implement logical components parts of the storm drainage improvements identified in the updated Storm Drainage Master Plan, or would be otherwise inconsistent with implementation of the update Storm Drainage Master Plan, can only be approved if consistent with the water quality treatment/design criteria and standards criteria of the updated Storm Drainage Master Plan and the City shall provide no reimbursement or credit for said work..

Policy IV.D.7: Notwithstanding any interim improvements constructed pursuant to Policy IV.D.6, all projects citywide and within the FOZ shall pay a Storm Drainage Master Plan Implementation Fee that represents a fair share towards implementation of the improvements specified in the updated Storm Drainage Master Plan. This fee shall be due prior to issuance of the building permit. To the extent that all or a component part of the Storm Drainage Master Plan is constructed by a project approved to move forward, credit toward the fee will be provided.

- Direct staff to revise and finalize the "Flood Overlay Area Storm Drainage Development Impact Fee Nexus Study" (November 4, 2005) in order to establish the storm drainage development fees. The revised final study will be brought back to the Council along with an amendment to the City's fee schedule in order to implement the new fees.

SUMMARY OF PROJECT

The Storm Drainage Master Plan Update (SDMPU) project is comprised of the following:

- Adoption of the "Moody Slough Subbasin Drainage Report" (August 2005) and the "Putah Creek/Dry Creek Subbasins Drainage Report" (August 2005). Together these two drainage reports constitute the 2008 Winters Storm Drainage Master Plan, and will amend and supersede the 1992 Storm Drainage Master Plan.

The two Drainage Reports do the following: 1) evaluate existing drainage and flooding conditions within their respective drainage subbasins; 2) identify regulatory agencies, applicable policies and guidelines, permitting requirements; 3) develop storm drainage and surface water quality treatment design criteria and standards; 4) identify cumulative drainage and flooding impacts for each subbasin, associated with ultimate development in accordance with the City's General Plan; and 5) identify phased drainage master plan facilities to mitigate increases to existing flooding problems and accommodate planned development within each subbasin.

The objective of the Drainage Reports is to identify cost-effective "backbone" drainage facilities that would provide protection to planned development and prevent adverse impacts on surrounding lands. These proposed facilities are identified below:

Within the Moody Slough Subbasin:

Putah Creek Diversion Channel – Excavated diversion channel/canal with maximum conveyance capacity of 1,150 cfs that would route overflow from proposed Moody Slough detention/water quality ponds to Putah Creek. This diversion channel/canal will also serve as a flood control facility for the Putah Creek/Dry creek subbasins by receiving overland releases as well as serving as a collection facility for overflow draining from water quality facilities. Assume acquisition of approximately 10 acres for this facility including the channel/canal, maintenance roads, landscaping, and fencing on each side. A concrete box culvert crossing under Grant Avenue and an outfall structure into Putah Creek will be required.

Moody Slough Detention/Water Quality Ponds – Five excavated ponds, assumed to total approximately 71 acres, connected via an open channel/canal (totaling 7 acres) into a chain that directs drainage into the proposed diversion channel/canal. These ponds are depicted in Figure 7 of the report, and would be generally located north of Moody Slough Road and south of CR 32A.

Runoff Corridors – Three excavated "runoff corridors" (shallow channels/canals) for draining subbasin areas in the northwest that are outside the urban limit line but drain through the plan area into the westerlymost proposed detention/water quality pond. Land acquisition costs for the runoff corridors are not included in the report. It is assumed that other existing rights-of-way or easements are in place or that land will be dedicated.

Winters North Drain/Levee – An excavated channel/canal and levee along the northern limit line to direct floodwater from outside of the urban limit line easterly into Moody Slough where it crosses under I-505 in existing culverts. Included is a movable flood barrier that would be installed where the levee meets the frontage road to protect the City from high flows at this location during a flood event. Assume acquisition of approximately 31 acres for the Winters North Drain, Relocated Willow Canal described below, and I-505 floodwall including area for drain, levee, pipeline or open

canal/channel, and future parallel roadway.

Relocated Willow Canal – Construction of a 54-inch pipeline between the Winters North Drain and proposed pond #1, along the northern urban limit. The pipeline would transition to a channel/canal near I-505. Levees and a new road would adjoin the channel/canal.

CR 33 – Overland flow from land to the south would be allowed to flow along CR 33 and discharge directly into the Putah Creek Diversion Channel.

Within the Putah Creek/Dry Creek Subbasins:

Putah Creek Diversion Channel – See description above.

Rancho Arroyo Regional Detention Pond – Modifications to existing pond to accommodate new pump station at pond outlet.

Putah Creek Detention/Water Quality Ponds – Four excavated ponds, assumed to total approximately 8 acres, each with an outlet control weir structure allowing drainage into the proposed diversion channel/canal. These ponds are depicted in Figure 5 of the report, and would be generally located north and south of Grant Avenue (two in each direction) at the east end of town near the I-505 interchange.

Grant Street Interceptor -- Excavated canal with 110 cfs capacity constructed between Broadview Drive and Grant Avenue to capture overland flow north of Grant Avenue and direct it into a proposed 60-inch storm drain that would be constructed parallel to Grant Avenue and would drain into the proposed Putah Creek Diversion Channel. Assume acquisition of one acre for both channel/canal and storm drain.

Additional Storm Drain – Construction of 66-inch storm drain along south face of Grant Avenue between Morgan Street and the southwest detention/water quality pond to capture flow in that area and direct it via the pond and diversion channel/canal, into Putah Creek.

- Adoption of the “Moody Slough and Putah Creek/Dry Creek Subbasins Storm Drainage Cost Allocation Report” (August 2005)” establishing cost burdens for the storm drainage development fees. This report distributes the “fair share” burden for the various improvements based on zones of benefit.

Total costs for improvements in both subbasins are estimated to be \$23,774,925 in 2004/5 dollars. The report identifies eight zones of benefit each with different requirements for storm drainage. Cost is allocated by benefit zone in the Draft Nexus Study discussed below.

- Amendment of the General Plan to add new policies to the Land Use Element and the Public Facilities and Services Element. The proposed new General Plan policies address development controls within the Flood Overlay Zone (FOZ). These policies are recommended because the act of adopting the SDMPU and subsequent fee program will open up 964 acres of previously constrained land to potential development without full funding and a program for implementation of the SDMPU in place. The policies will also clarify priorities for infill and job creation over new housing.

- Direct staff to revise and finalize the "Flood Overlay Area Storm Drainage Development Impact Fee Nexus Study" (November 4, 2005) in order to establish the storm drainage development fees. This draft Study has been circulated in draft form but is not proposed for adoption at this time. Because the draft Study uses input data that has subsequently been updated by the final drainage reports and cost allocation report it will require subsequent revisions after the City takes action on the subject project. The revised final study will be brought back to the Council along with an amendment to the City's fee schedule in order to actually put in place the new fees.

The draft Nexus Study identifies a cost range of \$28,904 per acre for Public/Quasi Public development in Zone 5b on the low end to \$88,041 per acre for Neighborhood Commercial development in Zone 2 on the high end (see Table 1, page 3). These draft fees are in 2004/5 dollars. Later revisions and updates to this draft fee study are expected to result in changes to these per-acre fees.

OVERVIEW OF EXISTING FLOOD OVERLAY ZONE (FOZ)

The General Plan includes a designated Flood Overlay Zone (FOZ) totaling approximately 964 acres that includes ±350 acres within the City's Urban Limit Line (ULL) but outside of the City limits, plus ±614 acres within the City's boundaries. General Plan policies (particularly Policies I.A.9 and IV.D.4) have generally precluded most development in this area from proceeding until such time as a comprehensive solution for storm drainage has been put into place.

Policy I.A.9 - No new development may occur within the flood-overlay area shown in Figure II-1 until a feasibility and design study for a comprehensive solution to the 100-year flooding problem has been completed and a fee schedule has been established or financing program adopted which includes all affected and contributing properties for financing the comprehensive flood control solution.

Policy IV.D.4 - The City, in cooperation with property owners, developers and the Yolo County Flood Control and Water Conservation District shall undertake a feasibility and design study for a comprehensive solution to the flooding problems associated with Chichahominy and Moody Sloughs. The comprehensive solution may include such features as diversion to Putah Creek, diversion under I-505, detention ponds, changes in land use designations, elevating building pads, and structural flood proofing as deemed effective and cost effective. As a condition to any development entitlement approval, all development affected by or contributing to the 100-year flooding problem shall be required to contribute to the financing of the comprehensive flood control solution in an amount that reflects that property's relative contribution to the flooding problem or benefit from the program adopted.

The General Plan EIR contemplated adoption of the subject project, but not construction of specific improvements because at the time those improvements were not known. The General Plan EIR refers to the need for a comprehensive flooding/storm drainage program, but does not provide CEQA clearance for adoption/implementation of such a program or for construction of specific improvements that resolve drainage and flood control issues. The 1992 Storm Drainage Master Plan (which has not been amended or updated since adoption) specifically defers to a future action (which the subject project constitutes) to identify and adopt a comprehensive solution to the 100-year flooding problem.

Adoption of the SDMPU would serve to partially satisfy Policies I.A.9 and IV.D.4 of the General Plan. Under these policies, once a fee schedule or financing program is in place, this will open up the 964-acre FOZ area for potential development. The FOZ area is a significant land mass. Just the 614 acres within the current City limits represents almost 38 percent of the City's total municipal area of 1,630 acres. Based on the General Plan land use designations assigned to the area, acreage within the FOZ could result in the following maximum development yield:

- 2,182 dwelling units
- 512,265 square feet of commercial (retail and office) uses (including potentially some additional residential development as allowed under the General Plan)
- 1.69 million square feet of industrial uses
- 1.91 million square feet of public uses (government, hospital, religious, and schools)
- 212 acres of parks and open space (park, recreation, habitat, and some multi-use retention facilities).

However, only that portion already assumed within the General Plan EIR could potentially proceed in reliance on the General Plan EIR, without triggering the need for further CEQA clearance. The General Plan EIR assumed the following for the FOZ area:

- 1,603 dwelling units
- 293,800 square feet commercial
- 811,400 square feet industrial
- 0 square feet public
- 318.2 acres parks and open space

PROPOSED NEW GENERAL PLAN POLICIES

These proposed new General Plan policies will serve to control growth in the FOZ area until the necessary capital improvements have appropriate CEQA clearance thus allowing construction to commence and/or until a timetable for actual construction has been developed and approved. Additionally, the new policies would control the phasing and direction of growth within the FOZ area, and would give priority to non-residential uses until a better citywide jobs/housing match has been achieved. The effect of the new policies would be to limit growth within the FOZ as shown below in column #3:

<u>1) FOZ Maximum</u>	<u>2) General Plan EIR</u>	<u>3)FOZ Under New GP Policies</u>
2,182 dus	1,603 dus	828 dus
512,265 sf comm.	293,800 sf comm.	512,265 sf comm
1.69 msf Indus	811,400 sf Indus	1.69 msf indus
1.91 msf public	0 sf public	1.91 msf public
212 ac park/OS	318.2 ac park/OS	212 ac park/OS
964.1 total acres	964.1 total acres	516.7 total acres

Therefore, by combining all constraints, the maximum development that could proceed in the FOZ without additional EIR analysis, as a result of this project is as follows:

- 828 dwelling units (maximum under proposed new General Plan policies)
- 293,800 sf commercial (General Plan EIR assumption)
- 811,400 sf industrial (General Plan EIR assumption)
- 0 sf public (General Plan EIR assumption)
- 212 ac parks and open space (FOZ maximum)

ENVIRONMENTAL REVIEW

A CEQA initial study was completed examining the potential for significant environmental impacts as a result of the FOZ development described immediately above. Based on an analysis of available information, the staff concluded that the prior General Plan EIR adequately addressed the potential for environmental impact from this possible development and that there would be no new impacts that would result. Therefore, the staff circulated a draft Negative Declaration on May 12, 2008 for a 30-day review period that began May 14, 2008 and ended June 13, 2008. There were no comments received on this document.

PLANNING COMMISSION

On July 22, 2008 the Planning Commission voted unanimously (6:0 with one absent) to recommend approval of this project to the City Council. There were no comments received on this project and no testimony from the public.

EXHIBITS

Exhibits A through D have been previously distributed. Please contact the City Engineer (Nick Ponticello at 530-668-5883) if additional copies are needed.

A -- Moody Slough Subbasin Drainage Report, Wood Rodgers, August 2005.

B -- Putah Creek/Dry Creek Subbasins Drainage Report, Wood Rodgers, August 2005.

C -- Moody Slough and Putah Creek/Dry Creek Subbasins Storm Drainage Cost Allocation Report, Wood Rodgers, August 2005.

D -- Draft Flood Area Storm Drainage Development Impact Fee Nexus Study, Economic and Planning Systems, Inc, November 4, 2005.

E -- Resolution No. 2008-35 adopting the Negative Declaration

F -- Resolution No. 2008-36 adopting the 2008 Storm Drainage Master Plan and amending the General Plan

**WINTERS CITY COUNCIL
RESOLUTION NO. 2008-35**

**ADOPTING A NEGATIVE DECLARATION PURSUANT
TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
FOR ADOPTION OF THE 2008 WINTERS STORM DRAINAGE MASTER PLAN
(SCH #2008052051)**

WHEREAS, the Winters General Plan was subject to a program-level environmental impact report certified by the City Council on May 19, 1992 (Resolution No. 92-13) certifying the two-volume EIR (SCH#91073080) prepared for the City General Plan and adopting the City General Plan;

WHEREAS, the General Plan EIR assumed a certain amount of growth on then-vacant land within the General Plan area as depicted in Figure 7 (revised, page E&R-56, FEIR, May 8, 1992);

WHEREAS, the development that may proceed as a result of this project falls within the growth assumed in the General Plan and General Plan EIR;

WHEREAS, a CEQA initial study has been completed examining the potential for significant environmental impacts as a result of adoption and implementation of the 2030 Storm Drainage Master Plan. Based on an analysis of available information, the staff has concluded that the prior General Plan EIR adequately addresses the potential for environmental impact from this project related to Program Adoption and Removal of Development Constraints, and that no new impacts that would result. Therefore, the staff has determined that the appropriate CEQA documentation for the proposed project is a Negative Declaration;

WHEREAS, the storm drainage improvements that may proceed as a result of this project will require additional environmental review;

WHEREAS, the subject Negative Declaration utilizes relevant information from the prior EIR, and relies on the EIR findings of fact and statements of overriding considerations where applicable;

WHEREAS, the Negative Declaration was circulated on May 12, 2008 for a 30-day review period that began May 14, 2008 and ended June 13, 2008. There were no comments received on this document;

WHEREAS, the Planning Commission held a public hearing on July 22, 2008, to take final action on the project in the form of a recommendation to the City Council, wherein the opportunity for public testimony was provided;

WHEREAS, no comments or testimony were received and the Planning Commission voted unanimously (6:0:1 absent) to recommend approval; and

WHEREAS, the City Council held a public hearing on September 2, 2008, to take final action on the project wherein the opportunity for public testimony was provided.

NOW, THEREFORE, BE IT RESOLVED that the Winters City Council hereby finds as follows:

1. A Negative Declaration is the appropriate CEQA compliance document.

2. The Negative Declaration has been prepared in compliance with CEQA, the State CEQA Guidelines, and applicable local regulations and is determined to be complete and final.
3. The Negative Declaration reflects the independent judgment and analysis of the Winters City Council.
4. The Winters City Council has considered the Negative Declaration before making a decision on the Ordinance.
5. On the basis of the whole record before the Winters City Council there is no substantial evidence that the project will have a significant effect on the environment.
6. Pursuant to Section 15074(e) of the CEQA Guidelines, this project will not result in a safety hazard or noise problem for persons using area airports or for persons residing or working in the project area.
7. There are no project changes, conditions of approval, or new mitigation measures necessary to avoid significant environmental effects from the project, and therefore, a program for reporting on or monitoring the implementation of these items is not necessary or required.
8. The Winters City Council hereby adopts as "final" the subject Negative Declaration comprised of: the Negative Declaration and the Environmental Checklist and Initial Study.
9. The record of proceedings of the decision on the project (including the prior environmental documentation) is available for public review at the City Community Development Department located at 318 First Street, Winters, CA 95694.
10. A Notice of Determination (NOD) shall be filed with the County Clerk immediately following approval of the project. Appropriate Department of Fish and Game fees shall be paid.

IT IS HEREBY CERTIFIED that the foregoing Resolution No. 2008-35 was duly introduced and legally adopted by the City Council at its regular meeting held on this 2nd day of September 2008, by the following roll call vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

Approved:

Attested:

 Michael Martin, Mayor

 Nanci Mills, Clerk of the Board

Approved As to Form:

 John Wallace, City Attorney

Exhibit 1 -- Negative Declaration (including Environmental Checklist and Initial Study)

**WINTERS CITY COUNCIL
RESOLUTION NO. 2008-36**

**ADOPTING THE 2008 WINTERS STORM DRAINAGE MASTER PLAN
AND AMENDING THE CITY GENERAL PLAN FOR THE FIRST TIME IN 2008**

WHEREAS, the Moody Slough and Putah Creek/Dry Creek Drainage Subbasins include a mix of existing and planned land uses within the City and agricultural land outside of the City, within the unincorporated area of Yolo County.

WHEREAS, the General Plan includes a designated Flood Overlay Zone (FOZ) totaling approximately 964 acres that includes ±350 acres within the City's Urban Limit Line (ULL) but outside of the City limits, plus ±614 acres within the City's boundaries.

WHEREAS, the FOZ is defined as the area affected by or contributing to the City's flood problem and for this reason includes lands that fall both within and outside of the federal 100-year floodplain. The purpose of identifying the FOZ was to ensure the inclusion of those properties in the funding mechanism for improvements to reduce or eliminate the 100-year flood hazard.

WHEREAS, General Plan policies (particularly Policies I.A.9 and IV.D.4) have generally precluded most development in the FOZ from proceeding until such time as a comprehensive solution for storm drainage has been put into place.

WHEREAS, the General Plan EIR refers to the need for a comprehensive flooding/storm drainage program, but does not provide CEQA clearance for adoption/implementation of such a program or for construction of specific improvements that resolve drainage and flood control issues.

WHEREAS, the 1992 Storm Drainage Master Plan (which has not been amended or updated since adoption) specifically defers to a future action (which the subject project constitutes) to identify and adopt a comprehensive solution to the 100-year flooding problem.

WHEREAS, adoption of the 2008 Winters Storm Drainage Master Plan will amend and supersede the 1992 City Storm Drainage Master Plan and will serve to partially satisfy Policies I.A.9 and IV.D.4 of the General Plan, thus potentially opening up the 964-acre FOZ area for potential development without benefit of implementation of the proposed comprehensive drainage improvement.

WHEREAS, the proposed new General Plan policies will serve to control growth in the FOZ area until the necessary capital improvements have appropriate CEQA clearance thus allowing construction to commence and/or until a timetable for actual construction has been developed and approved.

WHEREAS, the new policies would control the phasing and direction of growth within the FOZ area, and would give priority to non-residential uses until a better citywide jobs/housing match has been achieved.

NOW, THEREFORE, BE IT RESOLVED that the Winters City Council hereby finds as follows:

1) The "Moody Slough Subbasin Drainage Report" (August 2005) and the "Putah Creek/Dry Creek Subbasins Drainage Report" (August 2005) together are hereby adopted as the 2008 Winters Storm Drainage Master Plan thereby amending and superseding the 1992 Storm Drainage Master Plan.

2) The "Moody Slough and Putah Creek/Dry Creek Subbasins Storm Drainage Cost Allocation Report" (August 2005)" is hereby adopted establishing cost burdens for the storm drainage development fees.

3) The Winters General Plan is hereby amended to add the following new policies to the Land Use Element and the Public Facilities and Services Element:

Policy I.A.12: At such time as the City Council determines that Policies I.A.9 and IV.D.4 have been satisfied, including approval of a fee schedule or financing program, the 964-acre FOZ area may only be developed as provided in Policies I.A.13 through I.A.15, and Policies IV.D.6 and IV.D.7.

Policy I.A.13: As a way to improve the citywide job/housing balance, new job-producing non-residential development may develop within the FOZ, consistent with General Plan and zoning land use designations.

Policy I.A.14: New residential development may only occur in the FOZ area south of Moody Slough if it is determined to be "infill" development which is characterized by all of the following:

- Contiguous to other existing development.
- Consistent with the General Plan and zoning land use designations.
- Supported by a finding that the project is necessary because it would specifically provide critical roadway and infrastructure connections, not otherwise feasibly achievable, as determined by the City.

Residential projects which advance the City's goals and policies for affordable housing shall have priority.

Policy I.A.15: With the exception of housing incidental to the non-residential development (e.g. manager quarters; watchman quarters; etc.) new residential development is not allowed north of Moody Slough Road until such time as all of the following occurs:

- The citywide jobs/housing balance has significantly improved as determined by the City Council. This shall require demonstration of an acceptable match between housing prices and job wages, as well as a balance between the number of jobs and the number of houses. Licensed home occupations may be included.
- The storm drainage improvements specified in the updated Storm Drainage Master Plan have appropriate CEQA clearance thus allowing construction to commence, and until a time table for construction has been developed and approved by Council with a finding that the construction schedule will result in timely operation of the ultimate facilities in a manner that avoids drainage and or flooding impacts from development that would be allowed to proceed.
- The area is subject to a Specific Plan process consistent with State law.

Policy IV.D.6: All development allowed to proceed within the General Plan flood overlay zone, in advance of implementation of storm drainage improvements specified in the updated Storm Drainage Master Plan, must address interim drainage and flooding requirements in a manner found acceptable by the City Engineer, and in a manner that furthers and is not inconsistent with the updated Storm Drainage Master Plan. To the extent feasible as determined by the City, interim improvements shall implement logical component parts of the storm drainage improvements identified in the updated Storm Drainage Master Plan.

Interim drainage/flooding solutions that do not implement logical components parts of the storm drainage improvements identified in the updated Storm Drainage Master Plan, or would be otherwise inconsistent with implementation of the update Storm Drainage Master Plan, can only be approved if consistent with the water quality treatment/design criteria and standards criteria of the updated Storm Drainage Master Plan and the City shall provide no reimbursement or credit for said work..

Policy IV.D.7: Notwithstanding any interim improvements constructed pursuant to Policy IV.D.6, all projects citywide and within the FOZ shall pay a Storm Drainage Master Plan Implementation Fee that represents a fair share towards implementation of the improvements specified in the updated Storm Drainage Master Plan. This fee shall be due prior to issuance of the building permit. To the extent that all or a component part of the Storm Drainage Master Plan is constructed by a project approved to move forward, credit toward the fee will be provided.

4) The City Engineer is hereby directed to revise and finalize the "Flood Overlay Area Storm Drainage Development Impact Fee Nexus Study" (November 4, 2005) in order to establish the storm drainage development fees. The revised final study will be brought back to the Council along with an amendment to the City's fee schedule in order to implement the new fees.

IT IS HEREBY CERTIFIED that the foregoing Resolution No.2008-36 was duly introduced and legally adopted by the City Council at its regular meeting held on this 2nd day of September 2008, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:

Attested:

Michael Martin, Mayor

Nanci Mills, Clerk of the Board

Approved As to Form:

John Wallace, City Attorney



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE : September 2, 2008
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Cas Ellena, Redevelopment & Economic Development Director
SUBJECT: Joint Public Hearing Between the City Council and the Community Development Agency ("CDA") to Consider Disposition and Development Agreement with Monticello Investors LLC for the Disposition and Development of CDA Property and certain Right-of-Way Property at Railroad Avenue Between Main and Abbey Streets

RECOMMENDATION: Staff recommends the City Council: 1) hold a joint public hearing with the CDA, receive testimony and following the public hearing; 2) approve Resolution No. 2008-39 consenting and agreeing to, and approving and authorizing the execution of the Disposition and Development Agreement ("DDA") with Monticello Investor's LLC ("Developer").

BACKGROUND: The CDA purchased the property along the easterly side of Railroad Avenue between Main and Abbey Streets (Assessor's Parcel No. 003-224-01) (the "CDA Property") (see Map of Site attached) from the City in September, 2004 for a total acquisition price of \$120,000 based upon an appraisal provided by Mr. Lee Bartholomew, California Certified General Real Estate Appraiser (#AG004317), dated September 17, 2003. Based upon, and in conformance with, a subsequent appraisal by Mr. Bartholomew dated October 6, 2006 and updated as of June 10, 2008, the fair market value of the CDA Property is \$237,000.

In 2003, the City and the CDA began discussions with Main Street Village Partners ("MSVP") local developers for a comprehensive development of the "Main Street Village Block", the area bordered by Railroad Avenue on the west, East Abbey Street on the east, and East Main Street on the south. This Block was determined to have the greatest potential for in-fill development in downtown Winters.

In May 2005, the MSVP partnership dissolved and in November 2005, the CDA solicited proposals from adjacent property owners.

In 2006, the CDA began negotiations with the Developer for the disposition and development of the CDA Property for the Monticello Mixed-Use Project further described below (the "Project").

On March 4, 2008, the City approved Resolution No. 2008-06 approving a Notice of Intent regarding the reconfiguration and partial vacation of East Abbey Street between Railroad Avenue and Elliot Street which would provide for a 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 (the "ROW Property") to allow additional building footprint on the CDA Property and the development of diagonal public parking along East Abbey. The CDA Property, together with the ROW Property, is referred to as the "Site". (see Abbey Street Reconfiguration Map attached).

On April 22, 2008, the Planning Commission approved the General Plan Consistency Review and authorized its submittal to the City Council on the proposed vacation. This Review determined the vacation to be in conformance with the General Plan.

On July 22, 2008, the Planning Commission approved a Categorical Exemption under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15, the proposed Site Plan and Design and the Conditional Use Permit for the Project. The CDA contracted with PMC, the consulting preparing the City's Form Based Code, to work with the Developer to ensure that the design was in conformance with the City's downtown form based code principles.

DISCUSSION: On September 2, 2008, the CDA and the City Council will be asked to consider the attached proposed Disposition and Development Agreement (DDA) with the Developer of the Project for the disposition and development of the Site.

The Developer proposes to develop the Site with an approximately forty-seven thousand two hundred seventy-two (47,272) square foot, four (4) story mixed-use building to include retail/commercial and office uses on the ground and second floors and residential uses on the third and fourth floors, together with approximately 7,352 square feet of terraces, 9,352 square feet of exterior walkway, and 11 on-site parking spaces (consisting of approximately 1,208 square feet total) (the "Project").

The intersection of Railroad Avenue and Main Street acts to "anchor" the eastern end of the traditional Winters' downtown area fronting Main Street from Railroad Avenue to the east to First Street to the west. As such, the Railroad Avenue/Main Street intersection is a major attribute in Winters. In addition to the Site, development of this intersection includes: at the southwest corner, an historic, two-story brick building housing the Buckhorn Restaurant, one of the major destination venues in Winters; at the southeast corner, is Rotary Park, the City's "downtown" park whose public space is an invaluable urban asset; and at the northwest corner, another two-story, historic building containing the Putah Creek Café (another key attraction for Winters). Parenthetically, the western end of the traditional downtown is anchored by City Hall on First Street and the Masonic Building on the northeast corner of First and Main Streets.

The CDA, recognizing the importance of the Railroad Avenue/Main Street intersection, has been actively working with local real property developers and builders for many years to implement a development plan which will complement the already existing quality development at the southwest and northwest corners. As described above, the current DDA is the culmination of years of City and CDA efforts to induce commercial development at this important intersection.

Developer and the CDA engaged in substantial negotiations to arrive at the most efficient use of public money to induce development of the Project. One factor which makes the Project unique is the fact that Developer intends to locate their upper-end retail establishment in the Project. This decision allows the Developer to demand a lower return on investment than would otherwise be required by a "merchant builder"; i.e., a developer who intended to develop the Site and then be able to sell it to a third party investor for a legitimate profit. Since Developer would, in essence, be an owner occupant, their return demands could be forecast over a longer term period; thereby, allowing for lower return rates in the early years. This factor, in turn, allowed the Developer to build at a higher per square foot cost and to accept a lower return. These factors together were instrumental in; in the first place, the CDA's decision to award the DDA to Developer; and, in the second place, allow the Developer to use higher quality materials than would otherwise be applicable.

The Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) ("CRL") provides in Section 33431 that any sale or lease of agency property may be made only after a public hearing of the agency after publication of notice as provided by law. Notice of a joint public hearing of the City Council and the CDA was published in the Winters Express on August 12, 2008 and August 20, 2008.

CRL also provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing with specific publication requirements and that the CDA shall make available for public inspection a copy of the proposed sale or lease and a report containing specified information and the financial aspects of the proposal. The CDA has prepared the report pursuant to Section 33433 (the "Report") describing the cost of the DDA to the CDA, the value of the property interest to be conveyed, the purchase price and other information required. The Report and the DDA were made available for public inspection and the noticing requirements were completed as specified by CRL.

Discussion of the DDA Deal Points

The DDA provides for the CDA and the City to provide the following to the Project.

1. The CDA will sell the CDA Property to the Developer for a cash downpayment and a loan to be evidenced by a promissory note and secured by a deed of trust. The CDA purchased the CDA Property from the City in September, 2004 for \$120,000. The CDA is selling this asset to Developer for \$237,000, which amount is the fair market value of the CDA Property subject to the following terms: i) downpayment to be \$53,000; ii) loan of \$184,000 to bear interest at four percent per year, compounded annually; iii) Developer to make interest only payments for 14 years; iv) loan to be all due and payable on the 15th anniversary of the promissory note.
2. The City will defer its development fees for fifteen years in the form of a loan to Developer, which loan shall be evidenced by a promissory note and secured by a deed of trust, subject to the following terms: i) loan to be equal to the amount

of actual fees currently estimated at \$588,641.22 based on the estimated square footage of the Project. ii) loan to bear interest at four percent per year, compounded annually; iii) Developer to make interest only payments for 14 years; iv) loan to be all due and payable on the 15th anniversary of the promissory note.

3. The City and CDA have the option to negotiate with the Developer to lease available space in the Project during the term that the loans identified above are outstanding.
4. In connection with the development of the Project on the Site by the Developer, by its consent and agreement to the DDA, the City will agree to complete the abandonment of the portion of Abbey Street described above.
5. In connection with the development of the Project on the Site by the Developer, the CDA and or City coordinate the construction of the street improvements to be constructed along the Abbey Street adjacent to the Site as detailed in the downtown streetscape improvement projects, Phase I and II.

Discussion of CDA Risk

As has been discussed in the past, the Project is a real property transaction which involves private party money and depends upon private individuals' interest in leasing and/or purchasing space in the Project. All real property transactions involve some amount of risk. The risk factors may be broken down as follows:

Risk During Construction: The construction process involves some amount of risk both relating to construction financing and to actual development of the Project. This risk is mitigated by the following factors: i) the DDA requires Developer to secure construction financing, which when added to its equity, will be sufficient to complete the Project; ii) the CDA Property will not be conveyed to Developer and abandonment of the ROW property will not be completed until Developer has obtained all approvals and is ready to commence construction of the Project; and iii) the DDA provides other protections to the CDA in the event the Project, for whatever reason, is not completed in a timely fashion. Relating to the last mitigation, note that the DDA includes a schedule of performance and scope of development which contractually binds Developer to complete the Project within an agreed to time (the schedule of performance) and to an agreed floor plan, set of elevations, and quality of material (the scope of development). Furthermore, Section 510 of the DDA allows the CDA to repurchase the CDA Property after commencement of construction if Developer has not complied with provisions of the DDA.

Risk During Term of CDA and City Loans: It is possible that the Project will not fill up with sufficient occupants to repay the Developer's construction loan and, subsequent to stabilization, its permanent financing. This risk is mitigated by the following factors: i) the CDA secured a market analysis which has been reviewed by CDA Board members which provides that there is a market for the types of uses projected for the Project and that the Project is situated to capture this market; ii) at least one third of the Project will be "pre-leased" or "pre-sold" prior to conveyance of the CDA Property to Developer and commencement of construction; therefore, Developer will only have to market two-thirds of

the Project; iii) as discussed above, the Project's location is a primary intersection in Winters; and iv) the Project is a multi-use structure, thereby providing flexibility to the Developer in its sales/lease program.

Discussion of CDA Reward

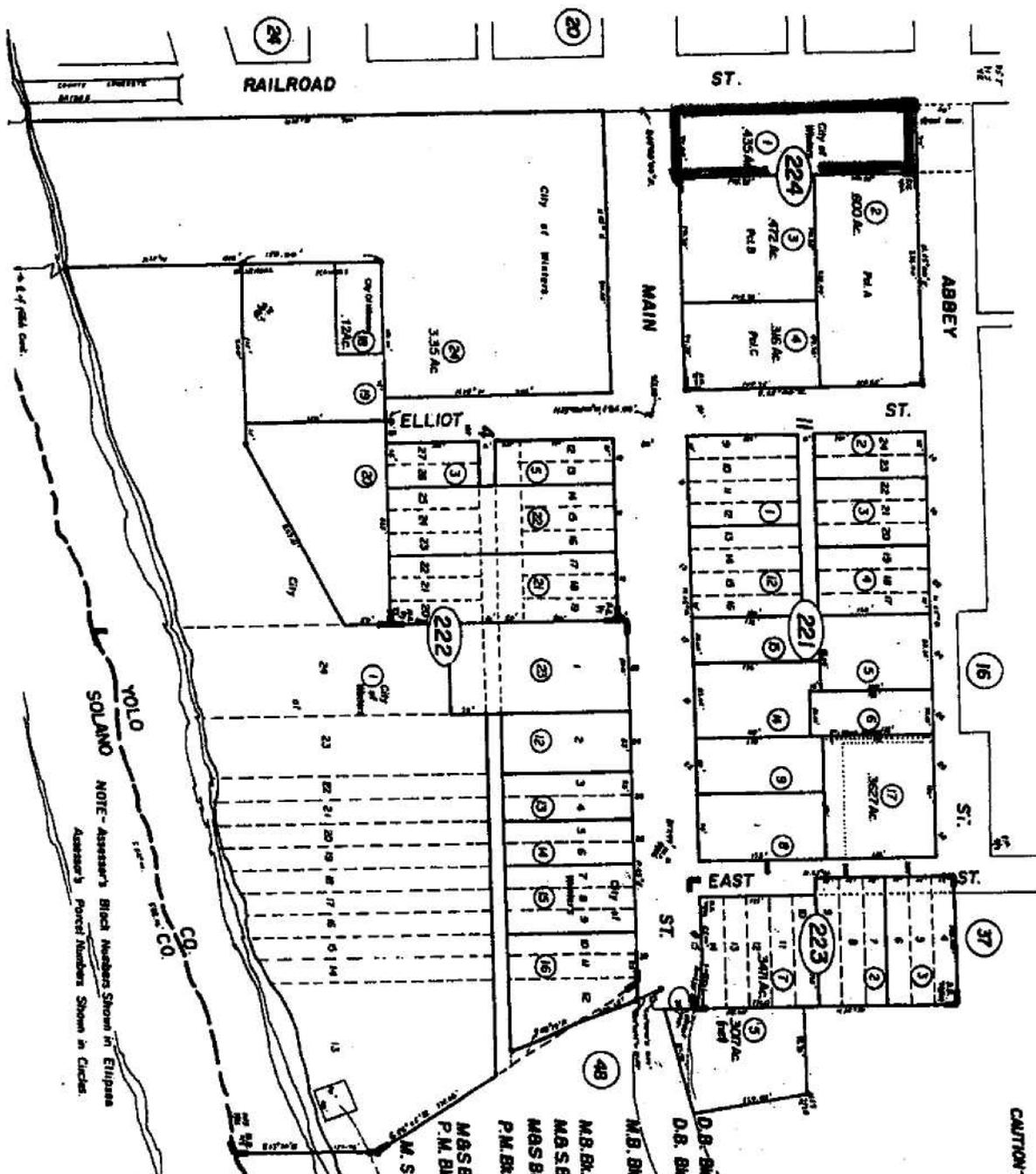
The CDA and the community could achieve dramatic success with the completion the Project. Such success would be as follows: i) land which is currently off the tax rolls would be returned to the tax rolls with a dramatic increase in assessed valuation, which increase would be reflected in increased tax increments flowing to the CDA for reinvestment elsewhere in the community; ii) the Project will spin off sales taxes which will go to the General Fund of the City; iii) the Project will further strengthen the competitive advantage of the Railroad Avenue/Main Street intersection in the Sacramento regional market, thereby increasing sales taxes and, ultimately, property taxes being generated on the northwest and southwest corners of the intersection; iv) the Project will help tie the commercial uses along the north side of Main Street east of Railroad Avenue into the greater Winters downtown development; and vi) the successful development of the Project will act as an impetus to other development along Main Street.

ALTERNATIVE ACTIONS: Staff recommends approval of the DDA however, other actions the City may consider include: 1) modify and approve the DDA; or 2) not approve the DDA.

ATTACHMENTS:

- Map of Site
- Abbey Street Reconfiguration Map
- Resolution No. 2008-39
- Disposition and Development Agreement by and between the CDA and Monticello Investors
- 33433 Report
- Planning Commission General Plan Consistency Review

Attachment No. 1
 A) Map of Site



NOTE - Assessor's Block Numbers Shown in Ellipse
 Assessor's Parcel Numbers Shown in Circles

City of Winters
 Assessor's Map Bk. 5 Pg. 22
 County of Yolo, Calif.

Lot No.	Area (Ac.)	Assessor's Parcel No.
1	0.12	121
2	0.12	122
3	0.12	123
4	0.12	124
5	0.12	125
6	0.12	126
7	0.12	127
8	0.12	128
9	0.12	129
10	0.12	130
11	0.12	131
12	0.12	132
13	0.12	133
14	0.12	134
15	0.12	135
16	0.12	136
17	0.12	137
18	0.12	138
19	0.12	139
20	0.12	140
21	0.12	141
22	0.12	142
23	0.12	143
24	0.12	144
25	0.12	145
26	0.12	146
27	0.12	147
28	0.12	148
29	0.12	149
30	0.12	150

- M.B. Bk. 1, Pg. 4 - S.P.R.R. Subd. of Block 4.
- M.B. Bk. 2, Pg. 5 - M.O. Wynn's Add.
- M.S. Bk. 3, Pg. 66 - M.O. Wynn's Add.
- M.S. Bk. 2, Pg. 51 - Town of Winters.
- P.M. Bk. 5, Pg. 4 - Egg & Andro D. Norworthy, § 2944.
- M.S. Bk. 7, Pg. 70 - J.A. Boyce
- P.M. Bk. 7, Pg. 72 - P.L. Map 3319 for Elliot Landes
- M.S. Bk. 99, Pg. 22 - City of Winters.

CAUTION - These maps ARE NOT to be used for legal description.
 3-22

ABBAY STREET RECONFIGURATION MAP

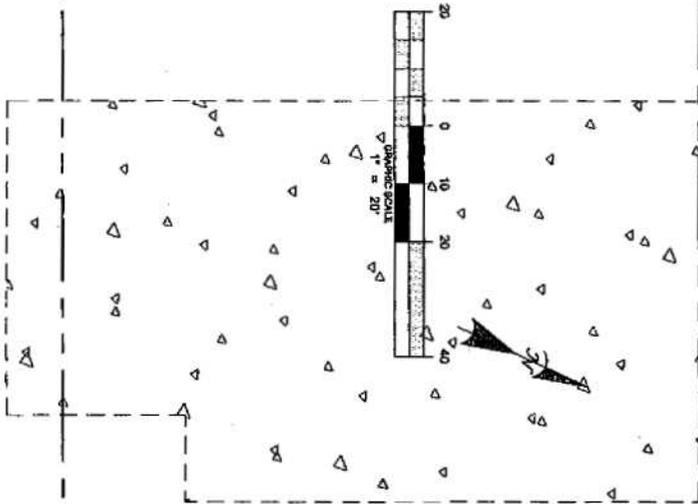
ROAD AVE.

CITY OF WINTERS

ello Development

PARKING DRIVEWAY

E. ABBEY ST.



1" = 100' (AS SHOWN)

COUNCIL RESOLUTION NO. 2008-39

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
CONSENTING AND AGREEING TO, AND APPROVING AND
AUTHORIZING THE EXECUTION OF A DISPOSITION AND
DEVELOPMENT AGREEMENT BETWEEN THE COMMUNITY
DEVELOPMENT AGENCY OF THE CITY OF WINTERS AND
MONTICELLO INVESTORS, LLC**

WHEREAS, the Community Development Agency of the City of Winters (the "Agency") is carrying out the City of Winters Community Development Project Area Plan (the "Development Plan") for the Winters Development Project Area (the "Development Project"); and

WHEREAS, in conformance with Health and Safety Code Section 33490, the Agency adopted a five-year Implementation Plan (the "Implementation Plan") for the Development Project, which Implementation Plan describes the Agency's goal, objectives and proposed programs and expenditures for the elimination of blight, including without limitation the implementation of an effective economic development strategy to attract and retain employers to the Development Project and pursue specific opportunities at attract development to the Development Project Area; and

WHEREAS, the Agency has received a proposed Disposition and Development Agreement (the "DDA") from Monticello Investors, LLC, a California limited liability company (the "Developer"), which provides for the disposition and development of certain real property (the "Site") located at the northeast corner of Main and Railroad Streets within the City of Winters and also within the boundaries covered by the Development Project and is an Economic Development Project as provided for in the projects and programs list in the Development Plan, as amended, for said Development Project; and

WHEREAS, the Site is comprised of (a) certain real property, totaling approximately 18,304 square feet (a portion of Assessor's Parcel No. 003-221-01) which is currently owned by the Agency (the "Agency Property"), and (2) a portion of the Abbey Street right-of-way, consisting of approximately 2,700 square feet currently owned by the City of Winters (the "City"), located adjacent to the Agency Property (the "ROW Property"); and

WHEREAS, the proposed DDA provides that the Developer will develop the Site with an approximately forty-seven thousand two hundred seventy-two (47,272) square foot, four (4) story mixed-use building to include retail/commercial and office uses on the ground and second floors and residential uses on the third and fourth floors, together with approximately 7,352 square feet of terraces, 9,352 square feet of exterior walkway, and 11 on-site parking spaces (consisting of approximately 1,208 square feet total) (the "Project"); and

WHEREAS, pursuant to and under the terms and conditions set forth in the DDA, the Agency is responsible for completion of the Lot Line Adjustment to create a legal parcel to constitute the Agency Property to be conveyed to the Developer; and

WHEREAS, in connection with the development of the Project on the Site by the Developer, by its consent and agreement to the DDA, the City has agreed to complete the abandonment of that portion of the Abbey Street right-of-way to be included as part of the Site and that fee title to the ROW Property shall be conveyed to the Developer to be included as part of the Site under the DDA; and

WHEREAS, in connection with the development of the Project on the Site by the Developer, the Agency and/or the City will construct the street improvements to be constructed along the Abby Street right-of-way, adjacent to the ROW Property, and the completion of the downtown streetscape improvements provided for under the Downtown Master Plan (the "Downtown Streetscape Improvements"); and

WHEREAS, pursuant to and under the terms and conditions set forth in the DDA, in order to facilitate development of the Project on the Site, the City, by its consent and agreement to the DDA, will defer payment of its development fees and impact fees required to be paid by the Developer for the development of the Project for a period of fifteen (15) years (as more particularly set forth in the DDA) (collectively, the "City Fees"); and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the Community Redevelopment Law further provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a report containing specified information and the financial aspects of the proposal; and

WHEREAS, notice of a joint public hearing of the City Council of the City of Winters (the "City Council") and the Agency was published in the *Winters Express* on August 13, 2008 and August 20, 2008; and

WHEREAS, the Agency prepared a report pursuant to Section 33433 of the Health and Safety Code (the "Report"), describing the cost of the DDA to the Agency, the value of the property interest to be conveyed, the purchase price and other information required by said Section 33433, and the Report, together with the DDA, was made available to the public for inspection; and

WHEREAS, the City Council and the Agency held a joint public hearing on September 2, 2008, in the City Council Chambers to consider and act on the disposition and development of the Site pursuant to the DDA; and

WHEREAS, the Agency staff has previously determined that approval of the proposed DDA and development of the Project on the Site is categorically exempt under Section 15332 of the Guidelines for the California Environmental Quality Act; and

WHEREAS, pursuant to Section 33445 of the Community Redevelopment Law, an agency is authorized, with the consent of the legislative body to pay all or part of the value for and the cost of installation and construction of any building, facility, structure or other improvement which is publicly owned either within or without a project area if the legislative body determines that the buildings, facilities, structures or other improvements are of benefit to the project area or the immediate area in which the project is located, that no other reasonable means of financing the buildings, facilities, structures or other improvements are available to the community, and that such buildings, facilities, structures or other improvements will assist in the elimination of blighting conditions inside the project area and are consistent with the implementation plan adopted pursuant to Section 33490 of the Community Redevelopment Law; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINTERS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby finds and determines that the sale of the Agency Property to the Developer, the abandonment of the right-of-way on that portion of Abbey Street to be included as part of the Site and conveyance of the Right-of-Way Property to the Developer, and development of the Project on the Site pursuant to the DDA will assist in the elimination of blight through the development of a modern, high-quality real estate mixed-use development, consisting of residential and commercial/retail uses and is consistent with the Five-Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490. This finding is based upon the facts and information contained in the Report prepared by the Agency pursuant to Health and Safety Code Section 33433.

Section 2. The City Council hereby finds and determines that the consideration for the Agency Property to be paid by the Developer is not less than the fair market value at its highest and best use in accordance with the Development Plan. This finding is based upon the facts and information contained in the Report prepared by the Agency pursuant to Health and Safety Code Sections 33433.

Section 3. The City Council hereby reaffirms its prior findings and determinations made at the time of adoption of the Downtown Master Plan, and further finds and determines that the Downtown Streetscape Improvements to be constructed by the Agency and/or the City in conjunction with the development of the Project on the Site are provided for and will be constructed pursuant to the Downtown Master Plan, are of primary benefit to the Development Project or the immediate area in which the Project is located, that no other reasonable means of financing the Downtown Streetscape Improvements are available to the community, and that the

Downtown Streetscape Improvements will assist in the elimination of blighting conditions within the Development Project Area and are consistent with the Implementation Plan adopted by the Agency pursuant to Section 33490 of the Community Redevelopment Law.

Section 4. The City Council hereby approves the DDA in substantially the form on file with the City Clerk. The City Council further approves and authorizes the sale of the Agency Property to the Developer, the abandonment of the ROW Property and the conveyance of the ROW Property by the City to the Developer, the deferral of the City Fees required to be paid by the Developer, and the coordination of construction by the Agency and/or City of the Downtown Streetscape Improvements with the development of the Project by the Developer, all as provided for under the DDA.

Section 5. The Agency is hereby authorized to execute the DDA on behalf of the Agency, subject to any minor conforming, technical or clarifying changes approved by Agency Counsel.

Section 6. The Mayor and City Clerk are hereby authorized and directed to execute the Consent and Agreement to the DDA, subject to any minor conforming, technical or clarifying changes approved by the City Attorney. The Mayor and City Clerk are hereby further authorized and directed to undertake such further actions and execute such documents as are necessary to carry out and complete the obligations of City under the DDA on behalf of the City, including without limitation, all actions and documents necessary to complete the abandonment of the ROW Property and the conveyance of the ROW Property to the Developer, the deferral of the City Fees to the Developer, and coordination of the construction of the Downtown Street Improvements, all in accordance with the DDA.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Winters this ____ day of September, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mayor Mike Martin

Nanci Mills City Clerk

PUBLIC REVIEW DRAFT 8/15/08

DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

**COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF WINTERS,**

AND

MONTICELLO INVESTORS, LLC

and consented and agreed to by:

CITY OF WINTERS

Railroad and Main Mixed-Use Project

DISPOSITION AND DEVELOPMENT AGREEMENT

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ATTACHMENTS

Attachment No. 1	Map of the Site
Attachment No. 2	Legal Description of the Agency Property
Attachment No. 3	Schedule of Performance
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Attachment No. 10	Concept Drawings

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the ____ day of _____, 2008, by and between the **COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS**, a public body, corporate and politic (the "**Agency**"), and **MONTICELLO INVESTORS, LLC**, a California limited liability company (the "**Developer**"), and is approved and consented to by the **CITY OF WINTERS**, a municipal corporation (the "**City**") by the Consent and Agreement of the City attached hereto following the signature pages of the parties and made a part hereof by this reference. The Agency and the Developer agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose of This Agreement

The purpose of this Agreement is to effectuate the City of Winters Community Development Project Area Plan (the "**Development Plan**") for the Winters Development Project Area (the "**Development Project**") and to revitalize downtown Winters by providing for the sale to the Developer of certain real property (the "**Agency Property**") located within the City of Winters and within the area covered by the Development Plan, and for development on the Agency Property, together with certain other adjacent property (the "**ROW Property**", and together with the Agency Property, the "**Site**") of an approximately forty-seven thousand two hundred seventy-two (47,272) square foot, four (4) story mixed-use project (the "**Project**").

In addition to the sale of the Agency Property to the Developer, the Agency desires to obtain an option to rent or lease a portion of the Project ("**Agency Lease Space**") from time to time, following completion of the Project, for administrative, meeting and other public purposes, as provided for in Section 406 of this Agreement.

In furtherance of the Development Plan, the City is willing to use its best efforts to abandon the public right-of-way across the ROW Property, and defer certain development and impact fees, as more particularly set forth in this Agreement.

The disposition and development of the Site pursuant to the provisions of this Agreement, and the fulfillment generally of this Agreement, are vital and in the best interests of the City of Winters and the welfare of its residents, and in accordance with the public purposes and provisions of applicable Federal, State and local laws and requirements.

Pursuant to Health and Safety Code Section 33490, the Agency adopted a five (5) year Community Development Project Implementation Plan 2003-2008 (the "**Implementation Plan**") for the Development Project which included a section addressing the Agency's efforts to revitalize the downtown area, including certain programs and projects to be undertaken throughout the community to further the Agency's efforts to revitalize downtown Winters. This

Agreement will further the Agency's goals and objectives set out in the Development Plan and the Implementation Plan.

B. [§102] The Development Plan

This Agreement is subject to the provisions of the Development Plan that was approved and adopted July 20, 1992, by the City Council of the City of Winters, by Ordinance No. 92-08, which Development Plan is incorporated herein by reference and made a part hereof as though fully set forth herein.

The Agency agrees that prior to the issuance of the Certificate of Completion, no amendment of the Development Plan which changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site, or otherwise affects the Developer's rights or obligations under this Agreement, shall be made or become effective without the prior written consent of Developer and any holder of any mortgage or deed of trust permitted by this Agreement. Amendments to the Development Plan applying to property outside of the Site shall not require the consent of Developer.

C. [§103] Parties to This Agreement

1. [§104] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.). The principal office of the Agency is located at 318 First Street, Winters, California 95694-1923. The term "**Agency**" shall mean any assignee or successor in interest to the Agency.

2. [§105] The Developer

The Developer is Monticello Investors, LLC, a California limited liability company, whose sole member is Ogando Development, L.P., a California limited partnership whose general partners are Joseph E. Ogando and Karen M. Ogando. The principal address of the Developer is 102 Wolfskill Street, Winters, CA 95694. Whenever the term "**Developer**" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The parties anticipate that a partnership or other entity (the "**Partnership**") may be formed by the Developer for the purposes of acquiring and developing the Site, or any portion thereof. In the event such a Partnership is formed, and provided the Developer or an affiliate of Developer constitutes the sole general partner or managing member of the Partnership, it is the understanding and agreement of the parties that this Agreement may be assigned to and assumed by such Partnership; provided that such Partnership shall assume all of the obligations of the Developer hereunder, in form and content satisfactory to the Agency. The term "**affiliate**" as used herein means an entity which is controlled by, under the common control with or controls the Developer.

The partnership agreement or other document which shall create or establish such Partnership shall be subject to the prior written approval of the Agency. Any amendments thereto shall also require the Agency's prior written approval, which approval shall not be unreasonably withheld; provided the Agency's disapproval of any such amendment shall not be deemed unreasonable if based on the Agency's desire to ensure that the Developer retains adequate financial interest in and/or control of the Partnership.

The qualifications and identity of the Developer are of particular concern to the Agency, and it is because of such qualifications and identity that the Agency has entered into this Agreement. Prior to the issuance of the Certificate of Completion for the Site, or any portion thereof, as set forth in Section 318 hereof, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, and the Developer shall not assign all or any part of this Agreement without the prior written approval of the Agency, which approval will be in the Agency's sole discretion. This Agreement may be terminated by the Agency if there is any significant change (voluntary or involuntary) in the management or control of the Developer prior to the completion of the development of the Site, as evidenced by the issuance of a Certificate of Completion therefore, without Agency's prior written approval, which approval will not be unreasonably withheld. Except as otherwise provided in this Agreement, for an approved assignment to be effective, the Developer and assignee shall enter into an assignment and assumption agreement in a form reasonably approved by the Agency. Notwithstanding the provisions of this Section 105, the following assignments or transfers of this Agreement and the Site shall be permitted:

- a. the sale or lease of residential units for occupancy upon completion;
- b. the sale or lease of any non-residential parcels to tenant or end-users, for occupancy upon completion;
- c. an assignment as security for a construction and/or development loan from a lender, subject to the approval by Agency pursuant to this Agreement; or
- d. an assignment to a Partnership, as authorized above and in compliance with this Section 105.

D. §106 The Site

The Site is shown on the Map of the Site, attached hereto as Attachment No. 1 and incorporated herein by reference.

The Site is comprised of: (1) certain real property totaling approximately 18,304 square feet, in the City of Winters (a portion of Assessor's Parcel Number 003-224-01) which is currently owned by the Agency (the "**Agency Property**"); and (2) a portion of the Abbey Street right-of-way, consisting of approximately 2,700 square feet, currently owned by the City, located adjacent to the Agency Property (the "**ROW Property**").

The Agency Property constitutes a portion of a larger parcel of property owned by the Agency. Prior to and as a condition to the close of escrow, the Agency will obtain all approvals necessary to effectuate a lot line adjustment to create a legal parcel to constitute the Agency Property to be sold to the Developer, pursuant to this Agreement. Following completion of the lot line adjustment, a legal description of the Agency Property shall be prepared by the Agency and incorporated into this Agreement as Attachment No. 2.

Additionally, the Agency and the Developer shall cooperate with the City, and the City, by its execution of the Consent and Agreement attached hereto, agrees to use its best efforts to take all actions and obtain all approvals necessary to complete the abandonment by the City of that portion of the Abbey Street right-of-way to be included as part of the Site, as shown on the Map of the Site (Attachment No. 1), and to ensure that, immediately following conveyance of the Agency Property to the Developer pursuant to this Agreement, fee title to the ROW Property shall be conveyed to the Developer.

E. §107] Deposit

The Developer shall, prior to or simultaneously with the execution of this Agreement by the Agency, deliver for the benefit of the Agency a deposit of cash or certified check in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) (the "Deposit") as security for the performance of the obligations of the Developer to be performed prior to the credit and/or return of the Deposit to the Developer as provided herein, or its retention by the Agency as liquidated damages. In lieu of cash or certified check, the Deposit may be in the form of an irrevocable letter of credit in form and content acceptable to the Agency. The Deposit shall be deposited with the Agency.

The Deposit, if in the form of cash or certified check, shall be placed in an interest bearing account, and any interest paid thereon shall become part of the Deposit.

Upon termination of this Agreement by the Agency prior to conveyance of the Agency Property to the Developer, as more specifically provided in Section 508, the Deposit (including all interest paid thereon) may be retained by the Agency as liquidated damages as provided therein.

Upon termination of this Agreement by the Developer as provided in Section 507, the Deposit (including all interest paid thereon) shall be returned to the Developer by the Agency as provided therein.

If the Developer is in default with respect to any provision of this Agreement after notice to the Developer and the expiration of the applicable cure period set forth in Section 501, the Agency may, but shall have no obligation to, use the Deposit or any portion of the Deposit to cure such default or to compensate the Agency for any expense or damage sustained by the Agency and resulting from such default. If this Agreement has not been terminated as a result of such default, the Developer, on demand from the Agency, shall promptly restore such Deposit to the full amount required by this Section 107. If Developer fails to restore the Deposit as specified in this paragraph, then either party may terminate this Agreement in accordance with Section 507 or 508 hereof, as applicable.

Upon the issuance by the Agency of a Certificate of Completion for the development of the Site pursuant to Section 318 of this Agreement, the full amount of the Deposit (including any interest earned thereon) shall be returned to the Developer.

II. **[§200] DISPOSITION OF THE SITE**

A. **[§201] Sale of the Agency Property**

In accordance with and subject to all of the other terms, covenants and conditions of this Agreement, the Agency agrees to sell to the Developer, and Developer agrees to purchase, the Agency Property within the time set forth in the Schedule of Performance, attached hereto as Attachment No. 3 and incorporated herein by reference. The purchase price for the Agency Property shall be TWO HUNDRED THIRTY-SEVEN THOUSAND DOLLARS (\$237,000) (the "**Purchase Price**"). The Purchase Price shall be paid as follows:

1. The Developer shall deposit with the Escrow Agent (as defined in Section 202 below), in the form of cash, certified check or wire transfer, an amount equal to FIFTY-THREE THOUSAND DOLLARS (\$53,000) (the "**Cash Downpayment**"), no later than two (2) business days prior to the scheduled date for the close of escrow.

2. The Developer shall execute and deliver into escrow a promissory note (the "**Acquisition Note**") in favor of the Agency in a principal balance equal to the remaining balance of the Purchase Price. The Acquisition Note shall be secured by a deed of trust (the "**Acquisition Deed of Trust**") which shall be recorded against the Agency Property. As a condition to and concurrently with the close of escrow for conveyance of the Agency Property to the Developer, the Developer shall execute and deliver the Acquisition Note and the Acquisition Deed of Trust into escrow in forms substantially as set forth in Attachment Nos. 5 and 6, respectively, hereto.

B. **[§202] Escrow**

The Agency agrees to open an escrow with Old Republic Title Company, located at 1499 Oliver Road, Fairfield, CA 94534, or any other escrow company approved by the Agency and the Developer, as escrow agent (the "**Escrow Agent**"), in Winters, California, within the time established in the Schedule of Performance (Attachment No. 3). This Agreement constitutes the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The Agency and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section 202 in writing, delivered to the Agency and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The Agency shall timely and properly execute, acknowledge and deliver to the Escrow Agent a grant deed (the "**Grant Deed**") conveying to the Developer fee title to the Agency Property in accordance with the requirements of Section 203 of this Agreement. The

Developer shall execute, acknowledge (where appropriate) and deliver to the Escrow Agent the Acquisition Note and Acquisition Deed of Trust in accordance with the provisions of Sections 201 and 206 of this Agreement.

The Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not later than two (2) business days prior to the scheduled date for the close of escrow:

1. One-half (1/2) of the escrow fees; and
2. The premiums for a lender's policy of title insurance, and any increase in title insurance premiums attributable to an A.L.T.A. title insurance policy, and for all special endorsements, if and as requested by the Developer, as set forth in Section 208 of this Agreement

The Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Agency of the amount of such fees, charges and costs, but not later than two (2) business days prior to the scheduled date for the close of escrow:

1. Costs necessary to place the title to the Agency Property in the condition for conveyance required by the provisions of this Agreement;
2. One-half (1/2) of the escrow fees;
3. The premiums for title insurance attributable to a C.L.T.A. standard form policy, to be paid by the Agency as set forth in Section 208 hereof;
4. Recording fees;
5. Notary fees; and
6. Any state, county or city documentary transfer tax; and
7. Ad valorem taxes, if any, upon the Agency Property for any time prior to conveyance of title.

Upon receiving a written certification from both the Agency and the Developer that the conditions for conveyance to the Developer of the Agency Property have either been satisfied or waived and instructing the Escrow Agent to close escrow, and upon delivery of the Grant Deed for the Agency Property pursuant to Section 206 of this Agreement, the Escrow Agent shall record the Grant Deed in accordance with the terms and provision of this Agreement. The Escrow Agent shall pay any transfer tax required by law.

The Escrow Agent is authorized to:

1. Pay and charge the Agency and the Developer, respectively, for any fees, charges or costs payable under this Section 202. Before such payments are made, the Escrow Agent shall notify the Agency and the Developer of the fees, charges and costs necessary to clear title and close the escrow;
2. Disburse funds and deliver the Acquisition Note to the Agency and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the Agency and the Developer; and
3. Record the Grant Deed (Attachment No. 7), the Acquisition Deed of Trust (Attachment No. 6), and any other instruments delivered through this escrow, if necessary or proper, to vest title in the Developer and secure the Agency's lien upon the Agency Property, in accordance with the terms and provisions of this Agreement.

All funds to be deposited with the Escrow Agent shall be delivered by wire transfer or other certified immediately available funds, and shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent, or by wire transfer if authorized by the parties. All adjustments shall be made on the basis of a thirty (30) day month.

If this escrow is not in condition to close before the time for conveyance established in Section 203 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner set forth in Sections 507 or 508 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Sections 507 or 508 hereof, as the case may be. If neither the Agency nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 203, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the ten (10) day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Agency Property until instructed in writing by both the Agency and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 202 shall be construed to impair or affect the rights or obligations of the Agency or the Developer to specific performance.

Any amendment of these escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the Agency or the Developer shall be directed to the addresses and in the manner established in Section 611 of this Agreement for notices, demands and communications between the Agency and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 202 to 208, both inclusive, of this Agreement.

C. [\$203] Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Developer of fee title to the Agency Property shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3), or any extension of such time as may be mutually agreed to by the parties. Said Schedule of Performance (Attachment No. 3) is subject to revision, from time to time, as mutually agreed upon in writing between the Developer and the Agency pursuant to Operating Memoranda, as described in Section 606 hereof. The Agency and the Developer agree to perform all acts necessary to conveyance of fee title in sufficient time for fee title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 213 of this Agreement. The Developer shall accept its fee title and possession on or before said date.

D. [\$204] Conditions Precedent to Conveyance

Close of escrow and conveyance of the Agency Property to the Developer shall be contingent upon satisfaction of the following conditions precedent:

1. Developer's final construction plans and drawings for the Project have been approved by the Agency and by the City, pursuant to Section 304;
2. Developer has provided evidence, satisfactory to Agency in its sole and absolute discretion, that Developer has sufficient and binding financing commitments to complete the Project;
3. Agency has executed and delivered the Grant Deed, and Developer has executed and delivered the Acquisition Note, Acquisition Deed of Trust, and all other documents and agreements required for escrow, as provided in this Agreement;
4. Developer has an executed construction contract for the Project with its general contractor;
5. Developer has delivered to the Agency proof of insurance, in compliance with Section 306 hereof;

6. Developer has provided a guarantee to the Agency for the completion of the Project through payment and performance bond(s), as provided in Section 308, or other equivalent form of security acceptable to the Agency;
7. Developer has obtained all permits and other governmental approvals necessary for construction of the Project, and a building permit for construction of the Project is ready to be issued, subject only to the completion of abandonment of the right-of-way on the ROW Property and payment of all applicable fees;
8. Developer has obtained a letter of intent regarding approval of all condominium formation documents from the California Department of Real Estate, for creation of condominium spaces and formation of management and ownership organizations reasonably acceptable to the Agency;
9. Developer shall have obtained pre-leasing commitments, reasonably acceptable to Agency, from tenants and for uses that are consistent with the underlying zoning of the Site and the Downtown Master Plan, for the sale, rental or lease of not less than one-third of the total space to be constructed in the Project, including condominium units and/or commercial/retail leasable space, which commitments shall include, without limitation, a fully executed agreement between Developer and DaRe, LLC for the sale to DaRe of no fewer than two thousand seven hundred (2,700) square feet of retail space, with an additional approximately six hundred seventy (670) square feet of courtyard space, for a total of approximately three thousand three hundred (3,300) square feet of space within the Project, at a sales price of not less than Two Hundred Dollars (\$200.00) per square foot;
10. Agency has obtained all approvals necessary to effectuate a lot line adjustment, referred to in Section 106, to create a legal parcel to constitute the Agency Property to be sold to the Developer;
11. City shall have completed the abandonment process of that portion of the Abbey Street right-of-way to be included as part of the Site as provided in Section 106;
12. City shall have adopted an Ordinance amending the City's Affordable Housing Program as provided in Section 211; and
13. The Title Company shall be ready, willing and able to issue the Title Policy to Developer at the Close of Escrow, subject only to the exceptions agreed upon by the Parties.

E. [\$205] Condition of Title

The Agency has submitted to the Developer for review and approval a preliminary title report for the Agency Property, together with a copy of all underlying documents referred to therein (the "**Preliminary Title Report**"), dated June 30, 2008, issued by Old Republic Title Company (Order No. 1717000203-PP). The Developer shall approve or disapprove the Preliminary Title Report within the time established in the Schedule of Performance (Attachment No. 3). Failure by the Developer to approve within such time shall be deemed a disapproval.

The Agency shall be responsible for any costs and expenses necessary to place title to the Agency Property in the condition for conveyance as required hereunder. If the Developer disapproves any title exception reflected in the Preliminary Title Report, and the Agency, within ten (10) days thereafter gives Developer written notice that the Agency elects not to remove such exception, the Developer may elect, within ten (10) days of receipt of the Agency's notice, to accept title to the Agency Property subject to such exception or to terminate this Agreement by providing written notice thereof to Agency.

The Agency shall convey to the Developer title to the Agency Property free and clear of all recorded liens, encumbrances, assessments, leases and taxes, except as are specifically set forth in this Agreement or approved in writing by the Developer.

F. [\$206] Time for and Place of Delivery of Cash Downpayment, Grant Deed, Acquisition Note and Acquisition Deed of Trust

Subject to any mutually agreed upon extensions of time, the Agency and Developer shall deposit the Grant Deed (in substantially the form attached hereto as Attachment No. 7 and incorporated herein by reference) for the Agency Property with the Escrow Agent on or before the date established for the conveyance of the Agency Property in the Schedule of Performance (Attachment No. 3). The Developer shall deposit the Cash Downpayment, the Acquisition Note (as more particularly described in Section 201 above, and in substantially the form attached hereto as Attachment No. 5 and incorporated herein by reference), the Acquisition Deed of Trust (as more particularly described in Section 201 above, and in substantially the form attached hereto as Attachment No. 6 and incorporated herein by reference), and all sums required hereunder with the Escrow Agent prior to the date for conveyance thereof, provided that the Escrow Agent shall have notified the Developer in writing that the Grant Deed (Attachment No. 7), properly executed and acknowledged by the Agency, have been delivered to the Escrow Agent and that title is in condition to be conveyed in conformity with the provisions of Section 205 of this Agreement.

G. [\$207] Recordation of Documents

Upon the close of escrow, the Escrow Agent shall file the Grant Deed (Attachment No. 7), and the Acquisition Deed of Trust (Attachment No. 6) for recordation among the land records in the Office of the County Recorder of Yolo County, shall deliver the Acquisition Note (Attachment No. 5) to the Agency, and shall deliver to the Developer and

Agency the title insurance policies insuring title and the Agency's lien upon the Agency Property, in conformity with Section 208 of this Agreement.

H. [\$208] Title Insurance

Concurrently with recordation of the Grant Deed, Old Republic Title Company, or some other title insurance company satisfactory to the Agency and the Developer having equal or greater financial responsibility ("**Title Company**"), shall provide and deliver to the Developer a title insurance policy issued by the Title Company insuring that fee title to the Agency Property is vested in the Developer in the condition required by Section 205 of this Agreement, and shall provide the Agency with a copy of the title insurance policy. The title insurance shall be in the amount of the Purchase Price.

At the same time, the Title Company shall provide and deliver to the Agency a standard form lender's policy of title insurance, in the principal amount of the Acquisition Note, insuring the Agency of the validity and the priority of the lien of the Acquisition Deed of Trust upon the Agency Property, subject only to matters of record approved by the Agency in writing. The Title Company shall provide the Developer with a copy of such lender's policy issued to the Agency.

The Agency shall pay only for that portion of the title insurance premium attributable to a C.L.T.A. standard form policy of title insurance in the amount of the Purchase Price for the Site. The Developer shall pay the title insurance premium for the lender's policy of title insurance and all other premiums for title insurance coverage or special endorsements that it may request.

The Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the Site. The Developer shall pay the entire premium for any increase in coverage and special endorsements, including extended A.L.T.A. coverage, if any, that may be requested by it.

I. [\$209] Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Agency Property, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Agency. All such ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

J. [\$210] Conveyance Free of Possession

The Agency Property shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements of record.

K. [§211] Entitlements for Development of the Site; Inclusionary Housing

The Developer shall obtain all approvals and take all actions necessary to cause the subdivision of the Site pursuant to a condominium plan or map providing appropriate land and air rights parcelization as necessary or desirable for the development of the Project on the Site in accordance with this Agreement. The Developer shall prepare all applications and such other documents and take all actions necessary to apply for and obtain all subdivisions, entitlements, permits and other approvals from the City and any other regulatory agency with jurisdiction over the proposed development (including without limitation the State Department of Real Estate) as necessary for development of the Project, at its sole cost and expense, except as otherwise expressly provided in this Agreement. The Agency shall cooperate with the Developer and provide any assistance deemed necessary and appropriate by the Agency's Executive Director.

The parties acknowledge and agree that the City's Ordinance No. 94-10, establishing an Affordable Housing Program for the City of Winters (the "**City's Affordable Housing Program**"), requires that two (2) of the residential units to be constructed in the Project would have to be affordable to very low, low or moderate income households. The parties further acknowledge and agree that the City Manager has recommended that the City's Affordable Housing Program established by Ordinance No. 94-10 be amended to exempt residential and mixed-use project that contain fifteen (15) or fewer residential units from the requirements of the City's Affordable Housing Program. If, prior to conveyance of the Site to the Developer, the City's Affordable Housing Program is not amended to exempt the Project from the requirements of the City's Affordable Housing Program prior to conveyance of the Agency Property to the Developer, then the Developer shall have the option to terminate this Agreement pursuant to Section 507 of this Agreement.

L. [§212] Inspections; Condition of the Site

1. Environmental Assessments. The Agency has obtain and provided to Developer a copy of the Phase I Environmental Site Assessment of the Railroad Avenue Property, prepared by Wallace-Kuhl & Associates, Inc., dated January 26, 2007, and a Limited Phase II Subsurface Soil Investigation of the Railroad Avenue Property, prepared for Mr. Cole Ogando, by Wallace-Kuhl & Associates, Inc., dated February 1, 2008 (collectively, the "**Environmental Assessments**"), indicating the presence of arsenic contamination (the "**Arsenic Contamination**") on the Agency Property. The Agency shall obtain all approvals for and cause the remediation of the Arsenic Contamination on the Agency Property, subject to the limitations and maximum amount set forth in Part II of the Scope of Development (Attachment No. 4).
2. Inspections. Within the time established in the Schedule of Performance (Attachment No. 3), the Developer shall conduct any additional investigation of the Site, its physical condition, the soils and toxic conditions of the Site and all other matters which in the Developer's

judgment affect or influence the Developer's proposed use of the Site and the Developer's willingness to develop the Site pursuant to this Agreement. The Developer's investigation may include, without limitation, the preparation by a duly licensed soils engineer of a soils report and environmental report for the Site. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall provide written notice to the Agency of the Developer's determinations concerning the suitability of the physical condition of the Site. If, in the Developer's reasonable judgment, the physical condition of the Site is unsuitable for the use or uses to which the Site will be put, then the Developer shall have the option either: (a) to take any action necessary to place the Site in a condition suitable for development, at no cost to the Agency or City; or (b) to terminate this Agreement by delivering written notice thereof to Agency. If the Developer has not notified the Agency of its determinations concerning the suitability of the physical condition of the Site within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall have the right to terminate this Agreement pursuant to Section 508 hereof.

3. "As Is." In addition to the Environmental Assessments referenced above, the Agency and the City, as applicable, shall deliver to the Developer all other information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any Hazardous Materials, as defined below. Except for the limited remediation work to be undertaken by the Agency as provided for in Part II of the Scope of Development (Attachment No. 4), the Developer acknowledges and agrees that the Site is being acquired "as is," in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Site.
4. Indemnity. The Developer agrees, from and after the date of recording of the Grant Deed conveying title to the Agency Property to the Developer under this Agreement, and following abandonment of the ROW Property by the City, to defend, indemnify, protect and hold harmless the Agency and City, respectively, and their officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("**Indemnitees**") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees) ("**Damages**") whenever arising, not caused in whole or in part by the

Agency or City resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Site (sometimes herein collectively referred to as "**Contamination**"), except if such Damages result from the fraud, misrepresentation or failure to disclose by the Indemnitees. The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at the Developer's sole cost.

5. Release and Waiver. The Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein), at, on, in, beneath or from the Site, except if such cause of action arises from the fraud or misrepresentation or failure to disclose by the Agency or City. In furtherance of the intentions set forth herein, the Developer acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The Developer hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 212.

6. Definitions.
 - a. As used in this Agreement, the term "**Environmental Response Actions**" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by the Developer.

- b. As used in this Agreement, the term "**Environmental Response Costs**" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.
 - c. As used in this Agreement, the term "**Hazardous Materials**" means any substance, material or waste that is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.
7. Materiality. The Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer for the benefit of the Agency and City set forth in this Agreement are a material element of the consideration to the Agency and City for the performance of their obligations under this Agreement, and that the Agency would not have entered into, and the City would not have consented to, this Agreement unless the Developer's obligations were as provided for herein.

M. [§213] Preliminary Work by the Developer

Prior to the conveyance of title of the Agency Property to the Developer, representatives of the Developer shall have the right of access to the Site at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Agency or City may require Developer to execute a right of entry agreement satisfactory to Agency or City prior to entry onto the Site for such purpose. Developer's inspections, examination, testing, survey and review of the Site shall be at the Developer's sole expense. The Developer shall obtain the Agency's or City's, as applicable, consent in writing prior to any proposed physical testing of the Property, which consent shall not be unreasonably conditioned, withheld or delayed. The Developer shall repair, restore and return the Site to its original condition after such physical testing, at Developer's sole expense. The Developer shall schedule any such inspections during normal business hours unless otherwise approved by the

Agency or City. The Developer shall at all times keep the Site free and clear of all liens and encumbrances affecting title to the Site.

The Developer shall have access to all data and information on the Site available to the Agency or City, as applicable, but without warranty or representation by the Agency or City, as applicable, as to the completeness, correctness or validity of such data and information. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the Agency and City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

Without limiting any other indemnity provisions set forth in this Agreement, the Developer shall indemnify, defend (with counsel approved by the Agency or City) and hold the Agency and City and their elected and appointed officers, officials, employees, contractors, agents and representatives harmless from and against all injury, damages, liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, or other expense resulting from or arising in connection with entry upon the Site by the Developer or Developer's representatives or agents pursuant to this Section 213. The Developer's indemnification obligations set forth in this Section 213 shall survive the close of escrow and the termination of this Agreement. Prior to the Developer's entry upon the Property, the Developer shall provide the Agency and City with a certificate or other proof of insurance meeting the requirements set forth in Section 306 of this Agreement.

N. [§214] Submission of Evidence of Equity Capital and Mortgage Financing

If the Developer finances the development of the Site and related activities, all such financing (construction and permanent) shall be subject to the approval of the Agency, which approval will not be unreasonably withheld. The Developer has indicated its intent to obtain financing for the Project through First Northern Bank. The Agency hereby approves of any such financing obtained through First Northern Bank; provided such financing complies with the conditions set forth in this Section 214.

Any construction loans shall provide that funds shall only be used to pay for Project related improvements and any permanent loans shall provide that funds shall only be used to repay construction financing. No funds from either construction or permanent loans shall be distributed as income, profit, inducement or any other form of payment to Developer or any other entity, whether or not related to Developer, unless and until all amounts owed by Developer to Agency and/or City pursuant to this Agreement have been fully repaid. In the event any such funds are so distributed, Developer shall, without presentment, owe the Agency one hundred, ten percent (110%) of the amount of such funds, which debt shall be immediately due and payable, and which amounts will not be credited toward any other debt owed the Agency, and the non-payment of such funds will be considered a default under this Agreement.

Prior to the issuance of the Certificate of Completion in accordance with Section 318, Developer shall not permit or cause any mortgages, deeds of trust, other security instruments, liens or encumbrances to be recorded against the Site, except for mortgages or deeds of trust to secure loans approved by the Agency.

No later than the time specified in the Schedule of Performance (Attachment No. 3), the Developer shall submit to the Agency evidence satisfactory to the Agency that the Developer has the equity capital and commitments for mortgage financing necessary for development of the Site. The Agency shall approve or disapprove such evidence of financing commitments within the time established in the Schedule of Performance (Attachment No. 3).

Any construction loans for the Project shall not exceed the cost to construct and finance the Project. The proceeds of sale of any residential or non-residential units or spaces within the Project shall be used exclusively to pay principal and interest on any construction loans, until such construction loans have been repaid in full.

The Agency agrees that the terms and conditions of the Acquisition Note and the Acquisition Deed of Trust shall be subject to and subordinate to the terms and conditions of financing obtained by the Developer through a lender approved by the Agency for the development of the Project, pursuant to the terms of a subordination agreement executed by the Agency and such lender; provided the total aggregate amount of financing secured by the Developer, whether secured through Developer's Financing (as defined in Section 303, below) or other sources, for the development of the Project, together with the outstanding principal amount of the Acquisition Note, shall not exceed the projected appraised value of the Project upon completion, unless otherwise approved by the Agency; and provided, further, that the subordination agreement shall contain the following provisions, or similar conditions acceptable to the Agency: (i) the Agency shall receive any notices of default issued by such lender to the Developer, (ii) the Agency shall have the right to cure any default by the Developer within forty-five (45) days after a notice of default; and (iii) the Agency shall have the right to foreclose under its Acquisition Deed of Trust without the lender accelerating its debt, provided the Agency has cured or is attempting to cure any defaults under such lender's deed of trust.

III. **[§300] DEVELOPMENT OF THE SITE**

A. **[§301] Development of the Site by the Developer**

1. **[§302] Scope of Development**

The Site shall be developed as provided in the Scope of Development (Attachment No. 4 hereto).

2. **[§303] Project Financing; Deferral of City Fees**

a. **Developer's Financing.** The Developer intends to seek funding for the Project through private commercial lending institutions (the "**Developer's Financing**"). The Developer shall complete all actions necessary to secure all approvals and commitments necessary to effectuate the Developer's Financing, or other alternative funding, as the case may be, in an amount satisfactory to undertake and complete the development of the Site, and each portion thereof.

Except as otherwise specifically provided for in this Agreement, including without limitation the work to be undertaken by the Agency or City as provided for in Part II of the Scope of Development (Attachment No. 4), all costs of developing the Site and constructing all improvements thereon shall be borne by the Developer.

In the event the Developer is unable, despite diligent efforts, to secure reasonable financing necessary for development of the Site, or otherwise determines that the development of the Site is not feasible due to the economic conditions then in existence, the Developer shall notify the Agency in writing. The Agency and Developer shall thereafter meet and confer in an attempt to reach an agreement on how and/or whether to proceed with the Project. If the Agency and Developer are unable to mutually agree upon an alternative approach, which may include modifications or amendments to this Agreement, then the Developer shall have the option to terminate this Agreement pursuant to Section 507.

b. Deferral of City Fees. In order to facilitate development of the Project on the Site, the City, by its execution of the Consent and Agreement attached hereto, agrees to defer payment of all normal Building Permit Fees (including Building, Plumbing, Electrical, Mechanical, CARF, Energy Plan Check, Plan Check and Reinspection, Strong Motion, and Metered Construction Water) and most City Impact Fees (including Water System, Waste Water System, General Storm Drain, Streets, Parks and Rec, General Capital, Storm Drain Non-Flood, Monitoring, Public Safety, Fire Protection and Residential High Density Fee) (collectively, the "City Fees") required to be paid by the Developer for development of the Project. The exact amount of the City Fees shall be computed in accordance with City rules, regulations and official policies in effect as of the date of this Agreement. The City Fees to be deferred are currently estimated to total \$588,641.22 based on the proposed square footage and estimated value of the Project.

As a condition to issuance of a building permit by the City for the development of the Project on the Site, the Developer shall execute and deliver to the City a promissory note (the "City Fees Note") in favor of the City in a principal balance equal to the amount of the City Fees to be deferred. The City Fees Note shall be secured by a deed of trust (the "City Fees Deed of Trust") which shall be recorded against the Site. The City Fees Note and the City Fees Deed of Trust shall be executed and delivered in forms substantially as set forth in Attachment Nos. 8 and 9, respectively, hereto. The City Fees Note shall be repaid pursuant to the terms and conditions set forth in the City Fees Note (Attachment No. 8).

3. [\$304] Development Review

Development of the Site shall be in substantial conformity with the concept drawings ("**Concept Drawings**"), attached hereto as Attachment No. 10 and incorporated herein by reference, including any modifications thereto as may be proposed by Developer and approved by the Agency. The Agency and City, by its execution of the Consent and Agreement attached hereto, acknowledge and agree that the Concept Drawings attached hereto as Attachment No. 10 conform to the Downtown Master Plan and the City's form based code design guidelines. No future amendments to the Downtown Master Plan or the City's form based code design guidelines shall apply to the Project; provided that any material change to the

Concept Drawings or the Project that may be proposed by the Developer shall be in conformity with the Downtown Master Plan and the City's form based code design guidelines in existence at the time of approval of any such change by the Agency and City. The Concept Drawings include: (i) a site plan drawn to scale showing all proposed uses in the Project; (ii) a set of elevations for all four (4) building walls in the Project, (iii) a textual and graphic description of facade treatments, fenestration, exterior stairways, on-site parking treatment, any enhancement of the public way proposed by Developer, and relationship with neighboring structures; (iv) at least four sections through the Project, and (v) a landscaping plan and parking layout design drawn to scale.

Within the times established in the Schedule of Performance (Attachment No. 3 hereto), the Developer shall submit to the City for review and approval all construction plans, drawings and related documents for the construction and development work to be done on the Site, or applicable portions thereof. Final construction plans and drawings are defined as those in sufficient detail to obtain a building permit.

The Developer shall obtain all approvals and permits that may be required under the City's normal plan check, development review and approval process for the construction and development work to be completed on the Site, or applicable portions thereof.

During the preparation of any drawings and plans for the development and construction work to be completed on the Site, the Agency staff and the Developer shall meet with City staff and communicate and consult informally and as frequently as is necessary to ensure that the formal submittal of any documents to the City pursuant to this Section 304 can receive prompt consideration.

The City shall approve or disapprove the plans, drawings and related documents submitted pursuant to this Section 304 in accordance with City's normal plan check procedures. Any approval by the City shall be deemed an approval by the Agency. Any disapproval shall state in writing the reasons for disapproval and the changes that the City requests be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 4) and any items previously approved hereunder by the Agency or City. The Developer, upon receipt of a disapproval, shall revise such plans, drawings and related documents and resubmit them to the City as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City be entitled to require changes inconsistent with the Scope of Development and any previously approved items.

If the Developer desires to make any material change in the construction plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the construction plans, as modified by the proposed change, conform to the requirements of this Section 304, the Concept Drawings and other approvals previously granted by the Agency under this Agreement and the Scope of Development (Attachment No. 4), the City shall approve the proposed change and notify the Developer in writing within thirty (30) days after submission to the City.

Based on the development and preliminary plans provided for under this Agreement, Agency staff has made an initial determination that the development of the Project will be except from environmental review under the California Environmental Quality Act, under a Class 32 Categorical Exemption (CEQA Guidelines Section 15332) for Infill Development Projects. The Developer understands and agrees that any material changes made to the development plans or any elements of the Project may require environmental review, and Developer shall cooperate with Agency and City staff in the event any determination is made that would require any such environmental review as part of the development review and approval process.

4. [§305] Schedule of Performance; City Inspection Services

The Developer shall promptly begin and thereafter diligently prosecute to completion the construction and development work to be done on the Site, or applicable portion thereof, as provided in the Scope of Development (Attachment No. 4 hereto), within the times specified in the Schedule of Performance (Attachment No. 3 hereto) with such reasonable extensions of said times as may be granted by the Agency. The Schedule of Performance (Attachment No. 3) is subject to revision from time to time as mutually agreed upon in writing between the Developer and the Agency pursuant to Operating Memoranda, as described in Section 606 hereof. The Agency's Executive Director shall have the authority to approve in writing, on behalf of the Agency, any such extensions of time he or she deems reasonable and appropriate, in accordance with Sections 605 and 606.

The City, by its execution of the Consent and Agreement attached hereto, will use its best reasonable efforts to respond to requests for inspection by the Developer within twenty-four (24) hours from receipt of such request, during regular business hours Monday through Friday. In the event the City's building / inspection staff is unable to respond in a timely manner to requests for inspection from the Developer during the construction period due to the number of redevelopment activities and development projects then currently under construction within the City, the City and Agency will cooperate to determine if it is necessary and feasible for the City to contract with a qualified third-party building inspection service acceptable to the Developer to assist the City with its inspection activities in order to ensure a timely and reasonable response to requests for inspections. Notwithstanding, the Developer shall have the right to contract for outside third-party building inspection services; provided the costs associated with any such services contracted for by the Developer shall be borne by the Developer; and provided, further, that any such service provider shall be subject to approval by the City's building official.

5. [§306] Bodily Injury and Property Damage Insurance; Indemnification

Prior to the commencement of any work on the Site, including any preliminary work performed by the Developer pursuant to Section 213, the Developer shall furnish, or cause to be furnished, to the Agency duplicate originals or appropriate certificates of insurance evidencing commercial general liability insurance on an occurrence basis insuring against bodily injury and property damage in a combined single limit of liability per occurrence in the amount of ONE MILLION DOLLARS (\$1,000,000), general aggregate limit of TWO

MILLION DOLLARS (\$2,000,000) and builder's all risk insurance in an amount not less than the full insurable value of the improvements on the Site on a replacement cost basis, together with endorsements naming the Agency and the City, and their respective elected and appointed officers, officials, employees, contractors, agents and representatives, as additional insureds. Developer shall further provide evidence of automobile liability insurance on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence, covering owned, non-owned and hired automobiles. Developer shall also provide evidence of worker's compensation insurance in the statutory amount required by law. Developer's contractor, and subcontractors if any, shall also submit evidence of liability insurance in the same form and amount as required by Developer.

The certificates of insurance shall be accompanied by all appropriate endorsements, and shall set forth the names of the insurance carriers, the policy numbers, the coverage limits, any applicable deductible or retention, and the policy effective and expiration dates. The certificates of insurance shall also evidence that: (a) Developer's Federal Employer Identification Number ("FEIN") is as set forth in the Agreement; (b) Developer has procured and paid for the foregoing insurance coverage from companies either (i) having an A.M. Best rating of "A VII" or higher or (ii) otherwise acceptable to Agency in its sole discretion; (c) the person executing the insurance certificates is authorized by the applicable insurance carriers to do so; and (d) all insurance coverages required to be maintained by Developer pursuant to this Section 306 provide coverage on an "occurrence" basis and not on a "claims made" basis. The insurance certificates shall state that the insurer will provide Agency with thirty (30) days written notice in case of cancellation or non-renewal.

The insurance policies required by this Section 306 shall be endorsed by Developer's insurance carriers to reflect (a) that the coverages provided pursuant to the policies required by this Section 306, including any excess or umbrella policies, are primary over any other insurance coverage that may be available to Agency and City, and (b) that any other insurance coverage that may be available to Agency or City shall be excess over the coverages provided by the policies required by this Section 306, including any excess or umbrella policies, and (c) that the coverages provided pursuant to the policies required by this Section 306, including any excess or umbrella policies, shall not require contribution of any other insurance coverage that may be available to Agency or City, regardless of how such other insurance coverage of Agency and City is structured to apply in other insurance situations. Further, all policies, including excess or umbrella policies, shall provide coverage for claims by one insured against another insured and the policies shall not contain any cross-suits exclusions, cross-liability exclusions, or insured versus insured exclusions.

In addition to the insurance requirement of this Section 306, the Developer agrees to and shall indemnify, protect, defend and hold the Agency and the City, their respective elected and appointed officers, directors, employees, agents and representatives, harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site, or applicable portion thereof, and which is not caused by the sole act or

negligence of the Agency or City, or their respective officers, agents, servants, employees or contractors.

6. [\$307] City and Other Governmental Agency Permits

Prior to the commencement of any construction and development (or any work related thereto) upon the Site, the Developer shall secure, or cause to be secured, any and all approvals and permits which may be required by the City or any other governmental agency affected by such construction. All site work and construction activities shall be undertaken in accordance with the requirements of the City, and other applicable local, regional, state and federal rules, regulations and standards, including but not limited to: City building permit; grading permit; conditions specified in Conditions of Approval approved by the Planning Commission on July 15, 2008; encroachment permit; approved improvement plans; Stormwater Pollution Prevention Plan.

Developer shall carry out the construction of the Project in conformity with all applicable laws, including applicable federal and state labor standards. As provided in Section 320, to the extent applicable to the Project, Developer and its subcontractors and agents, shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall be responsible for carrying out the requirements of such provisions.

The Developer agrees to defend, indemnify, protect and hold harmless the Agency and the City and their officers, employees, and agents from, regarding and against any all liabilities, obligations, orders, claims, damages, fines, penalties and expenses of any kind whatsoever, together with fees (including, without limitation, reasonable attorneys' fees), whenever arising, resulting from or in connection with the obligation to comply with all laws with respect to the construction of the Project, including, without limitation, all applicable federal and state labor laws and standards.

7. [\$308] Payment and Performance Bond; Letter of Credit

Prior to commencement of construction of the Project, Developer shall deliver, or cause Developer's contractor to deliver, to the Agency copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, and reasonably acceptable to the Agency, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Agency as co-obligee.

In lieu of payment bond(s) and performance bond(s) as set forth above, the Developer may, at its option, deliver to the Agency an unconditional and irrevocable letter of credit, in favor of the Agency, in an amount not less than one hundred percent (100%) of the scheduled cost of construction of the Project. Any such letter of credit shall be from a bank authorized to do business in California, in form and substance satisfactory to the Agency.

8. [§309] Rights of Access During Construction

Representatives of the Agency and the City shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction and development for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing and developing the improvements. Nothing contained in this Section 309 shall be, or be deemed to be, a limitation of the rights of the City, under its regulatory authority, to access the Site and inspect the Site or the Project being constructed thereon.

9. [§310] Anti-Discrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction and development of improvements on the Site provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

B. [§311] Taxes, Assessments, Encumbrances and Liens

The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Site and the Project for any period subsequent to conveyance of title to or delivery of possession of the Site or any portion thereof. Prior to the issuance of a Certificate of Completion for the Site, the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement, and the Developer shall remove or have removed any levy or attachment made on the Site that is not specifically authorized by this Agreement, or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto; provided, however, that prior to commencing any such contest, the Agency, in its reasonable discretion, may require the Developer to post bond in an amount sufficient to cover the tax, assessment, encumbrance or lien, or such portion thereof, to be contested and shall thereafter proceed in good faith to contest the validity or amount of such tax, assessment, encumbrance or lien. The prohibitions of this Section 311 shall not apply with respect to the Site or any portion thereof for which a Certificate of Completion has been issued.

C. [§312] Prohibition Against Transfer and Assignment of Agreement

Prior to the completion of the development and construction work to be performed on the Site, or applicable portion thereof, and the issuance of a Certificate of Completion therefor, the Developer shall not, except as permitted by Section 105 of this Agreement, assign or attempt to assign this Agreement or any rights herein, nor make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Site or the improvements thereon, without the prior written approval of the Agency. This prohibition shall not apply subsequent to the completion of the development and construction as evidenced

by a Certificate of Completion; provided that any such sale, transfer, conveyance, assignment or lease shall be subject to the terms and conditions set forth in the Acquisition Note and/or the City Fees Note so long as any amounts remain due and owing by the Developer under said Notes. This prohibition shall not be deemed to prevent the granting of easements, dedications or permits to facilitate the construction and development of the Site. This prohibition shall not be deemed to prohibit or restrict the rental or leasing of any part or parts of a building or structure when said improvements are completed.

Following transfer of the Site, or any portion thereof, with the Agency's consent, Developer shall be relieved of all of its obligations hereunder with respect to such portion of the Site transferred; provided, any such proposed buyer, transferee, conveyee, assignee or lessee of any portion of the Site for which a Certificate of Completion has not been issued, by instrument in writing satisfactory to the Agency and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the Agency, shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all conditions and restrictions to which the Developer is subject with respect to that portion of the Site so transferred. In the absence of specific written agreement of any proposed buyer, transferee, conveyee, assignee or lessee approved by the Agency as referred to above, no such sale, transfer, conveyance, assignment or lease, or the approval thereof by the Agency, shall be deemed to relieve the Developer or Approved Transferees, or any other party, from any obligations under this Agreement.

D. [§313] Security Financing; Rights of Holders

1. [§314] Holder Not Obligated to Construct

The holder of any mortgage, deed of trust or other security interest providing construction financing for the Project shall in no way be obligated by the provisions of this Agreement to construct or develop, or complete construction or development of, the improvements, or to guarantee such construction or development or completion.

2. [§315] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer of this Agreement, the Agency shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement (who has previously made a request therefor) a copy of such notice or demand. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction and development of the improvements, or the completion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Agency by written agreement

satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the construction and development of the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations.

E. [§316] Notice of Default to Agency; Right of Agency to Cure Mortgage, Deed of Trust or Other Security Interest Default

Whenever any holder of any mortgage, deed of trust or other security interest with respect to the Site shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer, such holder shall at the same time deliver a copy of such notice or demand to the Agency.

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of development, and the holder has not exercised its option to complete the development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

F. [§317] Right of the Agency to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title and prior to the issuance of a Certificate of Completion for construction and development of the Project on the Site, and after the Developer has had a reasonable time to cure or satisfy any liens or encumbrances on the Site, which period of time shall be the shorter of any period set by law or the cure period set forth in Section 501 hereof, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall prevent the Developer from challenging or contesting any tax, assessment, lien or charge so long as the Developer pays or makes provision for the payment of any such tax, assessment, lien or charge and thereafter in good faith contests the validity or amount thereof.

G. [§318] Certificate of Completion

Upon the completion of the construction and development of the Site, the Developer shall send a written request to the Agency and the Agency shall furnish the Developer with a Certificate of Completion for such work, in a form suitable for recording in the Official Records of Yolo County, California. The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction and development work to be completed on the Site, as required by this Agreement.

The Agency shall not unreasonably withhold the Certificate of Completion. If the Agency refuses or fails to furnish a Certificate of Completion for the Site after written request

from the Developer, the Agency shall provide the Developer with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping or monuments not a part of a structure, the Agency may issue its Certificate of Completion upon the posting of a bond by the Developer in an amount representing a fair value of the work not yet completed.

After recording of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site, shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, covenants, conditions and restrictions, contract or other instrument in accordance with the applicable provisions of Section 400, et seq., of this Agreement.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation by the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. A Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

H. §319 Records

The Developer shall maintain in accordance with generally accepted accounting principles, complete books and records relating to the acquisition, construction and development of the Site and the Project. Upon request for examination by the Agency, the Developer at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Developer shall permit the Agency to audit, examine and make excerpts or transcripts from these records.

I. §320 Prevailing Wages

The parties contemplate that the construction of the Project pursuant to this Agreement will not be subject to the payment of prevailing wages under the Prevailing Wage Laws (as defined in Section 307). The Developer, in its sole discretion, shall have the right to request from the California Department of Industrial Relations a formal determination as to the applicability of the Prevailing Wage Laws to the Project. If it is determined for any reason that the Project will be subject to the payment of prevailing wages, the parties acknowledge that the Project may then be determined to be economically unfeasible. In such event, the parties shall meet and confer to determine if there is a mutually agreeable resolution to such a determination of economic unfeasibility. If the parties are unable to reach a mutually agreeable resolution within forty-five days, either party may terminate this Agreement by providing written notice of such termination to the other party.

Notwithstanding, the Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of Developer or its contractors to pay prevailing wages if and to the extent required by law or to comply with the

other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the improvements on the Site. The foregoing indemnity shall survive any termination of this Agreement.

IV. [§400] USE OF THE SITE

A. [§401] Mixed-Use Project

The Site shall be developed to provide an approximately forty-seven thousand two hundred seventy-two (47,272) square foot, four-story mixed-use project, as more fully described in the Scope of Development. The Site shall be developed by the Developer pursuant to plans approved by the City, in conformance with the Concept Drawings in Attachment No. 10 hereto, and pursuant to the Scope of Development (Attachment No. 4).

Developer covenants and agrees that during construction and thereafter Developer shall devote the Site, and the improvements to be constructed thereon, to the uses specified in the Development Plan until the termination of the Development Plan (currently scheduled to terminate on July 20, 2033). The foregoing covenant shall run with the land.

B. [§402] Covenants, Conditions and Restrictions; Property Management and Maintenance of the Project

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall prepare, execute and record a declaration of covenants, conditions and restrictions ("CC&Rs") establishing reciprocal easement and access rights, operation and maintenance conditions (including without limitation approved hours of operation for the restaurant and retail uses to be operated on the Site), and other conditions and restrictions as appropriate for the Project. The CC&Rs shall be in such form and content as may be acceptable to the Agency and shall be recorded against the Site.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and enter into an agreement with a property management company approved by the Agency, to manage the Project. The Developer shall submit a copy of such agreement(s) to the Agency, provided the Agency shall not have the right to approve or disapprove such agreement(s) except to ensure compliance of such agreement(s) with the provisions of this Agreement. The property management and maintenance agreement(s) shall provide that the Project shall be managed and maintained in accordance with the CC&Rs and this Agreement. The property management and maintenance agreement(s) shall name the Agency as a third-party beneficiary permitting the Agency the right to enforce the agreement(s). The Developer shall promptly notify the Agency in the event there is any change in a property management company managing the Project, or any portion thereof.

The Developer covenants that it shall maintain, or cause to be maintained, the Site and the Project, in a manner consistent with the provisions set forth in the Winters Municipal Code, as may be amended from time to time, and shall keep the Site reasonably free from any accumulation of debris or waste materials prior to and after completion of the Project.

If, during any period of time that any amounts are due and owing under the Acquisition Note and/or the City Fees Note, the Developer fails to maintain the Site or the Project, the Agency or City, as applicable, shall have the right to take necessary corrective action pursuant to the provisions set forth in the applicable Note and the Winters Municipal Code.

Failure by Developer to maintain, or cause to be maintained, the Site in the condition provided in this Section 402 shall constitute a default under the Acquisition Note, the City Fees Note, and this Agreement.

The foregoing covenants shall remain in effect until the later of: (a) all amounts owing under the Acquisition Note and the City Fees Note have been repaid in full, or (b) the termination of the Development Plan.

C. [§403] Obligation to Refrain from Discrimination

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site, the Units or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Units. The foregoing covenants shall run with the land in accordance with Section 33438 of the Health and Safety Code and shall remain in effect in perpetuity.

D. [§404] Form of Nondiscrimination and Nonsegregation Clause

The Developer shall refrain from restricting the rental, sale or lease of any portion of the Site on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. Pursuant to Sections 33337 and 33436 of the Health and Safety Code or any successor statute, all such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds:

(a) "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor

shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

(a) "That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

3. In contracts:

(a) "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

E. §405 Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the Agency and the City shall have the reasonable right of access to the Site without charges or fees for the purpose of inspection of the Site.

F. §406 Agency Lease

If following completion of the Project, and during the initial lease-up period, Developer is unable to obtain pre-leasing commitments from tenants to fill the non-residential space to be constructed on the Site, the Developer shall notify the Agency that space is still available for lease within the Project. The Agency and/or City shall then have the option to negotiate with the Developer the terms of a lease or other agreement to rent or lease portions or areas of the Project which are then available for rent or lease (the "Agency Lease Space"), for administrative, meeting and other public purposes. In such event, Agency and Developer agree to cooperate and negotiate in good faith mutually acceptable terms for the lease or rental of the Agency Lease Space by the Agency or City.

V. §500 DEFAULTS AND REMEDIES

A. §501 Defaults

Subject to extensions of time pursuant to Sections 605 or any other extension of time that may be agreed to by the parties, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The nondefaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure or commence to cure and diligently prosecute to completion any such default within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

B. §502 Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Yolo, State of California, in any other appropriate court in that county, or in the Federal District Court in the Northern District of California.

The nondefaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the nondefaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement.

C. [\\$503] Applicable Law

The laws of the State of California, excepting those provisions dealing with choice of law, shall govern the interpretation and enforcement of this Agreement.

D. [\\$504] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, and subject to the nonrecourse provisions contained in the Acquisition Note (Attachment No. 5) and the City Fees Note (Attachment No. 8), the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

E. [\\$505] Damages

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the nondefaulting party for damages caused by such default.

F. [\\$506] Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the nondefaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

G. [\\$507] Termination by the Developer Prior to Conveyance

In the event that prior to conveyance of title to the Agency Property to the Developer:

a. Subject to Section 605 of this Agreement, any of the Developer's conditions precedent to conveyance of the Agency Property are not satisfied by the times set forth in this Agreement, and such failure is not cured within sixty (60) days after written notice

from Developer or, if such failure cannot be reasonably cured within such 60 day period, the Agency is not diligently acting to cure such failure in a timely manner; or

b. Subject to Section 605 of this Agreement, all conditions precedent to conveyance are satisfied or waived by the party benefiting from such condition and the Agency does not tender conveyance of the Agency Property or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within fifteen (15) days after written demand by the Developer or, if such failure cannot be reasonably cured within such fifteen (15) day period, the Agency is not diligently acting to cure such failure in a timely manner; or

c. The City's Affordable Housing Program is not amended to exempt the Project from the requirements of the City's Affordable Housing Program, as referenced in Section 211 of this Agreement; or

d. The Developer is unable, despite diligent efforts, to secure reasonable financing necessary for development of the Site, or otherwise determines that the development of the Site is not feasible due to the economic conditions then in existence, and the Agency and Developer are unable to mutually agree upon an alternative approach, which may include modifications or amendments to this Agreement, as provided for under Section 303 of this Agreement; or

e. The Agency determines that the costs to remediate the Arsenic Contamination exceeds the maximum amount set forth in Part II of the Scope of Development (Attachment No. 4), and the Developer determines not to pay the additional costs to complete such remediation work; or

f. The Agency is in default under any other provision of this Agreement and such default is not cured within the applicable time periods;

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Agency as the Developer's sole and exclusive remedy for the matters described in this Section 507. Upon such termination, and except for those provisions which are specifically intended to survive any termination of this Agreement, including without limitation the indemnification obligations set forth in Section 213, the parties shall have no further obligations to or rights against each other and the Deposit referenced in Section 107 (including any interest earned or accrued thereon) shall be returned to the Developer. Notwithstanding the foregoing, with respect to the circumstances described in subparagraph b., above, Developer may, at its option, pursue its remedies set forth in Section 506 of this Agreement.

H. [\$508] Termination by the Agency Prior to Conveyance

In the event that prior to conveyance of title to the Agency Property to the Developer:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein in violation of this Agreement; or

b. There is a change in the ownership or identity of the Developer or the parties in control of the Developer in violation of the provisions of Section 105 hereof; or

c. Subject to Section 605 of this Agreement, the Developer does not submit the evidence required under Section 214 that it has the necessary commitment letters for mortgage financing for development of the Site in the manner and by the date provided in this Agreement and such failure is not cured within thirty (30) days after written notice from Agency or, if such failure cannot be reasonably cured within such thirty (30) day period, the Developer is not diligently acting to cure such failure in a timely manner; or

d. Subject to Section 605 of this Agreement, the Developer does not notify the Agency that it has approved the conditions of the Site pursuant to Section 212, and such failure is not cured within thirty (30) days after written notice from Agency or, if such failure cannot be reasonably cured within such thirty (30) day period, the Developer is not diligently acting to cure such failure in a timely manner; or

e. Subject to Section 605 of this Agreement, the Developer does not take title to the Agency Property under tender of conveyance by the Agency after satisfaction of all conditions precedent pursuant to this Agreement and such failure is not cured within fifteen (15) days after written demand by the Agency or, if such failure cannot be reasonably cured within such fifteen (15) day period, the Developer is not diligently acting to cure such failure in a timely manner; or

f. The Developer is in breach or default with respect to any other material obligation of the Developer under this Agreement; and if any default or failure referred to above shall not be cured within sixty (60) days after the date of written demand by the Agency or, if such default cannot be reasonably cured within such sixty (60) day period, the Developer is not reasonably acting to cure such default in a timely manner;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Agency, may, at the option of the Agency, be terminated by the Agency by written notice thereof to the Developer as the Agency's sole and exclusive remedy for the matters described in this Section 508. Upon such termination, the parties shall have no further obligations to or rights against each other, provided however that the Agency may retain any amounts remaining from the Developer's Deposit as liquidated damages.

IN THE EVENT OF TERMINATION UNDER THIS SECTION 508, THE DEPOSIT MAY BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS, MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE AGENCY PROPERTY IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH PROPERTY WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH

DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION THAT SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THE DEVELOPER CHALLENGES THE LOSS OF THE DEPOSIT AND THIS PARAGRAPH IS HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE DEVELOPER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

By: _____

By: _____

I. [§509] Option to Repurchase After Conveyance of Title to the Site

1. The Agency shall have the right at its option, as its sole and exclusive remedy, to terminate this Agreement, and to repurchase the Agency Property, together with the ROW Property, or any portion thereof, with all improvements thereon, if after conveyance of title to the Site and prior to the date of issuance by the Agency of a Certificate of Completion for the Site or applicable portion thereof, pursuant to Section 318 of this Agreement, the Developer shall:

a. Fail to commence construction of the improvements on the Site, or applicable portion thereof, for a period of ninety (90) days after written notice thereof from the Agency; for purposes of this provision, the Developer shall be deemed to "commence construction" when and only when the Developer has commenced rough grading on the Site pursuant to a permit issued by the City for the construction of the improvements provided for herein, the final plans and specifications for which had been approved by the Agency; or

b. Subject to the provisions of Section 605, once construction has been commenced, fail to exercise reasonable diligence to complete construction of the improvements on the Site, where such failure has not been cured within three (3) months after written notice thereof from the Agency; or

c. Subject to the provisions of Section 605, abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency; or

d. Without the prior written consent of Agency, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site, or any portion thereof, except for any sale, assignment, encumbrance or transfer that is expressly permitted by the terms of this Agreement (which shall include mechanic's liens, preliminary notices from contractors or other encumbrances related to the construction of the Project). For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law.

2. This option shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

a. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

b. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

3. To exercise its right to repurchase, reenter and take possession with respect to the Site, or applicable portion thereof, the Agency shall pay to the Developer in cash an amount equal to:

a. The Cash Downpayment, plus such other cash amounts paid by the Developer for the Site, or applicable portion thereof;

b. Plus, the costs actually incurred by the Developer for on-site labor and materials for the construction of the Project, at the time of the repurchase, reentry and repossession, exclusive of amounts financed;

c. Less, any gains or income withdrawn or made by the Developer from the Site, or applicable portion thereof, or the improvements thereon; and

d. Less, the amount of liens on the Site and any unpaid assessments against the Site that are assumed by the Agency.

Agency agrees that it shall consider and execute any documents as may be reasonably requested by a lender to modify or clarify the provisions of this option to repurchase.

J. §510]Dispute Resolution; Legal Action

1. Informal Resolution. If any dispute arises between or among the Parties as to interpretation or application of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to judicial reference or formal court action. As to any such dispute and prior to mediation or judicial reference, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute.

2. Mediation. Before pursuing any administrative or judicial remedies to resolve any dispute or claim under this Agreement, the Parties hereto shall attempt in good faith to resolve any such dispute by mediation conducted by a mediator mutually selected by the Parties or in the absence of mutual agreement, a panel of three (3) mediators where each party selects one mediator, and those two mediators select the third mediator. The third mediator shall serve as chairperson and shall adhere to the Commercial Mediation Rules of the American Arbitration Association.

3. Judicial Reference. If mediation is not required under the provisions of this Agreement or mediation has not resolved the dispute and any Party to this Agreement commences a lawsuit relating to a dispute arising under this Agreement, all the issues in such action, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638.1 and 641 through 645.1. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Neither Party shall be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The following shall apply to any such proceedings:

a. The proceeding shall be brought and held in Yolo County, unless the Parties agree to an alternative venue.

b. The Parties shall use the procedures adopted by JAMS/ENDISPUTE ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties).

c. The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

d. The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court in accordance with California Code of Civil Procedure Sections 638 and 640.

e. The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy, other than punitive damages.

f. The referee may require one or more pre-hearing conferences.

g. The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

h. A stenographic record of the trial shall be made.

i. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

j. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

k. The Parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

l. The costs of such proceeding, including the fees of a referee, shall be borne equally by the parties to the dispute.

m. The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. Except for actions for indemnification, the Parties acknowledge and accept that they are waiving their right to a jury trial.

VI. [§600] GENERAL PROVISIONS

A. [§601] Conflicts of Interest

No member, official or employee of the Agency or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

B. [\$602] Nonliability of Agency or City Officials and Employees

No member, official or employee of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or the City, or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement, except as may be caused by intentional torts or criminal activities of any such Agency or City member, official or employee, in which case liability shall be limited to the Agency's and/or City's obligations under this Agreement. Developer hereby waives and releases any claim it may have against the members, officials or employees of the Agency or City with respect to any default or breach by Agency and/or City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement, except as may be caused by intentional torts or criminal activities.

C. [\$603] Broker's Commission

No broker, agent or finder was used by either party in this transaction. Agency and Developer each hereby represents to the other that they have not entered into any agreement or incurred any obligation which might result in the obligation of the other party to pay a brokerage commission or a finder's fee arising out of this transaction, and each agrees to indemnify and hold the other harmless from any claims, liabilities, or expenses including attorneys' fees arising out of claim for a brokerage commission or finder's fee because of any act of the indemnifying party.

D. [\$604] Condemnation

If, before the Close of Escrow for the Agency Property, all or part of the Site, as is reasonably material to the development of the Project, is taken or threatened to be taken by eminent domain or condemnation, Developer may elect to terminate this Agreement by written notice to Agency.

E. [\$605] Force Majeure

Subject to the limitations set forth below, performance by any party under this Agreement shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or other circumstances beyond the control of such party ("**Enforced Delay**"). An extension of time for any such cause shall be for the period of the force majeure delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of one hundred eighty (180) days), if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause; provided that in any event, Escrow shall close not later than April 30, 2010. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer.

F. §606 Operating Memoranda

The parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the parties find that non-substantive refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

Operating Memoranda may be approved and executed on the Agency's behalf by its Executive Director, or his or her designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement.

Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 621 hereof, and must be approved by the Agency Board.

G. §607 Further Documents

This Agreement shall be primary escrow instructions to Title Company. Each party will, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further instruments and documents as may be necessary in order to complete the sale, conveyance and transfer provided for herein, including without limitation such supplemental escrow instructions as may be reasonably required by Title Company and will do any and all other acts and will execute, acknowledge and deliver any and all documents as may be required in order to carry out the intent and purpose of this Agreement. If there is a conflict between this Agreement and any supplemental escrow instructions, this Agreement shall control.

H. §608 Time is of the Essence

Time is of the essence in the performance of this Agreement.

I. §609 Survival

Unless stated otherwise in this Agreement, all covenants, representations and warranties of the parties shall survive the Close of Escrow and will not merge with the Grant Deed (Attachment No. 7).

J. [§610] Waiver

A waiver by one party of the performance of any covenant, condition or promise of the other party shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant, condition or promise contained herein. The waiver of either or both parties of the time for performing any act shall not be construed as a waiver of any other act required to be performed at a later date.

K. [§611] Notices

All notices that are given pursuant to this Agreement shall be in writing. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card. Notices delivered by the United States Express Mail, Federal Express, Airborne Express or another overnight courier that provides next business day delivery (the "**Express Courier**") shall be deemed given on the next business day after deposit of the same with the Express Courier. If any notice is transmitted by facsimile (fax) transmission or similar means, the same shall be deemed received or delivered upon the transmission thereof, provided a copy is also given via personal delivery or deposited with the Express Courier by no later than the next business day after such facsimile transmission. If notice is given or received on a Saturday, Sunday or legal holiday, or on a business day after 5:00 P.M., it shall be deemed given or received on the next business day. For purposes of notice, the addresses of the parties are as follows, which may be changed by five (5) days prior written notice:

Agency: Community Development Agency
 of the City of Winters
 318 First Street
 Winters, CA 95694

 Attention: Redevelopment Manager
 Telephone: (530) 795-4910, Ext. 118
 Facsimile: (530) 795-4935

with a copy to

Iris P. Yang
McDonough Holland & Allen PC
555 Capitol Mall, 9th Floor
Sacramento, CA 95824

Telephone: (916) 444-3900
Facsimile: (916) 444-3826

City: City of Winters
318 First Street
Winters, CA 95694
Attention: John W. Donlevy, City Manager
Telephone: (530) 795-4910, Ext. 110
Facsimile: (530) 795-4935

With a copy to:

John C. Wallace, City Attorney
City of Winters
318 First Street
Winters, CA 95694
Telephone: (530) 795-4171
Facsimile: (530) 795-3578

Developer: Monticello Investors, LLC
c/o Ogando Development, L.P.
102 Wolfskill Street
Winters, CA 95694
Attention: Karen Ogando
Telephone: (530) 795-3816
Facsimile: (530) 795-3995

L. §612 Entire Agreement

This Agreement, including all attachments hereto, contains the entire agreement between the parties with regard to the Site and supersedes all prior written and/or oral representations and/or agreements, including, but not limited to, any letter of intent between the parties.

M. §613 Construction

Agency, City and Developer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, any remaining portion of this Agreement shall remain in effect. This Agreement will be enforced and interpreted under the laws of the State of California.

N. [§614] Attorneys' Fees

If an action is filed by any of the parties hereto to enforce and/or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

O. [§615] Days

In computing any period of time by days as provided in this Agreement, the date of the act, event or default from which the designated period of time begins to run will not be included. If the date for performance or last day of any time period stated in this Agreement, falls on a day that is not a business day, then the due date or the duration of such time period will be extended so that it ends on the next succeeding day that is a business day. A "business day" is a day of the week that is not a Saturday, Sunday, or legal holiday recognized by the banks, United States Postal Service or the Recorder of the County.

P. [§616] Relationship of the Parties

Nothing in this Agreement is intended to create a partnership or joint venture between the parties or make one party the agent of the other.

Q. [§617] Headings

Any headings or captions used herein are inserted only as a matter of convenience and for reference only and in no way define, limit or describe the scope of this Agreement nor the intent of any of the provisions hereof.

R. [§618] Context

The words or phrases that are not proper nouns that begin with capital letters, are defined terms that have the meanings that are assigned to them in this Agreement. The singular form shall include the plural and vice versa; adverbs such as "herein," "hereto," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; and the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to." "Recorded" means to be recorded in the Official Records of the County of Yolo. Unless specified to the contrary, any reference to a section or paragraph shall be to a section or paragraph of this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated herein and made a part of this Agreement by this reference.

S. [§619] Counterparts

This Agreement may be signed by the parties in different counterparts and the signature pages combined shall create a document binding on all parties.

T. [\$620] Agency Approvals and Actions

Whenever a reference is made herein to an action or approval to be undertaken by Agency, the Agency's Executive Director or his or her designee is authorized to act on behalf of Agency, unless specifically provided otherwise or the context requires otherwise.

U. [\$621] Modifications; Amendments

Any waiver, alteration, change, modification or amendment of or to this Agreement, including any Operating Memorandum provided for under Section 606, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. Any substantive or significant alternation, change, modification or amendment of or to this Agreement shall require approval by the Agency Board, in compliance with all applicable requirements of the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.).

VII. [\$700] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ___, inclusive, and Attachments Nos. 1 through 10 which, together with all documents and agreements referenced herein, constitute the entire understanding and agreement of the parties with respect to the Project.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

VIII. [\$800] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within thirty (30) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer may consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

IX. [\$900] DEFINITIONS

The following terms have the meaning as set forth:

- A. "Acquisition Deed of Trust" shall have the meaning defined in Section 201 hereof.
- B. "Acquisition Note" shall have the meaning defined in Section 201 hereof.

- C. "Agency" shall have the meaning defined in Section 104 hereof.
- D. "Agency Lease Space" shall have the meaning defined in Section 101, and as described in Section 406 hereof.
- E. "Agency Property" shall have the meaning defined in Section 101, and as described in Section 106 hereof.
- F. "Agreement" means this Disposition and Development Agreement.
- G. "Arsenic Contamination" shall have the meaning defined in Section 212 hereof.
- H. "Cash Downpayment" shall have the meaning defined in Section 201 hereof.
- I. "CC&Rs" shall have the meaning defined in Section 402 hereof.
- J. "City" shall have the meaning defined in Section 104 hereof.
- K. "City Fees" shall have the meaning defined in Section 303.b hereof.
- L. "City Fees Note" shall have the meaning defined in Section 303.b hereof.
- M. "City Fees Deed of Trust" shall have the meaning defined in Section 303.b hereof.
- N. "City's Affordable Housing Program" shall have the meaning defined in Section 211 hereof.
- O. "Concept Drawings" shall have the meaning defined in Section 304 hereof.
- P. "Contamination" shall have the meaning defined in Section 212 hereof.
- Q. "Damages" shall have the meaning defined in Section 212 hereof.
- R. "Deposit" shall have the meaning defined in Section 107 hereof.
- S. "Developer" shall have the meaning defined in Section 105 hereof.
- T. "Developer's Financing" shall have the meaning defined in Section 303 hereof.
- U. "Development Plan" shall have the meaning defined in Section 101 hereof.
- V. "Development Project" shall have the meaning defined in Section 101 hereof.
- W. "Enforced Delay" shall have the meaning defined in Section 605 hereof.

- X. "Environmental Assessment" shall have the meaning defined in Section 212 hereof.
- Y. "Environmental Response Actions" shall have the meaning defined in Section 212 hereof.
- Z. "Environmental Response Costs" shall have the meaning defined in Section 212 hereof.
- AA. "Escrow Agent" shall have the meaning defined in Section 202 hereof.
- BB. "Express Courier" shall have the meaning defined in Section 611 hereof.
- CC. "Grant Deed" shall have the meaning defined in Section 202 hereof.
- DD. "Hazardous Materials" shall have the meaning defined in Section 212 hereof.
- EE. "Implementation Plan" shall have the meaning defined in Section 101 hereof.
- FF. "Indemnitees" shall have the meaning defined in Section 212 hereof.
- GG. "Operating Memoranda" and "Operating Memorandum" shall have the meanings defined in Section 606 hereof.
- HH. "Partnership" shall have the meaning defined in Section 105 hereof.
- II. "Preliminary Title Report" shall have the meaning defined in Section 205 hereof.
- JJ. "Prevailing Wage Laws" shall have the meaning defined in Section 307 hereof.
- KK. "Project" shall have the meaning defined in Section 101 hereof.
- LL. "Purchase Price" shall have the meaning defined in Section 201 hereof.
- MM. "ROW Property" shall have the meaning defined in Section 101, and as described in Section 106 hereof.
- NN. "Site" shall have the meaning defined in Section 101 hereof, and as described in Section 107 hereof.
- OO. "Title Company" shall have the meaning defined in Section 208 hereof.

_____, 2008

APPROVED AS TO FORM:

By: _____
Agency Counsel

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF WINTERS, a public body,
corporate and politic

By: _____
Executive Director

ATTEST:

By: _____
Secretary

"AGENCY"

_____, 2008

MONTICELLO INVESTORS, LLC., a
California limited liability company

By: OGANGO DEVELOPMENT, L.P.,
a California limited partnership,
its sole member

By: _____
Joseph E. Ogando,
General Partner

By: _____
Karen M. Ogando
General Partner

"DEVELOPER"

CONSENT AND AGREEMENT OF CITY OF WINTERS

In implementation of the City of Winters Community Development Project Area Plan (the "Development Plan") for the Winters Development Project Area (the "Development Project"), the City of Winters hereby consents to the terms of the Disposition and Development Agreement entered into as of _____, 2008 (the "Agreement"), by and between the Community Development Agency of the City of Winters (the "Agency") and Monticello Investors, LLC, a California limited liability company (the "Developer"), and does hereby agree, for itself and its officers, departments, boards and agencies:

1. To cooperate with the Agency and the Developer in implementing the provisions of the Agreement;

2. To consider and act upon, in a timely and good faith manner, the matters submitted to it by the Agency and Developer; and

3. To undertake, in a timely and good faith manner, subject to applicable legal requirements, those actions required of the City to implement the Agreement, including without limitation the abandonment of that portion of the Abbey Street right-of-way (defined in the Agreement as the "ROW Property") to be included as part of the Site, as provided for in Section 106 of the Agreement, and the deferral of the City Fees, as provided for in Section 303.b of the Agreement.

_____, 2008

CITY OF WINTERS, a municipal corporation

APPROVED AS TO FORM:

By: _____
City Attorney

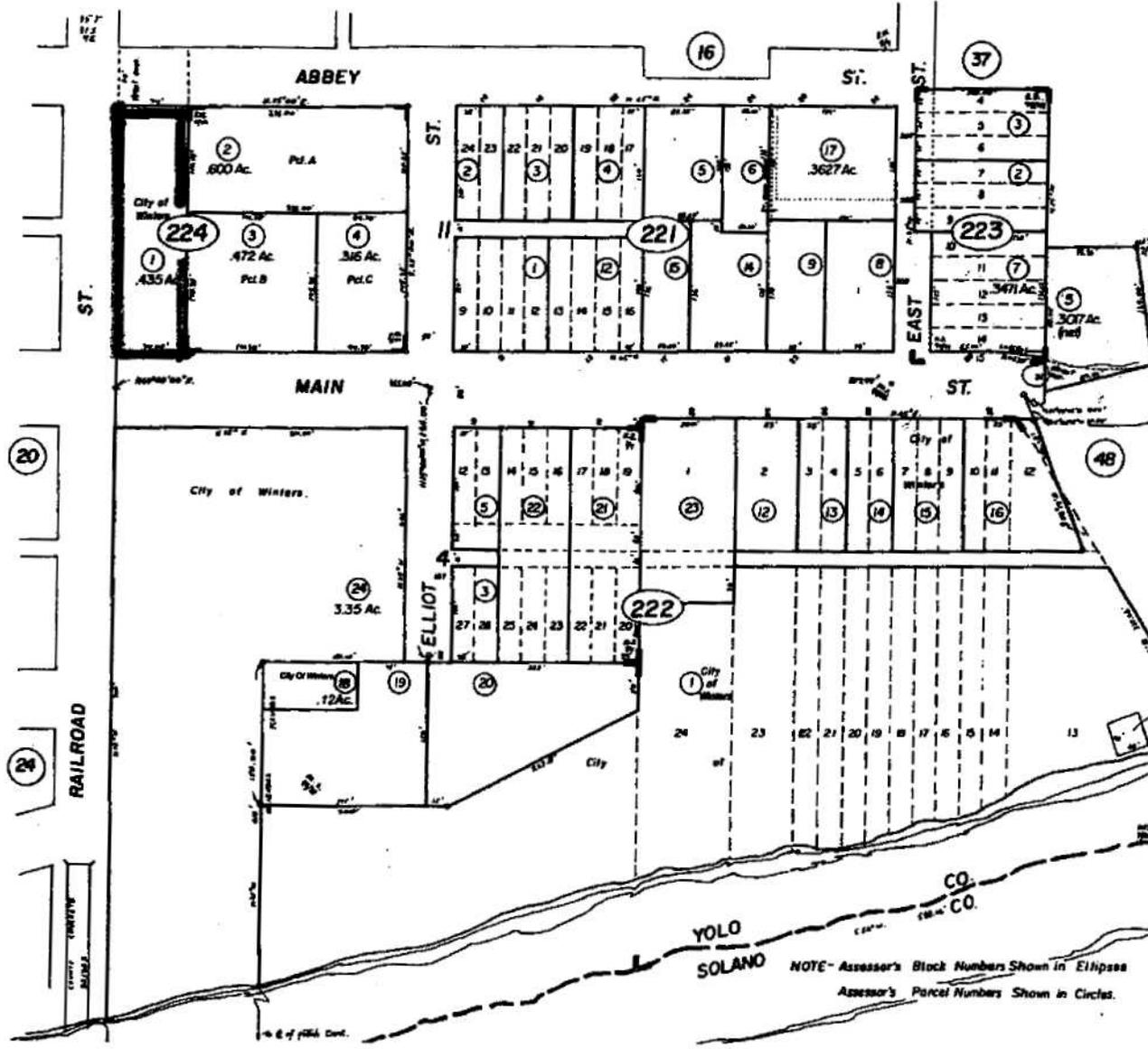
By: _____
City Manager

ATTEST:

By: _____
City Clerk

"CITY"

Attachment No. 1
Map of Site



CAUTION - These maps ARE NOT to be used for legal description. **3-22**

- D.B. Bk. S. Pg. 150 - City of Winters.
- D.B. Bk. 49, Pg. 119 - Emilie Kahns Addition to Winters.
- M.B. Bk. 1, Pg. 4 - S.P.R.R. Subd. of Block. 4.
- M.B. Bk. 2, Pg. 5 - M.O. Wyatt's Add.
- M.B. S. Bk. 3 Pg. 66 - M.O. Wyatt's Add.
- M.B. S. Bk. 2, Pg. 51 - Town of Winters.
- P.M. Bk. 5, Pg. 4 - Epp & Audra D. Norsworthy. #2944.
- M.B. S. Bk. 7, Pg. 70 - J.A. Boyce
- P.M. Bk. 7, Pg. 72 - Pcl. Map #3319 for Elliot Landes
- M. S. Bk. 99, Pg. 22 - City of Winters.

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NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles.

City of Winters
Assessor's Map Bk. 3 Pg. 22
County of Yolo, Calif.

0506

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE AGENCY PROPERTY

All of that land in the State of California, County of Yolo, City of Winters, described as follows:

[To Be Inserted following lot line adjustment
and creation of legal parcel (Sec. 106).]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

Action	Date
1. <u>Execution of Agreement by Agency.</u> The Agency shall authorize execution of this Agreement and deliver this Agreement to the Developer.	Within 30 days after execution and delivery by the Developer.
2. <u>Submission of Preliminary Title Report.</u> The Agency shall cause to be prepared and delivered to the Developer a Preliminary Title Report for the Site.	Completed.
3. <u>Approval of Preliminary Title Report.</u> The Developer shall approve the Preliminary Title Report for the Site.	Within 30 days after execution of this Agreement by the Agency.
4. <u>Approval of Site Conditions.</u> The Developer shall complete its investigations and approve or disapprove of the condition of the Site.	Within 60 days after execution of this Agreement by the Agency.
5. <u>Submission of Preliminary Site and Construction Plans.</u> The Developer shall submit all construction plans, drawings and related documents to the Agency/City, and other appropriate governmental agencies.	Completed.
6. <u>Approval of Preliminary Site and Construction Plans.</u> The Agency/City shall review and approve all construction plans, drawings and related documents.	Completed.
7. <u>Submission of Preliminary Construction and Operating Budget.</u> The Developer shall submit preliminary construction and operating budget to the Agency.	Within 60 days after execution of this Agreement by the Agency.
8. <u>Approval of Preliminary Construction and Operating Budget.</u> The Agency shall review and approve preliminary construction and operating budget.	Within 30 days after receipt by Agency.

Action	Date
<p>9. <u>Submission of Final Site and Construction Plans and Final Construction and Operating Budget.</u> The Developer shall prepare and submit to the Agency/City final construction plans, drawings and related documents.</p>	<p>Within 90 days after approval by the City of an amendment to the City's Affordable Housing Program pursuant to Section 211.</p>
<p>10. <u>Approval of Final Site and Construction Plans and Construction and Operating Budget.</u> The Agency/City shall approve the Developer's final construction plans.</p>	<p>In accordance with City's normal plan check and design review process.</p>
<p>11. <u>Submission of Evidence of Financing.</u> The Developer shall submit evidence of adequate financing to construct the Project.</p>	<p>Concurrently with approval of final Construction and Operating Budget, but in any event within 30 days prior to close of escrow.</p>
<p>12. <u>Approval of Evidence of Financing.</u> The Agency shall review and approve Developer's evidence of adequate financing to construct the Project.</p>	<p>Within 30 days after receipt thereof by the Agency.</p>
<p>13. <u>Satisfaction of All Conditions Precedent to Close of Escrow.</u> Developer and Agency, as applicable, shall complete all other conditions precedent to close of escrow provided for in Section 204.</p>	<p>Not later than two days prior to the close of escrow.</p>
<p>14. <u>Deposit of Grant Deed, Acquisition Note and Acquisition Deed of Trust.</u> Developer and Agency, as applicable, shall deliver into escrow the Grant Deed, Acquisition Note, Acquisition Deed of Trust, and all required funds.</p>	<p>Not later than two days prior to the close of escrow.</p>
<p>15. <u>Close of Escrow.</u> The Agency shall convey title to the Agency Property to the Developer, and the Developer shall accept such conveyance.</p>	<p>Prior to or concurrently with the close of Developer's construction loan for the Project, which shall occur no later than April 30, 2010. Target Date: March 2009.</p>
<p>16. <u>Certificates of Insurance.</u> The Developer shall deliver to the Agency and City certificates of insurance.</p>	<p>Prior to commencement of any work on the Site. Target Date: March 2009.</p>
<p>17. <u>Relocation of Water Line.</u> The Developer shall relocate and upgrade the Water Line currently existing in the ROW Property.</p>	<p>Within 60 days after close of escrow. Target Date: March 2009.</p>

Action	Date
18. <u>Abandonment of ROW Property.</u> The City shall abandon the right of way and take such actions as are necessary to ensure that fee title to the ROW Property reverts to the Developer.	Promptly following relocation of the Water Line on the ROW Property, or as otherwise agreed to by the City. Target Date: March 2009.
19. <u>Delivery of City Fees Note and City Fees Deed of Trust.</u> The Developer shall execute and deliver to the City the City Fees Note and City Fees Deed of Trust.	Promptly following abandonment of the ROW Property by the City, and concurrently with issuance of buildings permits for the Project. Target Date: March 2009.
20. <u>Commencement of Construction.</u> The Developer shall commence construction of the improvements on the Site.	Within 30 days after abandonment of ROW Property and issuance of building permits. Target Date: March 2009.
21. <u>Recordation of CC&Rs.</u> The Developer shall prepare and execute and record CC&Rs, approved by the Agency, for the Project.	Within 6 months after commencement of construction, but in any event prior to completion of the Project.
22. <u>Property Management Agreement.</u> The Developer shall prepare and enter into an agreement with a property management company approved by the Agency, to manage the Project.	Within 6 months after commencement of construction, but in any event prior to completion of the Project.
23. <u>Completion of Construction.</u> The Developer shall complete construction of the improvements on the Site.	Within 18 months after commencement thereof. Target Date: September 2010.
24. <u>Issuance of Certificate of Completion; Return of Deposit.</u> The Agency shall furnish the Developer with a Certification of Completion for the Project and return any remaining portion of the Deposit to Developer.	Promptly after completion of all construction required to be completed by the Developer on the Site, and upon written request therefor by the Developer.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. DEVELOPMENT OF THE SITE

A. General

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the Agency and City pursuant hereto. The Developer, its engineer and contractors, shall work with Agency staff to coordinate the overall construction and development work to be completed on the Site.

B. Developer's Improvements

Developer shall construct an approximately forty-seven thousand two hundred seventy-two (47,272) square foot, four (4) story mixed-use condominium project on the Site, including the following components:

Interior Sq ft: 47,272 sq. ft.
 Terraces: 7,352 sq. ft.
 Walkways: 9,352 sq. ft.
 Parking: 1,208 sq. ft. (11 on-site spaces)

Floor	Total Sq Ft	Retail	Office / Health Club	Food Service	Residential
Basement	3220			3220	
1	10139	6455		3684	
2	13064		13064		
3	13033				13033
4	7816				7816
Totals	47272	6455	13064	6904	20849

1. Ground Floor/Basement

The ground floor and basement will contain approximately thirteen thousand three hundred fifty-nine (13,359) square feet of retail / commercial space, including: (1) an approximately six thousand nine hundred four (6,904) square foot sit-down family style restaurant, with full bar; (2) approximately six thousand four hundred fifty-five (6,455) square feet of divided retail rental space; and (3) appurtenant restrooms, miscellaneous service uses, and access to the second and third floors. Additionally, at ground level, the Project will include

eleven (11) on-site parking spaces, with the balance of required parking being provided on public property pursuant to an agreement between Developer and the City.

2. Second Floor

The second floor will contain approximately thirteen thousand sixty-four (13,064) square feet of space, including (1) approximately three thousand five hundred (3,500) square foot of commercial space; (2) approximately two thousand two hundred forty four (2,244) square feet of commercial/office; and (3) approximately seven thousand three hundred twenty (7,320) square feet of office rental space.

3. Third and Fourth Floors

The third and fourth floors will contain approximately twenty thousand eight hundred forty-nine (20,849) square feet of residential space, including ten (10) two-story residential condominium one and two bedroom units, ranging in size from one thousand four hundred fifty (1,450) square feet to two thousand seven hundred fifty (2,750) square feet.

4. Parking

The parties acknowledge that the eleven (11) on-site parking spaces included within the Project are the only dedicated parking spaces for the Project. The parties further acknowledge and agree that, based upon the Project as currently proposed under this Agreement, sufficient parking is expected to be available in the downtown area to serve the Project based on the shared parking standards established by the City for the downtown area, other parking lots and parking spaces currently located in the downtown area available for public parking, and the additional public parking improvements to be constructed within the downtown area adjacent to and within the vicinity of the Site as part of the Downtown Master Plan (discussed in Part II, below). If, for any reason, the Developer determines that the shared and public parking available within the downtown area is not satisfactory, and additional parking is required to adequately serve the Project, it shall be the responsibility of the Developer, at its sole cost, to acquire or otherwise provide such additional parking.

C. Relocation of Water Line

In conjunction with the development of the Project on the Site, the Developer, at its sole cost and expense, shall relocate, or cause to be relocated, the existing 6-inch water line (the "Water Line") currently located within the ROW Property. The City and Agency agree to cooperate with the Developer in preparing all plans and obtaining all approvals required for the relocation of the Water Line. Relocation of the Water Line shall be undertaken and completed by the Developer in accordance with all City approvals and specifications, including without limitation upgrade of the Water Line to an 8-inch line to comply with current City standards.

D. Landscaping

Landscaping shall be incorporated into the project to improve aesthetics of the project. Landscaping may include such materials as paving, trees, shrubs and other plant

materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation, landscape and pedestrian lighting.

E. Signs

All signs on the exterior of the buildings are of special concern to the Agency and must be approved by the City (which approval shall not be unreasonably withheld).

F. Screening

Trash areas shall be screened on at least three (3) sides and have movable doors or other devices to obscure such areas from view. All fire standpipes and such other fire related mechanical devices shall be screened with plant materials. Rooftop equipment shall be reasonably hidden so as to mitigate views from principal elevations surrounding the development in accordance with architectural review by the City's Planning Commission.

G. Applicable Codes

The construction work to be undertaken on the Site shall be performed and completed in accordance with the California Building Codes and the City of Winters Municipal Code.

II. PUBLIC IMPROVEMENTS

A. Downtown Master Plan Improvements

The Agency and/or City shall be responsible for and shall construct, at its sole cost, the street improvements to be constructed along the Abby Street right-of-way, adjacent to the ROW Property, and completion of Phase I of the downtown streetscape improvements provided for under the Downtown Master Plan. Phase I of the downtown streetscape improvements will include improvement of the public roadway frontage along the east side of Railroad Avenue from Main to Abbey Street, including the intersection corners. The improvements will be constructed according to the layout and plans currently available in the Bid Documents prepared by Rick Engineering dated July 15, 2008. Those streetscape improvements will include new sidewalk, curb and gutter with expanded sidewalk at the intersections, landscaped and irrigated planters, trees with tree grates, decorative street furnishings, street lighting, seat walls, roadway drainage and on-street 45-degree parking along Railroad Avenue with decorative patterning and clay pavers in portions of the sidewalk. Per Developer's request, the Agency will delete the construction of a uniform strip of the sidewalk along the back of walk to accommodate the construction of the Project. The width of the sidewalk strip to be left unconstructed will be not less than eighteen inches (18") and not more than thirty inches (30"). Developer shall complete the construction of said strip of sidewalk at its own cost concurrently with construction of the Project improvements on the Site. Developer's sidewalk construction improvements shall be in conformance with the above noted plans dated July 15, 2008.

The Agency anticipates that Phase I of the Downtown Streetscape Improvements will be completed by the end of March 2009. The Phase II Streetscape improvements are

currently scheduled to begin construction in late Spring or early Summer of 2009 and are expected to be completed by the end of October 2009. The Agency will make reasonable efforts to coordinate the streetscape construction occurring adjacent to the Project with the Developer's construction activities to the extent construction of both projects occurs simultaneously.

B. Arsenic Remediation

The Agency has obtained and provided to Developer a copy of the Phase I Environmental Site Assessment of the Railroad Avenue Property, prepared by Wallace-Kuhl & Associates, Inc., dated January 26, 2007, and a Limited Phase II Subsurface Soil Investigation of the Railroad Avenue Property, prepared for Mr. Cole Ogando, by Wallace-Kuhl & Associates, Inc., dated February 1, 2008 (collectively, the "Environmental Assessments"), indicating the presence of arsenic contamination (the "Arsenic Contamination") on the Agency Property. The Agency shall obtain all approvals for and cause the remediation of the Arsenic Contamination on the Agency Property; provided the costs to be incurred by the Agency to remediate the Arsenic Contamination shall not exceed a maximum amount of Twenty Thousand Dollars (\$20,000). If the costs to remediate the Arsenic Contamination exceeds the maximum amount set forth above, the Agency shall notify the Developer in writing, and the Developer shall have the option to pay any additional amounts necessary to complete the remediation work or to terminate this Agreement pursuant to Section 507.

ATTACHMENT NO. 5

FORM OF ACQUISITION NOTE

\$ _____, 200 _____
Winters, California

FOR VALUE RECEIVED, MONTICELLO INVESTORS, LLC, a California limited liability company (the "Maker"), having an address of _____, California _____, promises to pay the COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS, or order ("Holder"), the initial principal sum equal to _____ DOLLARS (\$ _____). The principal, interest and other sums payable hereunder shall be payable in lawful money of the United State of America.

1. This Note is made pursuant to that certain Disposition and Development Agreement ("DDA") between Maker and Holder dated _____, 200 _____, which provides in part for the Agency to convey certain real property (the "Agency Property") to the Developer, and the Developer to develop on the Agency Property, and other adjacent property (referred to in the DDA as the "ROW Property", and collectively with the Agency Property, the "Site") a multi-story, mixed-use building containing residential, retail, commercial and office space (the "Project"), as set forth in the DDA. Pursuant to the DDA, the Developer paid a Cash Downpayment for a portion of the Purchase Price for the Agency Property. This is a purchase money note evidencing the remaining balance of the Purchase Price of the Agency Property sold to the Developer pursuant to the DDA. All capitalized terms not defined in this Note shall have the meaning set forth in the DDA.

2. Payment of this Note shall be secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "Deed of Trust") from Maker to Holder, which is recorded upon the Site.

3. Commencing on the date of this Note, and continuing thereafter until amounts due and owing hereunder are paid in full, this Note shall bear interest at the rate of four percent (4%) per annum, compounded annually, based on the unpaid principal balance of this Note remaining from time to time. So long as Maker is not in default under the DDA, this Note or the Deed of Trust securing this Note, and subject to the repayment provisions set forth below, and subject further to the limitations in this Note, annual payments of interest only shall be due and payable for the first fourteen (14) years from the date of this Note. The first annual interest payment shall be due on the first anniversary of the date of this Note, and each subsequent interest payment shall be due on each subsequent anniversary thereafter. The entire outstanding unpaid principal amount, plus all accrued and unpaid interest shall be due and payable on the date which is fifteen (15) years from the date of this Note. A schedule of payments due hereunder is set forth in Exhibit A to this Note.

The DDA contemplates (a) the sale of the residential units to be constructed in the Project to homebuyers, (b) the sale of an approximately 3,400 square foot portion of the commercial and courtyard space to be constructed on the first floor of the Project to DaRe, LLC, and (c) the sale of up to (but not to exceed) approximately 7,000 square feet of the restaurant, retail/commercial or office space to be constructed in the Project for a restaurant or other approved use (the sale of the residential units, the DaRe commercial/courtyard space and the additional not more than 7,000 square feet of restaurant/retail/commercial/office space are all collectively referred to herein as the "Pre-Approved Sales"). Upon close of escrow, from time to time, for any of said Pre-Approved Sales transactions, Holder shall execute such documents as may be necessary to release those applicable portions or areas of the Project from Holder's lien under the Deed of Trust; provided, any such reconveyance(s) shall not affect or impair Holder's lien against the remaining portion of the Project owned by Maker.

Upon the sale of any other portion or portions of the Project (except the Pre-Approved Sales identified above), Maker shall repay to Holder, through escrow, an amount equal to a pro rata share of the then outstanding principal balance of this Note, together with all accrued but unpaid interest applicable to said amount then being repaid. The amount to be repaid in each such event shall be determined by (i) dividing the number of square feet in the Project then being sold by Maker by (ii) the total number of square feet within the Project then owned by Maker and (iii) multiplying the resultant fraction by the total outstanding principal balance of this Note then remaining to be repaid. Upon receipt by Holder of the pro rata repayment amount, the remaining principal balance of this Note shall be reduced accordingly, and Holder shall execute such documents as may be necessary to release the applicable portion or area of the Project from Holder's lien under the Deed of Trust; provided, any such reconveyance(s) shall not affect or impair Holder's lien against the remaining portion of the Project owned by Maker.

[Example: Assuming Maker then owns 2,000 square feet of the Project, and sells 500 square feet of space, and remaining principal balance of Note is \$200,000; upon close of escrow for sale of the 500 square feet of space, Maker shall repay to Holder an amount equal to \$50,000 (500 divided by 2,000 = .25; multiplied by \$200,000 = \$50,000).]

Notwithstanding anything in this Note or the DDA to the contrary, the entire outstanding amount due under this Note, including principal and all accrued and unpaid interest, may, at the option of the Holder, become immediately due and payable upon the occurrence of any of the following events: (a) a sale or transfer by Maker of all of Maker's interest (or remaining interest, as the case may be) in the Project; (b) a refinancing by Maker of any permanent financing obtained by Maker for the development of the Project, or any portion thereof, on the Site; or (c) an event of default under the DDA, this Note or the Deed of Trust securing this Note.

All payments made hereunder shall be credited first to any accrued but unpaid interest, then to current interest due and owing and lastly to principal.

Maker may prepay all or any part of this Note, without penalty, at any time during the term of this Note.

4. Payment shall be made in lawful money of the United States to Holder c/o the City of Winters, 318 First Street, Winters, California 95694-1923. The place of payment may be changed from time to time as the Holder may from time to time designate in writing.

5. Maker hereby covenants and agrees that it shall maintain, or cause to be maintained, the Site and the Project in a manner consistent with the provisions set forth therefor in the Winters Municipal Code, as may be amended from time to time, and shall keep the entire Project reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Maker fails to maintain the Site or the Project in accordance with this Section 5, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from Holder to Maker, Holder may perform the necessary corrective maintenance, and Maker shall pay such costs as are reasonably incurred for such maintenance. The Holder shall have the right to place a lien on the property should Maker not reimburse Holder for such costs within sixty (60) days following Holder's written demand to Maker for reimbursement of such costs. Maker, on behalf of itself its heirs, successors and assigns, hereby grants to Holder and its officers, employees and agents, an irrevocable license to enter upon the Site to perform such maintenance during normal business hours after receipt of written notice from Holder as hereinabove described and Maker's failure to cure, or commence and diligently prosecute to completion such cure, or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Maker, and Holder shall indemnify and hold Maker harmless from any claims or liabilities pertaining to any such entry by Holder.

Failure by Maker to maintain the Site in the condition provided in this Section 5 may, in Holder's sole discretion, constitute a default under this Note and the related Deed of Trust.

The foregoing covenants shall remain in effect until the later to occur of: (a) all amounts due Holder hereunder are paid in full, or (b) the termination date of the Development Plan (currently scheduled to terminate on July 20, 2033).

6. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within thirty (30) days of its due date; or (ii) Any default by Maker under this Note, the Deed of Trust securing this Note, or the DDA after the expiration of applicable notice and cure periods.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the Holder hereof and without notice, the entire unpaid principal and interest owing on this Note may become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not

constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. If any annual installment payable under this Note is not paid within fifteen (15) days after the applicable due date, Maker shall pay to Holder upon demand an amount equal to five percent (5%) of such unpaid sum to defray the expenses incurred by Holder in handling and processing the delinquent payment and to compensate Holder for the loss of the use of the delinquent payment, and this amount shall be secured by the Deed of Trust. At all times when Maker is in default hereunder by reason of Maker's failure to pay amounts due under this Note thirty (30) days after the applicable due date, the interest rate on the sums as to which Maker is in default (including principal, if Holder has elected to declare it immediately due and payable), shall be the lower of the highest rate then allowed by law or two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default.

8. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

9. Maker agrees to pay immediately upon demand all costs and expenses of Holder including reasonable attorneys' fees: (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder or under the Deed of Trust, the DDA or under any loan document referred to herein Holder finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Deed of Trust, the DDA or other loan document, or (iii) if Holder seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust, the DDA or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

10. If Holder shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Holder under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Holder shall be reimbursed by maker immediately upon demand for all costs, charges and attorneys' fees incurred by Holder in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Site.

11. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

12. This Note shall be binding upon Maker, its successors and assigns.

13. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. This is a nonrecourse Note whereby the Maker has no personal liability for repayment of the sums evidenced hereby, and Holder shall not be entitled to obtain a personal or deficiency judgment against Maker or any partner of Maker, if Maker is a partnership, for nonpayment of the principal and interest due under this Note or the DDA. Nothing in this provision shall prejudice the rights of Holder as against Maker or against any other entity under any policy of insurance or other agreement which Maker or such other entity may have given Holder that does not create personal liability on the part of Maker for the payment of principal and interest on this Note or the DDA. Moreover, notwithstanding this paragraph 14, Maker shall be liable to Holder, and Holder shall be entitled to obtain a personal or deficiency judgment to the extent of the loss and damage suffered by Holder, as result of: (i) Maker intentional fraud or intentional misrepresentation to Holder, (ii) misapplication or wrongful retention of rental income or casualty insurance or condemnation proceeds attributable to the Project or Site, (iii) Maker's removal of personal property in violation of the provisions of the Deed of Trust, (iv) the commission of any act of deliberate waste with respect to the Project or Site by Maker, (v) any losses suffered or liability incurred as a result of Maker's use of hazardous or toxic material or wastes on the Project or Site (but not losses suffered or liability incurred by the Agency due to the presence of hazardous or toxic material or wastes on the Site prior to Maker's acquisition of the Site or any interest therein), (iv) Maker's failure to pay all taxes and assessments levied against the Project or Site, or (vii) Maker's indemnification obligations under DDA that specifically state that such obligations are not subject to this nonrecourse provision.

15. This is a nonnegotiable Note. Without the consent of the Holder, this Note may not be assigned except to any successor or assignee of the Maker authorized under the DDA. Any unauthorized assignment or transfer shall, at the option of the Holder, be considered void and of no force and effect. No transferee shall have any greater rights or obligations than the Maker.

16. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

_____, 2008

MONTICELLO INVESTORS, LLC., a
California limited liability company

By: OGANGO DEVELOPMENT, L.P.,
a California limited partnership,
its sole member

By: _____
Joseph E. Ogando,
General Partner

By: _____
Karen M. Ogando
General Partner

"MAKER"

EXHIBIT A

SCHEDULE OF PAYMENTS

[To Be Inserted.]

ATTACHMENT NO. 6

FORM OF DEED OF TRUST

[_____ TITLE COMPANY STANDARD FORM OF DEED OF TRUST TO BE USED WITH THE FOLLOWING "ADDENDUM TO DEED OF TRUST" ATTACHED THERETO.]

ADDENDUM TO DEED OF TRUST

This Addendum to Deed of Trust is part of the Deed of Trust dated _____, 200__, to which it is attached between MONTICELLO INVESTORS, LLC, a California limited liability company, as Trustor, and the COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS, as Beneficiary. The Deed of Trust, together with this Addendum to Deed of Trust, are executed and delivered pursuant to and in furtherance of that certain Disposition and Development Agreement, dated _____, 200__, between Trustor and Beneficiary (the "DDA"), which provides in part for Beneficiary to convey certain real property (the "Agency Property") to Trustor, and Trustor to develop on the Agency Property, and other adjacent property (referred to in the DDA as the "ROW Property", and collectively with the Agency Property, the "Site") a multi-story, mixed-use building containing residential, retail, commercial and office space (the "Project"), as set forth in the DDA. All capitalized terms not defined in this Note shall have the meaning set forth in the DDA.

Pursuant to the DDA, Trustor paid a Cash Downpayment for a portion of the Purchase Price for the Agency Property, and executed and delivered to Beneficiary a promissory Note (the "Acquisition Note" or "Note"), in the principal amount of _____ DOLLARS (\$_____) evidencing the remaining balance of the Purchase Price of the Agency Property sold to the Trustor pursuant to the DDA. The following provisions are made a part of the Deed of Trust:

1. No Discrimination. The Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

2. Nondiscrimination Clauses. All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to the nondiscrimination clauses set forth in California Health and Safety Code Section 33436.

3. Subordination. Beneficiary agrees that the terms and conditions of the Note and this Deed of Trust shall be subject to and subordinate to the terms and conditions of financing obtained by Trustor through a lender approved by Beneficiary for the development of the Project (as defined in the Note secured by this Deed of Trust, and the DDA) pursuant to a subordination agreement executed by the Beneficiary and such lender; provided the total aggregate amount of financing secured by Trustor, whether secured through Developer's Financing (as defined in the DDA) or other sources, for the development of the Project, together with the outstanding principal amount of the Note, shall not exceed the appraised value of the Project, unless otherwise approved by the Beneficiary; and provided, further, that the subordination agreement shall contain the following provisions, or similar conditions acceptable to the Beneficiary: (i) the Beneficiary shall receive any notices of default issued by such lender to the Trustor, (ii) the Beneficiary shall have the right to cure any default by the Trustor within forty-five (45) days after a notice of default; and (iii) the Beneficiary shall have the right to foreclose under its Deed of Trust without the lender accelerating its debt, provided the Beneficiary has cured or is attempting to cure any defaults under such lender's deed of trust.

4. Default. Notwithstanding any other provisions in this Deed of Trust, the occurrence of any of the following shall constitute an event of default under the Note and this Deed of Trust, and a default may be declared under this Deed of Trust solely upon the occurrence of any of the following: (i) Any failure by Trustor to pay any amount due under the Note within fifteen (15) days of its due date; or (ii) Any default by Trustor under the terms of the DDA after expiration of applicable notice and cure periods.

5. Hazardous Substances.

(a) As used in this Section 5, the following terms shall have the following meanings:

(i) "Environmental Laws" means all statutes, ordinances, orders, rules, regulations, plans, policies or decrees and the like now or hereafter in effect relating to (A) Hazardous Substance Activity or Hazardous Substances; (B) the generation, use, storage, transportation or disposal of Hazardous Substances, or solid waste; or (C) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Hazardous Material Transportation Act (49 U.S.C. Section 180 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Clean Air Act (42 U.S.C. Section 740 et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); the Occupational Safety and health Act (29 U.S.C. Section 651 et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); the Porter-Cologne Water Quality Control Act (California Water

Code Section 13020 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code Section 25249.5 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.); the Hazardous Waste Control Act (California Health & Safety Code Section 25100 et seq.); The California Environmental Quality Act (California Public Resources Code Section 2100 et seq.); and the rules, regulations and ordinances of the City or County of San Francisco or any applicable federal, state and local agencies or bureaus, as amended from time to time.

(ii) "Foreclosure Transfer" means the transfer of title to all or any part of the Property or the Trust Estate at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust, or by deed in lieu of such foreclosure.

(iii) "Hazardous Substances" means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "toxic pollutant," "contaminant" as well as any other formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "EP toxicity" or "TCLP toxicity"; (B) petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (C) "hazardous substance" as defined in Section 2782.6(d) of the California Civil Code; (D) "waste" as defined in Section 13050(d) of the California Water Code; (E) asbestos in any form; (F) urea formaldehyde foam insulation; (G) polychlorinated biphenyls (PCBs); (H) radon; and (I) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(iv) "Hazardous Substance Activity" means any actual, proposed, or threatened use, storage, holding, existence, location, release (including, without limitation, any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water or the air), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling, or transportation of any Hazardous Substance from, under, in, into, or on the Property, including without limitation, the movement or migration of any Hazardous Substances from surrounding property, surface water, groundwater or any

body of water, or the air under, in, into or onto the Property and any residual Hazardous Substances contamination in, on, or under the Property.

(v) "Losses" means all charges, losses, liabilities, damages (whether actual, consequential, punitive, or otherwise denominated), costs, fees, demands, claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, causes of action, assessments, fines, penalties, costs, and expenses of any kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, the following: (A) the reasonable fees and expenses of outside legal counsel; (B) the reasonable fees and expenses of accountants, third-party consultants, and other independent contractors retained by an Beneficiary; (C) costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person that is required by Environmental Laws or administrative ruling or directive because of the presence, suspected presence, release or suspected release of Hazardous Substances in violation of Environmental Laws in the air, soil, surface water or groundwater at the Property; (D) any and all diminution in value of the Property, loss of use or damage to the Property, or loss of profits or loss of business opportunity; and (E) reasonable costs and expenses of enforcing this Section 6.09.

(vi) "Environmental Losses" means Losses rising out of or as a result of: (A) the occurrence of any Hazardous Substance Activity; (B) any violation of any applicable Environmental laws relating to the Property or to the ownership, use, occupancy or operation thereof; (C) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity; or (D) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (A), (B), or (C), or any allegation of any such matters.

(b) Trustor represents and warrants to Beneficiary that Trustor has conducted as appropriate inquiry and investigation, and, to the best of Trustor's knowledge, based on such inquiry and investigation, no portion of the Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances, nor have any Hazardous Substances migrated onto or from the Property. Neither the Property nor Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law. Trustor's intended use of the Property will not result in the disposal or release of any Hazardous Substances on, under, about or to the Property or the migration of any Hazardous Substances from the Property. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations and warranties shall survive such release.

(c) Trustor represents and warrants to Beneficiary that Trustor has complied with all recommendations by any engineers retained by Trustor and all requirements of any applicable department of environmental resources, environmental protection agency or similar governmental agency, and there are no recommendations by said engineers or requirements ordered by said agency or any other governmental body for environmental investigation or cleanup with respect to the Property.

(d) On and after the date hereof, Trustor shall not: (a) allow any Hazardous Substances to be installed, used, introduced, stored, treated, disposed of, generated, manufactured, discharged, dumped, transported or brought in, upon or over the Property in violation of applicable law; (b) allow any soil or ground water contamination or pollution with any Hazardous Substances on the Property in violation of applicable law; (c) allow any Hazardous Substances to migrate from the Property in violation of applicable law; (d) allow any Hazardous Substances to migrate onto the Property from any adjacent properties in violation of applicable law; or (e) allow or cause the Property to be in violation of, or to trigger a duly initiated and prosecuted investigation of the Property by any governmental authority under applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules or timetables contained in any local, state and/or federal laws, regulations, codes, ordinances, plans, administrative or judicial orders, decrees, judgments, notices or demand letters issued, entered, promulgated or approved thereunder relating to the environment, land use, water and air quality and Hazardous Substances ("Environmental Requirements").

(e) If the presence of any Hazardous Substances on the Property caused or permitted by Trustor results in any contamination of the Property, Trustor shall promptly take all actions, at its sole expense, as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Substances to the Property; provided that Beneficiary's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

(f) At any time after the occurrence and during the continuance of any default under this Section 5, Beneficiary shall have the following rights and remedies, in addition to any other rights and remedies Beneficiary has under this Deed of Trust:

(i) As provided in California Code of Civil Procedure Section 564, Beneficiary or its employees, acting by themselves or through a court appointed receiver may do any of the following: (i) enter upon, possess, manage, operate, dispose of, and contract to dispose of the Property or any part thereof; (ii) take custody of all accounts; (iii) negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; (iv) take any action necessary to enforce compliance with environmental provisions, including spending Rent Payments to abate any environmental problem; (v) make, terminate, enforce or modify leases of part or all of the Property; (vi) contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Property necessary in Beneficiary's judgment to protect or enhance the security hereof; and/or (vii) take any and all other actions which may be necessary or desirable to comply with Trustor's obligations

hereunder and under the Loan Documents. All sums realized by the receiver or Beneficiary under this subparagraph, less all costs and expenses incurred by either of them under this subparagraph, including attorneys' fees, and less such sums as Beneficiary or the receiver deems appropriate as a reserve to meet future expenses under this subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness, nor any other action taken by Beneficiary or the receiver under this subparagraph shall cure or waive any default or notice of default hereunder, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to the adequacy of the security for the indebtedness secured hereunder, the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or the filing of a notice of default.

(ii) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor or in connection with any such default, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Property or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including of any of Beneficiary's other rights: (i) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property under California Civil Code Section 2929.5 (in respect of which the decision of Beneficiary as to whether there exists a release or threatened release of hazardous substance, as defined therein, onto the Property shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed under California Code of Civil Procedure Section 564 to enforce Beneficiary's right to enter and inspect the Property for hazardous substances as defined therein. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations which Beneficiary or its agents or employees may conduct, including the fees of engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustee and Beneficiary pursuant to this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date they are incurred until said sums have been paid.

(iii) Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth above in this Section 5, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary or advanced by Beneficiary (collectively, the "Environmental Costs") relating to the cleanup, remediation or other response action required by applicable law or which Beneficiary believes necessary to protect the Property, it being conclusively presumed between Beneficiary

and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation, or other response action respecting the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Property held hereunder, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

(iv) As provided in California Code of Civil Procedure Section 726.5, Beneficiary may waive its lien against the Property or any portion thereof, to the extent such property is found to be environmentally impaired as defined therein, and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including seeking an attachment order under California Code of Civil Procedure Section 483.010. Beneficiary and Trustor each represents and warrants for itself that it has no actual knowledge of any release of any Hazardous Substance (as defined in Section 726.5) on, to or under the Property. As between Beneficiary and Trustor, for purposes of California Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) did not cause or contribute to, and was not in any way negligent in permitting, any release or threatened release of the Hazardous Substance.

(v) Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or in the Loan Documents, the Environmental Costs and all judgments and awards entered against Trustor pursuant to Section 5(f)(iv) above shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and Trustor shall be fully and personally liable for the Environmental Costs and such judgments and awards and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Property or this Deed of Trust.

(g) Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from and against any and all Environmental Losses.

_____, 2008

MONTICELLO INVESTORS, LLC., a
California limited liability company

By: OGANGO DEVELOPMENT, L.P.,
a California limited partnership,
its sole member

By: _____
Joseph E. Ogando,
General Partner

By: _____
Karen M. Ogando
General Partner

"TRUSTOR"

_____, 2008

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF WINTERS, a public body,
corporate and politic

APPROVED AS TO FORM:

By: _____
Agency Counsel

By: _____
Executive Director

ATTEST:

By: _____
Secretary

"BENEFICIARY"

ATTACHMENT NO. 7

FORM OF GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS, a public body, corporate and politic, of the State of California (herein called "Grantor"), hereby grants to MONTICELLO INVESTORS, LLC, a California limited liability company (herein called "Grantee"), the real property (the "Property") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference, which Property constitutes a portion of the "Site" which is the subject of the DDA (as defined in Section 1, below).

1. The Property is conveyed pursuant to a Disposition and Development Agreement (the "DDA") entered into by and between the Grantor and the Grantee and dated _____, 2008. The Property is also conveyed subject to the City of Winters Community Development Project Area Plan for the Winters Development Project Area (the "Development Plan"), and easements and other matters of record. Grantee covenants and agrees, on behalf of itself and all successors and assigns, that during construction of the improvements on the Site and thereafter until the termination of the Development Plan (currently scheduled to terminate on July 20, 2033), Grantee shall devote the Site, and the improvements to be constructed thereon, to the uses specified in the Development Plan.

2. Prior to the issuance of a Certificate of Completion by the Grantor as provided in Section 318 of the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the whole or any part of the Property without the prior written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion with respect to the improvements upon the Property. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the rental or leasing of any part or parts of a building or structure when said improvements are completed.

3. Option To Repurchase After Conveyance. Grantee hereby grants to Grantor the option to repurchase the Property, or any portion thereof, hereby conveyed, upon the terms and provisions more fully set forth in Section 509 of the DDA, which provisions are incorporated herein by this reference thereto. As more fully provided in such Section 509:

a. The term of the option shall commence upon the recordation of this Grant Deed and shall continue until the date a Certificate of Completion for the Project to be constructed upon the Site, or applicable portion thereof, has been issued.

b. The option shall be exercisable by Grantor in each and every one of the following circumstances:

i. Grantee fails to commence construction of the improvements on the Site, or applicable portion thereof, for a period of ninety (90) days after written notice thereof from Grantor; for purposes of this provision, Grantee shall be deemed to "commence construction" when and only when Grantee has commenced rough grading on the Site pursuant to a permit issued by the City for the construction of the improvements provided for herein, the final plans and specifications for which had been approved by Grantor; or

ii. Once construction has been commenced, and prior to issuance by Grantor of a Certificate of Completion pursuant to Section 318 of the DDA, Grantee's failure to diligently prosecute construction of the improvements through completion, where such failure has not been cured within three (3) months after written notice thereof from the Grantor; or

iii. Once construction has been commenced, and prior to issuance by Grantor of a Certificate of Completion pursuant to Section 318 of the DDA, Grantee's abandonment or substantial suspension construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or

iv. Without the prior written consent of Grantor, Grantee directly or indirectly, voluntarily or involuntarily sells, assigns, transfers, disposes of or further encumbers or agrees to sell, assign, transfer, dispose of or further encumber or suffers to exist any other lien against all or any portion of or any interest in the Property, or applicable portion thereof, except for any sale, assignment, encumbrance or transfer that is expressly permitted by the terms of the DDA. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Property may be exempt from such transaction during the period when owned by Grantor.

c. This option shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

i. Any mortgage, deed of trust or other security instrument permitted by the DDA; or

ii. Any rights or interests provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

d. To exercise its right to repurchase, reenter and take possession with respect to the Property, Grantor shall pay to Grantee in cash an amount equal to:

i. The Cash Downpayment, plus such other cash amounts paid by the Grantee for the Property, or applicable portion thereof;

ii. Plus, the costs actually incurred by the Grantee for on-site labor and materials for the construction of the improvements existing on the Property, or applicable portion thereof, at the time of the repurchase, reentry and repossession, exclusive of amounts financed;

iii. Less, any gains or income withdrawn or made by the Grantee from the Property, or applicable portion thereof, or the improvements thereon; and

iv. Less, the amount of liens on the Property and any unpaid assessments against the Property, or applicable portion thereof, that are assumed by the Grantor.

4. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

5. All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof shall contain or be subject to substantially the following nondiscrimination clauses:

(a) In Deeds:

(1) "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection,

location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

(1) "That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In contracts:

(1) "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section

12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

6. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA, provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. The covenants against discrimination contained in paragraphs 4 and 5 of this Grant Deed shall remain in perpetuity. The covenants contained in paragraph 3 shall remain in effect until issuance by Grantor of a Certificate of Completion for the Site, or applicable portion thereof, pursuant to Section 318 of the DDA. The covenants contained in paragraph 1 shall remain in effect until the termination of the Development Plan (currently scheduled to terminate on July 20, 2033).

8. The covenants contained in paragraphs 1, 2, 3, 4 and 5 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed or the DDA, the provisions of this Grant Deed shall control.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized this _____ day of _____, 200__.

APPROVED AS TO FORM:

By: _____
Agency Counsel

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF WINTERS, a public body,
corporate and politic

By: _____
Executive Director

ATTEST:

By: _____
Secretary

"GRANTOR"

The provisions of this Grant Deed are hereby approved and accepted.

MONTICELLO INVESTORS, LLC., a
California limited liability company

By: OGANGO DEVELOPMENT, L.P.,
a California limited partnership,
its sole member

By: _____
Joseph E. Ogando,
General Partner

By: _____
Karen M. Ogando
General Partner

"GRANTEE"

ACKNOWLEDGMENTS

EXHIBIT A TO ATTACHMENT NO. 7

LEGAL DESCRIPTION OF THE SITE

[To Be Inserted.]

ATTACHMENT NO. 8

FORM OF CITY FEES NOTE

\$ _____, 200__
Winters, California

FOR VALUE RECEIVED, MONTICELLO INVESTORS, LLC, a California limited liability company (the "Maker"), having an address of c/o Ogando Development, L.P., 102 Wolfskill Street, Winters, California 95694, promises to pay the CITY OF WINTERS, or order ("Holder"), the initial principal sum equal to _____ DOLLARS (\$ _____). The principal, interest and other sums payable hereunder shall be payable in lawful money of the United States of America.

1. This Note is made pursuant to and in furtherance of that certain Disposition and Development Agreement ("DDA") between Maker and the Community Development Agency of the City of Winters ("Agency"), dated _____, 200__, which DDA was consented and agreed to by Holder. The DDA provides in part for the Agency to convey certain real property (the "Agency Property") to the Developer, and the Developer to develop on the Agency Property, and other adjacent property (referred to in the DDA as the "ROW Property", and collectively with the Agency Property, the "Site") for development of a multi-story, mixed-use building containing residential, retail, commercial and office space (the "Project"), as set forth in the DDA. Pursuant to Section 303.b. of the DDA, Holder agreed to defer payment of certain City Fees required to be paid by Maker for development of the Project (the "City Fees"). The principal amount of this Note represents the amount of the City Fees deferred by Holder pursuant to Section 303.b. of the DDA. All capitalized terms not defined in this Note shall have the meaning set forth in the DDA.

2. Payment of this Note shall be secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "Deed of Trust") from Maker to Holder, which is recorded upon the Site.

3. Commencing on the date of this Note, and continuing thereafter until amounts due and owing hereunder are paid in full, this Note shall bear interest at the rate of four percent (4%) per annum, compounded annually, based on the unpaid principal balance of this Note remaining from time to time. So long as Maker is not in default under the DDA, this Note or the Deed of Trust securing this Note, and subject to the repayment provisions set forth below, and subject further to the limitations in this Note, annual payments of interest only shall be due and payable for the first fourteen (14) years from the date of this Note. The first annual interest payment shall be due on the first anniversary of the date of this Note, and each subsequent interest payment shall be due on each subsequent anniversary thereafter. The entire outstanding unpaid principal amount, plus all accrued and unpaid interest shall be due and payable on the date which

is fifteen (15) years from the date of this Note. A schedule of payments due hereunder is set forth in Exhibit A to this Note.

The DDA contemplates (a) the sale of the residential units to be constructed in the Project to homebuyers, (b) the sale of an approximately 3,400 square foot portion of the commercial and courtyard space to be constructed on the first floor of the Project to DaRe, LLC, and (c) the sale of up to (but not to exceed) approximately 7,000 square feet of the restaurant, retail/commercial or office space to be constructed in the Project for a restaurant or other approved use (the sale of the residential units, the DaRe commercial/courtyard space and the additional not more than 7,000 square feet of restaurant/retail/commercial/office space are all collectively referred to herein as the "Pre-Approved Sales"). Upon close of escrow, from time to time, for any of said Pre-Approved Sales transactions, Holder shall execute such documents as may be necessary to release those applicable portions or areas of the Project from Holder's lien under the Deed of Trust; provided, any such reconveyance(s) shall not affect or impair Holder's lien against the remaining portion of the Project owned by Maker

Upon the sale of any other portion or portions of the Project (except the Pre-Approved Sales identified above), Maker shall repay to Holder, through escrow, an amount equal to a pro rata share of the then outstanding principal balance of this Note, together with all accrued but unpaid interest applicable to said amount then being repaid. The amount to be repaid in each such event shall be determined by (i) dividing the number of square feet in the Project then being sold by Maker by (ii) the total number of square feet within the Project then owned by Maker and (iii) multiplying the resultant fraction by the total outstanding principal balance of this Note then remaining to be repaid. Upon receipt by Holder of the pro rata repayment amount, the remaining principal balance of this Note shall be reduced accordingly, and Holder shall execute such documents as may be necessary to release the applicable portion or area of the Project from Holder's lien under the Deed of Trust; provided, any such reconveyance(s) shall not affect or impair Holder's lien against the remaining portion of the Project owned by Maker.

[Example: Assuming Maker then owns 2,000 square feet of the Project, and sells 500 square feet of space, and remaining principal balance of Note is \$200,000; upon close of escrow for sale of the 500 square feet of space, Maker shall repay to Holder an amount equal to \$50,000 (500 divided by 2,000 = .25; multiplied by \$200,000 = \$50,000).]

Notwithstanding anything in this Note or the DDA to the contrary, the entire outstanding amount due under this Note, including principal and all accrued and unpaid interest, may, at the option of the Holder, become immediately due and payable upon the occurrence of any of the following events: (a) a sale or transfer by Maker of all of Maker's interest (or remaining interest, as the case may be) in the Project; (b) a refinancing by Maker of any permanent financing obtained by Maker for the development of the Project, or any portion thereof, on the Site; or (c) an event of default under the DDA, this Note or the Deed of Trust securing this Note.

All payments made hereunder shall be credited first to any accrued but unpaid interest, then to current interest due and owing and lastly to principal.

Maker may prepay all or any part of this Note, without penalty, at any time during the term of this Note.

4. Payment shall be made in lawful money of the United States to Holder, 318 First Street, Winters, California 95694-1923. The place of payment may be changed from time to time as the Holder may from time to time designate in writing.

5. Maker hereby covenants and agrees that it shall maintain, or cause to be maintained, the Site and the Project in a manner consistent with the provisions set forth therefor in the Winters Municipal Code, as may be amended from time to time, and shall keep the entire Project reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Maker fails to maintain the Site or the Project in accordance with this Section 5, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from Holder to Maker, Holder may perform the necessary corrective maintenance, and Maker shall pay such costs as are reasonably incurred for such maintenance. The Holder shall have the right to place a lien on the property should Maker not reimburse Holder for such costs within sixty (60) days following Holder's written demand to Maker for reimbursement of such costs. Maker, on behalf of itself its heirs, successors and assigns, hereby grants to Holder and its officers, employees and agents, an irrevocable license to enter upon the Site to perform such maintenance during normal business hours after receipt of written notice from Holder as hereinabove described and Maker's failure to cure, or commence and diligently prosecute to completion such cure, or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Maker, and Holder shall indemnify and hold Maker harmless from any claims or liabilities pertaining to any such entry by Holder.

Failure by Maker to maintain the Site in the condition provided in this Section 5 may, in Holder's sole discretion, constitute a default under this Note and the related Deed of Trust.

The foregoing covenants shall remain in effect until the later to occur of: (a) all amounts due Holder hereunder are paid in full, or (b) termination of the Development Plan (currently scheduled to terminate on July 20, 2033).

6. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within thirty (30) days of its due date; or (ii) Any default by Maker under this Note, the Deed of Trust securing this Note, or the DDA after the expiration of applicable notice and cure periods.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the Holder hereof and without notice, the entire unpaid principal and interest owing on

this Note may become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. If any annual installment payable under this Note is not paid within fifteen (15) days after the applicable due date, Maker shall pay to Holder upon demand an amount equal to five percent (5%) of such unpaid sum to defray the expenses incurred by Holder in handling and processing the delinquent payment and to compensate Holder for the loss of the use of the delinquent payment, and this amount shall be secured by the Deed of Trust. At all times when Maker is in default hereunder by reason of Maker's failure to pay amounts due under this Note thirty (30) days after the applicable due date, the interest rate on the sums as to which Maker is in default (including principal, if Holder has elected to declare it immediately due and payable), shall be the lower of the highest rate then allowed by law or two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default.

8. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

9. Maker agrees to pay immediately upon demand all costs and expenses of Holder including reasonable attorneys' fees: (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder or under the Deed of Trust, the DDA or under any loan document referred to herein Holder finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Deed of Trust, the DDA or other loan document, or (iii) if Holder seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust, the DDA or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

10. If Holder shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Holder under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Holder shall be reimbursed by maker immediately upon demand for all costs, charges and attorneys' fees incurred by Holder in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Site.

11. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

12. This Note shall be binding upon Maker, its successors and assigns.

13. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. This is a nonrecourse Note whereby the Maker has no personal liability for repayment of the sums evidenced hereby, and Holder shall not be entitled to obtain a personal or deficiency judgment against Maker or any partner of Maker, if Maker is a partnership, for nonpayment of the principal and interest due under this Note or the DDA. Nothing in this provision shall prejudice the rights of Holder as against Maker or against any other entity under any policy of insurance or other agreement which Maker or such other entity may have given Holder that does not create personal liability on the part of Maker for the payment of principal and interest on this Note or the DDA. Moreover, notwithstanding this paragraph 14, Maker shall be liable to Holder, and Holder shall be entitled to obtain a personal or deficiency judgment to the extent of the loss and damage suffered by Holder, as result of: (i) Maker intentional fraud or intentional misrepresentation to Holder, (ii) misapplication or wrongful retention of rental income or casualty insurance or condemnation proceeds attributable to the Project or Site, (iii) Maker's removal of personal property in violation of the provisions of the Deed of Trust, (iv) the commission of any act of deliberate waste with respect to the Project or Site by Maker, (v) any losses suffered or liability incurred as a result of Maker's use of hazardous or toxic material or wastes on the Project or Site (but not losses suffered or liability incurred by the Agency due to the presence of hazardous or toxic material or wastes on the Site prior to Maker's acquisition of the Site or any interest therein), (iv) Maker's failure to pay all taxes and assessments levied against the Project or Site, or (vii) Maker's indemnification obligations under DDA that specifically state that such obligations are not subject to this nonrecourse provision.

15. This is a nonnegotiable Note. Without the consent of the Holder, this Note may not be assigned except to any successor or assignee of the Maker authorized under the DDA. Any unauthorized assignment or transfer shall, at the option of the Holder, be considered void and of no force and effect. No transferee shall have any greater rights or obligations than the Maker.

16. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

_____, 2008

MONTICELLO INVESTORS, LLC., a
California limited liability company

By: OGANGO DEVELOPMENT, L.P.,
a California limited partnership,
its sole member

By: _____
Joseph E. Ogando,
General Partner

By: _____
Karen M. Ogando
General Partner

"MAKER"

EXHIBIT A

SCHEDULE OF PAYMENTS

[To Be Inserted.]

ATTACHMENT NO. 9

FORM OF DEED OF TRUST

[_____ TITLE COMPANY STANDARD FORM OF DEED OF TRUST TO BE USED WITH THE FOLLOWING "ADDENDUM TO DEED OF TRUST" ATTACHED THERETO.]

ADDENDUM TO DEED OF TRUST

This Addendum to Deed of Trust is part of the Deed of Trust dated _____, 200__, to which it is attached between MONTICELLO INVESTORS, LLC, a California limited liability company, as Trustor, and the CITY OF WINTERS, as Beneficiary. The Deed of Trust, together with this Addendum to Deed of Trust, are executed and delivered pursuant to and in furtherance of that certain Disposition and Development Agreement, dated _____, 200__, (the "DDA") between Trustor and the Community Development Agency of the City of Winters (the "Agency"), which DDA was consented and agreed to by Beneficiary. The DDA provides in part for the Agency to convey certain real property (the "Agency Property") to Trustor, and Trustor to develop on the Agency Property, and other adjacent property (referred to in the DDA as the "ROW Property"), and collectively with the Agency Property, the "Site") a multi-story, mixed-use building containing residential, retail, commercial and office space (the "Project"), as set forth in the DDA. Pursuant to Section 303.b. of the DDA, Beneficiary agreed to defer payment of certain City Fees required to be paid by Trustor for development of the Project (the "City Fees"), and Trustor executed and delivered to Beneficiary a promissory Note (the "City Fees Note" or "Note"), in the principal amount of _____ DOLLARS (\$ _____), which amount reflects the amount of City Fees which were deferred by Beneficiary. The following provisions are made a part of the Deed of Trust:

1. No Discrimination. The Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

2. Nondiscrimination Clauses. All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to the nondiscrimination clauses set forth in California Health and Safety Code Section 33436.

3. Subordination. Beneficiary agrees that the terms and conditions of the Note and this Deed of Trust shall be subject to and subordinate to the terms and conditions of financing obtained by Trustor through a lender approved by Beneficiary for the development of the Project (as defined in the Note secured by this Deed of Trust, and the DDA) pursuant to a subordination agreement executed by the Beneficiary and such lender; provided the total aggregate amount of financing secured by Trustor, whether secured through Developer's Financing (as defined in the DDA) or other sources, for the development of the Project, together with the outstanding principal amount of the Note, shall not exceed the appraised value of the Project, unless otherwise approved by the Beneficiary; and provided, further, that the subordination agreement shall contain the following provisions, or similar conditions acceptable to the Beneficiary: (i) the Beneficiary shall receive any notices of default issued by such lender to the Trustor, (ii) the Beneficiary shall have the right to cure any default by the Trustor within forty-five (45) days after a notice of default; and (iii) the Beneficiary shall have the right to foreclose under its Deed of Trust without the lender accelerating its debt, provided the Beneficiary has cured or is attempting to cure any defaults under such lender's deed of trust.

4. Default. Notwithstanding any other provisions in this Deed of Trust, the occurrence of any of the following shall constitute an event of default under the Note and this Deed of Trust, and a default may be declared under this Deed of Trust solely upon the occurrence of any of the following: (i) Any failure by Trustor to pay any amount due under the Note within fifteen (15) days of its due date; or (ii) Any default by Trustor under the terms of the DDA after expiration of applicable notice and cure periods.

5. Hazardous Substances.

(a) As used in this Section 5, the following terms shall have the following meanings:

(i) "Environmental Laws" means all statutes, ordinances, orders, rules, regulations, plans, policies or decrees and the like now or hereafter in effect relating to (A) Hazardous Substance Activity or Hazardous Substances; (B) the generation, use, storage, transportation or disposal of Hazardous Substances, or solid waste; or (C) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Hazardous Material Transportation Act (49 U.S.C. Section 180 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Clean Air Act (42 U.S.C. Section 740 et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); the Occupational Safety and health Act (29 U.S.C. Section 651 et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); the Porter-Cologne Water Quality Control Act (California Water

Code Section 13020 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code Section 25249.5 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.); the Hazardous Waste Control Act (California Health & Safety Code Section 25100 et seq.); The California Environmental Quality Act (California Public Resources Code Section 2100 et seq.); and the rules, regulations and ordinances of the City or County of San Francisco or any applicable federal, state and local agencies or bureaus, as amended from time to time.

(ii) "Foreclosure Transfer" means the transfer of title to all or any part of the Property or the Trust Estate at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust, or by deed in lieu of such foreclosure.

(iii) "Hazardous Substances" means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "toxic pollutant," "contaminant" as well as any other formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "EP toxicity" or "TCLP toxicity"; (B) petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (C) "hazardous substance" as defined in Section 2782.6(d) of the California Civil Code; (D) "waste" as defined in Section 13050(d) of the California Water Code; (E) asbestos in any form; (F) urea formaldehyde foam insulation; (G) polychlorinated biphenyls (PCBs); (H) radon; and (I) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(iv) "Hazardous Substance Activity" means any actual, proposed, or threatened use, storage, holding, existence, location, release (including, without limitation, any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water or the air), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling, or transportation of any Hazardous Substance from, under, in, into, or on the Property, including without limitation, the movement or migration of any Hazardous Substances from surrounding property, surface water, groundwater or any

body of water, or the air under, in, into or onto the Property and any residual Hazardous Substances contamination in, on, or under the Property.

(v) "Losses" means all charges, losses, liabilities, damages (whether actual, consequential, punitive, or otherwise denominated), costs, fees, demands, claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, causes of action, assessments, fines, penalties, costs, and expenses of any kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, the following: (A) the reasonable fees and expenses of outside legal counsel; (B) the reasonable fees and expenses of accountants, third-party consultants, and other independent contractors retained by an Beneficiary; (C) costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person that is required by Environmental Laws or administrative ruling or directive because of the presence, suspected presence, release or suspected release of Hazardous Substances in violation of Environmental Laws in the air, soil, surface water or groundwater at the Property; (D) any and all diminution in value of the Property, loss of use or damage to the Property, or loss of profits or loss of business opportunity; and (E) reasonable costs and expenses of enforcing this Section 6.09.

(vi) "Environmental Losses" means Losses rising out of or as a result of: (A) the occurrence of any Hazardous Substance Activity; (B) any violation of any applicable Environmental laws relating to the Property or to the ownership, use, occupancy or operation thereof; (C) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity; or (D) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (A), (B), or (C), or any allegation of any such matters.

(b) Trustor represents and warrants to Beneficiary that Trustor has conducted as appropriate inquiry and investigation, and, to the best of Trustor's knowledge, based on such inquiry and investigation, no portion of the Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances, nor have any Hazardous Substances migrated onto or from the Property. Neither the Property nor Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law. Trustor's intended use of the Property will not result in the disposal or release of any Hazardous Substances on, under, about or to the Property or the migration of any Hazardous Substances from the Property. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations and warranties shall survive such release.

(c) Trustor represents and warrants to Beneficiary that Trustor has complied with all recommendations by any engineers retained by Trustor and all requirements of any applicable department of environmental resources, environmental protection agency or similar governmental agency, and there are no recommendations by said engineers or requirements ordered by said agency or any other governmental body for environmental investigation or cleanup with respect to the Property.

(d) On and after the date hereof, Trustor shall not: (a) allow any Hazardous Substances to be installed, used, introduced, stored, treated, disposed of, generated, manufactured, discharged, dumped, transported or brought in, upon or over the Property in violation of applicable law; (b) allow any soil or ground water contamination or pollution with any Hazardous Substances on the Property in violation of applicable law; (c) allow any Hazardous Substances to migrate from the Property in violation of applicable law; (d) allow any Hazardous Substances to migrate onto the Property from any adjacent properties in violation of applicable law; or (e) allow or cause the Property to be in violation of, or to trigger a duly initiated and prosecuted investigation of the Property by any governmental authority under applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules or timetables contained in any local, state and/or federal laws, regulations, codes, ordinances, plans, administrative or judicial orders, decrees, judgments, notices or demand letters issued, entered, promulgated or approved thereunder relating to the environment, land use, water and air quality and Hazardous Substances ("Environmental Requirements").

(e) If the presence of any Hazardous Substances on the Property caused or permitted by Trustor results in any contamination of the Property, Trustor shall promptly take all actions, at its sole expense, as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Substances to the Property; provided that Beneficiary's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

(f) At any time after the occurrence and during the continuance of any default under this Section 5, Beneficiary shall have the following rights and remedies, in addition to any other rights and remedies Beneficiary has under this Deed of Trust:

(i) As provided in California Code of Civil Procedure Section 564, Beneficiary or its employees, acting by themselves or through a court appointed receiver may do any of the following: (i) enter upon, possess, manage, operate, dispose of, and contract to dispose of the Property or any part thereof; (ii) take custody of all accounts; (iii) negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; (iv) take any action necessary to enforce compliance with environmental provisions, including spending Rent Payments to abate any environmental problem; (v) make, terminate, enforce or modify leases of part or all of the Property; (vi) contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Property necessary in Beneficiary's judgment to protect or enhance the security hereof; and/or (vii) take any and all other actions which may be necessary or desirable to comply with Trustor's obligations

hereunder and under the Loan Documents. All sums realized by the receiver or Beneficiary under this subparagraph, less all costs and expenses incurred by either of them under this subparagraph, including attorneys' fees, and less such sums as Beneficiary or the receiver deems appropriate as a reserve to meet future expenses under this subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness, nor any other action taken by Beneficiary or the receiver under this subparagraph shall cure or waive any default or notice of default hereunder, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to the adequacy of the security for the indebtedness secured hereunder, the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or the filing of a notice of default.

(ii) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor or in connection with any such default, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Property or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including of any of Beneficiary's other rights: (i) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property under California Civil Code Section 2929.5 (in respect of which the decision of Beneficiary as to whether there exists a release or threatened release of hazardous substance, as defined therein, onto the Property shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed under California Code of Civil Procedure Section 564 to enforce Beneficiary's right to enter and inspect the Property for hazardous substances as defined therein. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations which Beneficiary or its agents or employees may conduct, including the fees of engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustor and Beneficiary pursuant to this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date they are incurred until said sums have been paid.

(iii) Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth above in this Section 5, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary or advanced by Beneficiary (collectively, the "Environmental Costs") relating to the cleanup, remediation or other response action required by applicable law or which Beneficiary believes necessary to protect the Property, it being conclusively presumed between Beneficiary

and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation, or other response action respecting the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Property held hereunder, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

(iv) As provided in California Code of Civil Procedure Section 726.5, Beneficiary may waive its lien against the Property or any portion thereof, to the extent such property is found to be environmentally impaired as defined therein, and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including seeking an attachment order under California Code of Civil Procedure Section 483.010. Beneficiary and Trustor each represents and warrants for itself that it has no actual knowledge of any release of any Hazardous Substance (as defined in Section 726.5) on, to or under the Property. As between Beneficiary and Trustor, for purposes of California Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) did not cause or contribute to, and was not in any way negligent in permitting, any release or threatened release of the Hazardous Substance.

(v) Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or in the Loan Documents, the Environmental Costs and all judgments and awards entered against Trustor pursuant to Section 5(f)(iv) above shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and Trustor shall be fully and personally liable for the Environmental Costs and such judgments and awards and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Property or this Deed of Trust.

(g) Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from and against any and all Environmental Losses.

_____, 2008

MONTICELLO INVESTORS, LLC., a
California limited liability company

By: OGANGO DEVELOPMENT, L.P.,
a California limited partnership,
its sole member

By: _____
Joseph E. Ogando,
General Partner

By: _____
Karen M. Ogando
General Partner

"TRUSTOR"

_____, 2008

CITY OF WINTERS, a public body, corporate
and politic

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
City Manager

ATTEST:

By: _____
City Clerk

"BENEFICIARY"

ATTACHMENT NO. 10
CONCEPT DRAWINGS

[To Be Inserted.]

**INFORMATION SUMMARY
FOR PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT WITH
MONTICELLO INVESTORS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

This summary report has been prepared pursuant to Section 33433 of the California Community Redevelopment Law (CCRL, being Section 33000 *et seq.* of the Health and Safety Code).

The City Council of the City of Winters (the "City Council") and the Community Development Agency of the City of Winters ("Agency") have set on or after 7:30 pm on Tuesday, September 2, 2008 in the Council Chambers in the City Hall of the City of Winters as the time, date and place for a joint public hearing to hear testimony with reference to a proposed Disposition and Development Agreement (the "DDA") between the Agency and Monticello Investors, LLC, a California Limited Liability Company (the "Developer"), and to be consented to and agreed to by the City of Winters (the "City"). At the close of said public hearing, the City Council and Agency may each take action to approve, disapprove or approve a modified version of said DDA.

The DDA provides for the disposition and development of certain property (the "Site") located within the City and also within the boundaries of the Winters Community Development Project Area (the "Development Project") and is subject to the Development Plan, as amended, (the "Development Plan") for said Development Project. The Site is comprised of: i) certain real property, totaling approximately 18,304 square feet (a portion of Assessor's Parcel No. 003-224-01) which is currently owned by the Agency (the "Agency Property"); and ii) a portion of the Abbey Street right-of-way, consisting of approximately 2,700 square feet currently owned by the City, located adjacent to the Agency Property (the "ROW Property"). The DDA provides for the sale of the Agency Property by the Agency to the Developer, and the completion of abandonment by the City and conveyance to the Developer of the ROW Property. Developer will develop the Site with an approximately 47,272 square foot, four (4) story mixed-use building, which is projected to include retail/commercial and office uses on the ground and second floors and residential uses on the third and fourth floors, together with approximately 7,352 square feet of terraces, 9,352 square feet of exterior walkway, and 11 on-site parking space (consisting of approximately 1,208 square feet total) (the "Project"). The Site is located at the northeast corner of Main and Railroad Streets in the City. The Agency Property is zoned "Central Business District" which allows for, among other uses, the uses proposed in the DDA.

In addition to the sale and development of the Site, the DDA also provides the Agency with the option to negotiate with the Developer to rent or lease portions or areas of the Project which are available for rent or lease following completion of the Project, for administrative, meeting and other public purposes, as provided for in the DDA.

The Project is an Economic Development Project as provided for in the projects and programs list in the Development Plan. Furthermore, the Project helps implement a number of goals identified in the Winters Community Development Project Implementation Plan, 2003-2008 (the "Implementation Plan") and more fully described below.

I. COPY OF THE PROPOSED DDA

A copy of the proposed DDA is attached to and is made a part of this Report by reference. The DDA includes escrow instructions which govern the sale of the Agency Property to Developer. The

DDA anticipates that, if the City Council completes abandonment of the ROW Property, the ROW Property, in such case, would revert to the then owner of the Agency Property. The ROW Property would then become a part of the Site under the DDA.

II. COST OF THE PROJECT TO AGENCY

The cost of the Project to the Agency is as follows.

1. Land Acquisition and Disposition

There is no net cost to the Agency for land acquisition and disposition.

The Agency Property is currently owned by the Agency in fee simple. The Agency purchased the Agency Property from the City in September, 2004 for a total acquisition price of \$120,000 based upon an appraisal provided by Mr. Lee Bartholomew, California Certified General Real Estate Appraiser (#AG004317), dated September 17, 2003. In addition to the purchase price, the Agency incurred appraisal fees and other closing and administrative costs associated with the acquisition of the property.

Based upon, and in conformance with, a subsequent appraisal by Mr. Bartholomew dated October 6, 2006 and updated as of June 10, 2008, the fair market value of the Agency Property is \$237,000.

This amount is the "market value of the fee simple interest in the [Agency Property]" as described in Mr. Bartholomew's appraisal update (the "Appraisal Update"). In the Appraisal Update, Mr. Bartholomew provides that "[t]his update contains a newly developed market analysis, sales data, and conclusions regarding the [Agency Property]. While [Agency staff] asked for updated information, this document provides adequate information and analysis to fully understand the [Agency Property] as of the date of this report. The [Agency Property] is more fully identified in the contents of the report which follows. This appraisal [Update] is complete in its development, and reported summarily."

The terms of the sale of the Agency Property to the Developer are as follows: i) sales price to be \$237,000; ii) Developer to pay \$53,000 as a downpayment; iii) Developer to execute a promissory note evidencing a loan to Developer (the "Agency Loan") in the amount of \$184,000 which Agency Loan will be collateralized by a recorded deed of trust, and which Agency Loan shall bear interest at the rate of four percent per year, compounded annually; iv) Developer to make annual payments of interest only during the first 14 years of the Agency Loan; v) Developer to repay the entire Agency Loan on the date which is fifteen (15) years from the date of the promissory note evidencing said Agency Loan; and vi) close of escrow on the Agency Property to be conditioned on Developer evidencing commitments for the sale or lease of at least one third of the space in the Project including a sale to DaRe, LLC of no less than three thousand, three hundred, ninety-seven (3,397) square feet of retail space (which includes 2,726 square feet within the structure and 671 square feet of courtyard space), at a price of no less than two hundred dollars (\$200) per square foot for a total sales price of \$679,400.¹ The terms of the Agency Loan are deemed to be within market rates for the following reasons:

¹Sections 107, 201, and 204 of the DDA and Attachment No. 5 to the DDA.

The downpayment of \$53,000 equals 22.4 percent of the total purchase price for the land. This amount represents more than a 20 percent downpayment which would traditionally be considered appropriate for a standard loan.

The interest rate is within the low end of an appropriate range. This interest rate is appropriate given the protection against risk by the requirement that, prior to making the Agency Loan, Agency will be assured that Developer has pre-leased or pre-sold one third of the space in the Project and that an affiliate of Developer shall have purchased no fewer than 3,397 square feet of the space for its own retail outlet. The Developer therefore becomes more an "owner occupant" than a merchant builder. Owner occupants typically will represent less risk to a lender than merchant builders.

The fifteen year term is within the range of an appropriate loan for a commercial enterprise. The fact that interest is paid annually mitigates some of the risk aspects of eschewing repayment of principal during the term of the loan.

Prior to the close of escrow on the Agency Property, the Developer shall have, at least: i) had its final construction plans and drawings approved by the Agency and the City; ii) provided evidence that it has sufficient and binding financing commitments to complete the Project; iii) executed a construction contract for the Project with its general contractor; iv) provided a guarantee to the Agency for the completion of the Project; v) obtained all permits and other governmental approvals necessary for construction of the Project; and vi) obtained letter of intent for approval of all condominium formation documents from the California Department of Real Estate.

As described above, many of the aspects of risk which might be associated with the Agency Loan are mitigated by the requirement that Developer obtain commitments to pre-lease or pre-sell at least one-third of the space in the Project and that Developer be fully prepared to commence construction of the Project prior to conveyance of the Agency Property to the Developer. Such pre-leasing will provide the Agency with the assurances that Developer will enjoy cash flow during at least the first third (assuming a five-year lease prototype) of the term of the Agency Loan. Such pre-selling will assure the Agency that Developer will have cash on hand to accommodate unexpected exigencies while still retaining sufficient cash flow to make required payments on the Agency Loan.

All the contingencies listed above, and especially the last two, exceed those required of a traditional land loan and provide assurances to the Agency that Developer will enjoy every likelihood of being able to repay the Agency Loan. As a consequence, the Agency Loan is considered a market rate loan.

In any event, the Agency will make money on the transaction inasmuch as it will have purchased the Agency Property for \$120,000 in September, 2004 and will sell it for \$237,000 under the DDA expected to be approved in September 2008. This represents a 97.5 percent increase on the Agency's original investment over a four year period, or an approximately 24 percent increase per year.

Pursuant to the DDA, the Agency will bear one-half of the escrow fee, plus all recording fees, notary fees, and other normal escrow costs associated with sale of the Agency Property, including payment of the premium for a CLTA title insurance policy. Should Developer desire an ALTA title

insurance policy or other increase in coverage, the DDA provides that Developer will bear the incremental difference in cost of the premiums between a CLTA and an ALTA policy and any other increases in coverage requested by Developer.

2. Clearance Costs

None, however the Agency is responsible for up to \$20,000 in remediation costs for arsenic contamination.² The Agency Property has been a vacant parcel since its acquisition by the Agency. Other than the arsenic contamination issue, the Agency will sell the Agency Property to Developer in an "as is, where is" condition.³

3. Relocation Costs

None. The Agency Property is currently vacant.

4. Costs of Improvements to be Provided by Agency

None. The Agency Property will be acquired by Developer in an "as is, where is" condition and will be developed by Developer at its own expense. However, the City has agreed to defer its development fees for a period of 15 years as follows. Development fees are estimated in the DDA to be approximately \$588,641.22 (the "City Fees"). As a condition to issuance of a building permit by the City for the development of the Project, the Developer will execute and deliver a promissory note in favor of the City and a trust deed to be recorded against the Agency Property. The note will earn interest at a rate of four percent per annum, compounded annually. Developer shall make annual payments of interest only for the first fourteen (14) years of the note and shall pay all principal due on the date which is fifteen (15) years from the date of the promissory note.⁴ Provisions for the deferral of the City Fees mirror those of the Agency Loan and enjoy the same risk mitigation assurances; therefore, as with the Agency Loan, the deferral of City Fees is considered to be a market rate transaction.

5. Interest on Loans or Bonds to finance the DDA

The Agency does not intend to issue any loans or bonds to finance the DDA. Acquisition of the Agency Property by the Agency was financed through Agency general fund revenues; however, at such time as the Agency sells the Agency Property to Developer, it will "take out" the previous financing and replace said previous financing with the Agency Loan.

6. Other Costs

The Agency will incur administrative costs associated with the DDA, including staff time and legal costs for the negotiation and preparation of the DDA and other related documents, and

²DDA, Attachment 4, Section II.B. Reducing the "net" disposition price to the Agency of the Agency Property by \$20,000 still generates an annual increase of approximately 20 percent in the Agency Property's value since it was acquired by the Agency.

³DDA, Section 212.3.

⁴DDA, Attachment No. 8.

ongoing staff costs related to the Agency's obligations as required under the DDA. Following construction, the Agency will incur additional administrative and staff costs relating to the ongoing monitoring and administering the Agency Loan, however, these costs are expected to be minimal.

III. ESTIMATED VALUE OF INTEREST TO BE SOLD, DETERMINED AT THE HIGHEST AND BEST USES PERMITTED UNDER THE DEVELOPMENT PLAN

Agency staff and legal counsel have reviewed the original appraisal dated October 6, 2006, and the Appraisal Update and have determined that these documents accurately identify the market value for the Agency Property. The appraiser's opinion is that the highest and best use of the Agency Property is as provided for in the DDA. As of the date of value, the appraised value of the Agency Property is \$237,000. The Agency will sell the Agency Property to Developer for a total price of \$237,000, a price which equals the appraised value of the Agency Property.

IV. ESTIMATED VALUE OF THE INTEREST TO BE SOLD, DETERMINED AT THE USE AND WITH THE CONDITIONS, COVENANTS AND DEVELOPMENT COSTS REQUIRED BY THE DDA

The Agency Property will be conveyed to the Developer in its current condition, for development of the Project. Following conveyance, the Developer must comply with the repayments terms under the Agency Note and City Fees Note, both of which notes have been determined to be fair market transactions and do not diminish the value of the property being conveyed. Following completion of construction, the Developer is required to comply with the restrictions set forth in the Grant Deed, including nondiscrimination covenants, and the covenant to use the Site for the uses specified in the Development Plan until termination of that Plan. Because the nondiscrimination covenants and the use restrictions apply to all other property located in the Development Project Area, these covenants do not diminish or reduce the value of the Agency Property. The Grant Deed also contains the Agency's option to repurchase the Agency Property in the event of a default by Developer prior to completion of the Project. If the Agency were to exercise its option to repurchase the Agency Property, it would occur only in the event of a default by Developer, and the Agency would be required to pay the Developer all costs incurred by the Developer to acquire the Agency Property, and for all on-site labor and materials for construction of any improvements existing at the time of such repurchase. Therefore, this option to repurchase does not diminish the actual value of the property. There are no other long-term covenants or restrictions associated with the development or use of the Agency Property following conveyance or construction of the improvements pursuant to the DDA. Therefore, the estimated value of the Agency Property, at the use and with the conditions, covenants and development costs required by the DDA, is estimated to be equal to the fair market value of the Agency Property (\$237,000).

V. REASONS FOR THE DIFFERENCE BETWEEN THE ESTIMATED VALUE OF THE INTEREST TO BE SOLD DETERMINED AT ITS HIGHEST AND BEST USE AND AS DETERMINED SUBJECT TO CONDITIONS, COVENANTS AND DEVELOPMENT COSTS

As described above, the highest and best use of the Agency Property is the use intended in the DDA. The market value of the Agency Property is \$237,000. The Agency is selling the Agency Property to Developer at this value; therefore, the "sale price" as described in CCRL Section 33433(a)(2)(B)(iii) is not "less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan." As there is no

difference between the fair market value of the Agency Property and the sale price, the Agency has no requirement to "provide an explanation of the reasons for the difference."

VI. EXPLANATION OF WHY THE SALE OF THE AGENCY PROPERTY WILL ASSIST IN THE ELIMINATION OF BLIGHT

The Agency Property is currently vacant and owned by the Agency and is temporarily used for overflow parking. At the time the Agency Property was made subject to redevelopment, the Agency's Report to the City Council provided evidence and the City Council found and determined that the Project Area, of which the Agency Property is a part, was a blighted area, the redevelopment of which was necessary to effectuate the public purposes of the CCRL. The goals and objectives of the Agency under the Development Plan include, among others, to provide a stable, diversified and stronger economic base for the Project Area and the Community; and to maximize opportunities for the revitalization, expansion and development of commercial uses within the Project Area. To achieve these goals and objectives, the Development Plan provides that the Agency will implement project and activities, including, among others, economic development, project area planning, and property disposition and development.

Since it is vacant and owned by a public entity which does not pay property taxes, the Agency Property is currently producing no sales or property taxes and generates no jobs or housing opportunities for the community. The Agency, and the City before it, has used the Agency Property as overflow parking in an effort of assist downtown merchants; however, the Agency Property has not been improved to full parking area status (i.e., provision of paved, stripped, and landscaped parking spaces with adequate provisions for safe and efficient ingress and egress from the public way). This parking use has always been considered an interim use. The Project will, in cooperation with other improvements planned for the area, replace the parking spaces which are being converted to active commercial/residential uses.

State law provides that one of the primary purposes for redevelopment is to provide employment opportunities in the community. The implementation of the DDA will provide for the development of a modern, high-quality real estate mixed-use development, consisting of residential and commercial/retail uses, which will eliminate a currently under-utilized parcel of land in the Project Area; provide short-term construction jobs during the period of construction, as well as long-term retail and commercial employment opportunities through those business establishments that will occupy space within the Project; improve the City's sales and property tax bases; provide upper end retail opportunities to residents of the City; and improve the function and usefulness of public facilities in the Project Area generally and in the City's downtown core specifically. Furthermore, the sale and development of land which is currently owned by the Agency will increase the tax dollars to be generated for the City and the Agency, thereby allowing the Agency to initiate other redevelopment activities.

Based upon the above, the Agency and City Council may make a finding that the sale of the Agency Property pursuant to the DDA will assist in the elimination of blight within the Development Project.

VII. FINDING THAT THE SALE OF THE AGENCY PROPERTY PURSUANT TO THE DDA IS CONSISTENT WITH THE IMPLEMENTATION PLAN

The development of the Project pursuant to the DDA will help implement and is consistent with the following goals found in Section II.B.1 of the Implementation Plan: i) alleviate and prevent the spread

of blight and deterioration through redevelopment, rehabilitation and development (development of the Project will prevent the spread of blight and help reverse the deterioration of downtown Winters); ii) attract additional retail and industrial development to serve the Winters community and the greater region (the Project will help attract additional retail uses to the City); iii) support development of new housing and rehabilitation of existing housing for all income levels (the Project will include ten units of new housing); and iv) provide the necessary assistance to increase local employment opportunities, primarily through the development of vacant or underutilized land (the Agency Property is currently vacant; the Project will generate new employment opportunities in the community). Furthermore, development of the Project will help implement and be consistent with the following objectives and proposed redevelopment activities found in Sections II.B.2 and II.B.3 of the Implementation Plan: i) pursue specific opportunities to attract development to the project area through market analysis, specific plans, and, marketing efforts (the Agency commissioned a market analysis for the Project, the Project itself represents new development); and ii) implement an effective economic development strategy designed to attract and retain employers to the project area (see comments above).

The Project is a "redevelopment activity" as described in Section II.B.3 of the Implementation Plan which is quoted, in part, below:

Economic Development: Design and implement activities and programs to strengthen existing industrial and commercial enterprises and retailers, and attract new businesses which will provide quality jobs (see above; the Project will help attract a major, upscale retailer to downtown Winters which will provide quality jobs).

Project Area Planning: Implement planning projects that guide land use, transportation, public facilities and recreation development. Maintain the City's balance between commercial, residential and industrial developments with thoughtful planning (the Project is a mixed-use residential and retail/commercial project, in furtherance of the Agency's and City's planning for downtown Winters).

Property Disposition and Development: Improve and arrange for development of property by private sector developers that will promote and support the City's redevelopment efforts (disposition of the Agency Property and the ROW Property will improve the development of property by the private sector).

The Project is consistent with and implements many of the redevelopment activities identified in the Implementation Plan.

The Project is both an "Economic Development" and a "Property Acquisition/Disposition and Cleanup" Program as identified in Table II-4 in the Implementation Plan and therefore is consistent with said Implementation Plan.

Section II.F.2 of the Implementation Plan provides linkages between programs and the elimination of blighting influences. With reference to the Project, pertinent linkages are identified in subsections "d" and "f" quoted below:

d. Economic Development

Central Business District Improvements

Various improvements to the central business district (for streetscapes, building façade upgrades, and other improvements) and the construction of a landscaped parking facility will improve the appearance and functionality of this key commercial area and will attract additional business and result in the upgrade of existing structures.

f. Agency-Owned Property Disposition and Development

Property Acquisition

The agency will acquire available properties for community facilities and economic development. The agency's ability to acquire land through eminent domain expires on July 20, 2004.

Based upon the above, the Agency and City Council may each make a finding that the DDA is consistent with the Implementation Plan.

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 "project", defined as the 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
Land Use Element	
<p>I.A.3. The City shall encourage development to occur in a sequence that promotes the efficient use and extension of public facilities and services.</p>	<p>The project will facilitate infill development on the adjacent site in a manner that fully utilizes existing public facilities and services.</p>
<p>I.B.2 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 for commercial uses in the CBD.</p>
<p>I.B.6. 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>I.D.3. The City's first priority for new commercial development shall be the Central Business District.</p>	<p>The project will facilitate infill commercial development and increased public benefit (i.e., improved pedestrian/bike access and vehicle parking) in the Central Business District.</p>
<p>General Plan Circulation Plan Diagram and Standards:</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>
Transportation and Circulation Element	

<p>III.A.1. 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>III.A.2. 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>III.A.9. 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>III.A.10. 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>III.A.12. The City shall encourage the use of curb corner radii that slow traffic turning movements and minimize pedestrian crosswalk lengths, but are consistent with fire truck turning needs.</p>	<p>The project is consistent with the requirements and standards of the Winters Fire Department.</p>
<p>III.A.13. 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>III.A.14 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>III.A.15. 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>III.F.1 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 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>III.G.1 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 affect the existing pedestrian and bicycle routes. The creation of the parking area will also promote pedestrian activity to the Central Business District.</p>
<p>III.G.6 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 encourage biking.</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>
<p>Public Facilities and Services</p>	
<p>IV.A.1 The City shall ensure, insofar as possible, that public facilities and services are developed and operational as they are needed to serve new development.</p>	<p>Adequate operational public services are existing at the site to accommodate new development.</p>
<p>IV.G.1. The City shall encourage the Fire</p>	<p>The project will be designed in accordance</p>

<p>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.</p>	<p>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.</p>
<p>Natural Resources</p>	
<p>VI.C.3. 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.</p>	<p>The project is determined to be Categoricaly Exempt from any CEQA analysis, meaning no unmitigatable impacts are anticipated on rare, threatened, or endangered wildlife or plant species.</p>
<p>VI.C.9. 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.</p>	<p>The project does not include the removal of any existing trees.</p>
<p>VI.E.6. 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.</p>	<p>The project shall conform to the standard specifications related to earthwork contained in the City Public Works Improvement Standards Section 12-2.</p>



CITY COUNCIL STAFF REPORT
August 25, 2008

HEARING DATE: September 2, 2008
AGENDA ITEM: Valadez General Plan Amendment and Rezone
Application #2007-01-GPA
PREPARED BY: Eileen Shaw, Contract Planner 
APPLICANT: Frank Valadez, Trustee of the Valadez Family Trust
OWNER: Same as Applicant

SITE DATA:

Location: North central area of the City directly north of Pear Place, south of 776
Apricot Avenue, and east of the Winters Cemetery

Assessor's Parcel Number: APN 003-391-05

Parcel Size: 1.421 acres

Current General Plan designation: Recreation and Parks (RP)

Current Zoning designation: Parks-Recreation (P-R)

REQUESTED ACTION: The Planning Commission has made its recommendation that the
City Council carry out the following General Plan amendment and Zoning amendment actions:

1. Adopt the Draft Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Approve a General Plan Amendment that re-designates APN 003-391-05 from Recreation and Parks (RP) to Medium Density Residential (MR).
3. Approve a Zoning Ordinance Amendment that rezones APN 003-391-05 from Parks and Recreation (P-R) to Single-Family Residential (R-2).

INTRODUCTION:

On July 22, 2008, at a publicly-noticed hearing before the Planning Commission (continued from the June 24th meeting), the Commission recommended that the City Council adopt a General Plan Amendment re-designating the site from Recreation and Parks (RP) to Medium Density Residential (MR) as shown in *Attachment A*; and that the Council approve an amendment to the Zoning Ordinance that would rezone the site from Parks-Recreation (P-R) to Single-Family Residential (R-2) as shown in *Attachment B*.

As part of this action, the applicant signed a *Consent of Owner(s) to Imposition of Rezone Conditions* on June 2, 2008, which states that, if the GPA and rezone is approved, a development plan will need to be submitted for the subject 1.421-acre parcel to be developed at the same time as the adjacent ±2.719-acre parcel (APN 003-392-01), also owned by Mr. Valadez. Development would be based on a City-approved development plan for the combined 4.14-acre property, and would include dedication of land or payment of in-lieu fees for parks, and subject to ordinances in place at that time.

BACKGROUND:

In 1992, the subject parcel was part of a city-wide General Plan update adopted by the City Council. As part of the update, the General Plan Land Use designation for the subject parcel was changed from Medium Density Residential (MR) to Recreation and Parks (RP), and the zoning designation was changed from Single-Family Residential (R-) to Parks-Recreation (PR). The adjacent parcel to the east remained designated RP and zoned as R-2.

With regard to Apricot Avenue, the city's Circulation Master Plan identifies future extension of the street through the Valadez property, which would bisect the subject parcel and the ±2.79-acre parcel as shown in *Attachment C*. This roadway easement was dedicated to the City with the intent of completing this final section of Apricot Avenue upon residential development of the easterly parcel. The city does not intend to complete this street section until development has been approved for the site.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration was prepared for this project and was circulated for public review in accordance with the requirements of the California Environmental Quality Act (CEQA). Although there was not a subdivision map associated with the project, the document assumed future residential development on the site and the project was analyzed accordingly. The document did not identify any impacts which could not be mitigated to less than significant levels. The Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are attached to this report (see *Attachment D*).

PUBLIC COMMENTS:

No public comments have been received on this project as of the date this staff report was prepared.

DISCUSSION:

The project site, as discussed above, is located in a developed residential area, but its land use designation and zoning designation was changed from single-family residential use to parks and recreation uses in 1992. Since then, the land use has remained unchanged and the City does not have any plans to develop the property for park purposes.

General Plan Consistency On July 22, 2008, the Planning Commission made its recommendation that the Council re-designate and rezone the site for residential uses, consistent with the General Plan land use policies that 1) provide for infill development; 2) allow for development to occur in a logical sequence; 3) allow for development which can utilize existing public services and roadways; and 4) allow for the completion of the circulation patterns through the city.

Land Use Compatibility The project would not promote land uses which are incompatible with the established surrounding land uses in the project vicinity. On the contrary, the project would allow for a more consistent pattern of land use development and continue the existing residential development trend in the project vicinity.

Residential Density The project would not create residential densities which are inconsistent with those existing. The proposed R-2 zoning allows for residential densities identical to those which currently surround the project site. Multi-family development would not be an approved use upon a rezone to R-2.

Effect on Adjacent Residents The project would not significantly affect or negatively influence living conditions for those currently residing in the area. There are no parcels in the vicinity that do not currently have at least one adjacent neighbor. If developed, the project would allow for single-family homes similar to those nearby. The project would allow for a use which is not expected to adversely affect property values in the neighborhood.

The project would not deter the improvement or development of adjacent properties, nor create a precedent due to the fact that this project would allow for infill development and there are no other vacant parcels in the project area which could be developed otherwise.

Development Plans In order to ensure future land use and neighborhood compatibility, any proposed development would require a tentative subdivision map (for 5 or more subdivided parcels) subject to review and approval by the Planning Commission and City Council. Additional CEQA analysis may also be required.

Furthermore, the City and the applicant have entered into an agreement (see *Attachment E*) that an application for future development of the subject parcel shall also include development plans for the adjacent parcel. Therefore, the entire 4.14-acre site will be required to be developed under a single application. This agreement will ensure a development which is compatible and consistent with the surrounding neighborhood. At the time of development, the property owner will also be required to dedicate land and/or pay fees for park or recreational purposes, in accordance with then-existing City ordinances. These conditions and the signed agreement are attached to this report.

Findings for Adopting the 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 is determined to be complete and final.

Findings for amending the General Plan

The Planning Commission has recommended that the City Council make the following Findings for amending the City of Winters General Plan:

1. The adoption of the General Plan Amendment will be consistent with the adopted City General Plan goals, policies and programs. The change in land use designation will facilitate the type of infill development that is consistent with the character of the neighborhood, which consists of predominantly single-family homes.
2. The adoption of the General Plan Amendment will be compatible with other General Plan land use designations in the vicinity, and with surrounding land uses that include single-family residences to the north and south; the Winters Cemetery to the west; and walnut orchard with a single-family residence to the east.

Findings for amending the Zoning Ordinance

The Planning Commission has recommended that the City Council make the following Findings for approval of an amendment to the City of Winters Zoning Ordinance:

1. The rezone would not be detrimental to the public's health, safety and general welfare;
2. The rezone would result in conformity with the General Plan land use designation for this site.

FISCAL IMPACTS

While undetermined at this time, the fiscal impact of rezoning this property from Parks and Recreation to Single-Family Residential would be positive.

CONDITIONS OF APPROVAL

1. In order to promote the compatibility of the development with the surrounding neighborhood, a development plan for the entire 4.14 acre parcel, which includes APN # 003-391-05 (1.421 acres) and APN # 003-0392-01 (2.719 acres) shall be presented to the City of Winters for consideration at one time, as opposed to submitting separate and independent development plans for either the eastern or western portion of the site.
2. The property owner understands and acknowledges that at the time of development of the 4.14 acre parcel, which includes the subject property, there will be a requirement to dedicate land and/or pay fees for park or recreational purposes, in accordance with then-existing City ordinances, and the property owner agrees to comply with such ordinances.
3. The property owner agrees to provide any successor-in-interest to the 4.14 acre parcel, which includes the Subject Property, or any portion thereof, with a complete copy of the *Consent of Owner(s) to Imposition of Rezone Conditions* dated June 2, 2008.

ATTACHMENTS:

- A. Resolution No. 2008-37 amending the General Plan
- B. Ordinance No. 2008-10 amending the Zoning Map
- C. Rezone Exhibit
- D. Mitigated Negative Declaration / Mitigation Monitoring and Reporting Program
- E. Consent of Owner(s) to Imposition of Rezone Conditions (signed June 2, 2008)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING THE GENERAL PLAN TO CHANGE THE GENERAL PLAN DESIGNATION FROM RECREATION AND PARKS (RP) TO MEDIUM DENSITY RESIDENTIAL (MR) FOR THE PROPERTY LOCATED AT ASSESSOR'S PARCEL NUMBER 003-391-05

WHEREAS, Section _____ of the Winters Municipal Code authorizes the City Council of City of Winters, upon receipt of a recommendation from the Planning Commission, upon holding a public hearing and hearing all testimony, upon examination and review of the investigative and staff reports and upon ascertaining all other pertinent facts relative thereto, and upon conclusion of public hearing to make determinations and findings of fact as deemed necessary and to approve proposed General Plan amendment and adoption of a Resolution changing General Plan designation; and

WHEREAS, California Government Code section 65350 *et seq.* authorizes the City Council of City of Winters, upon hearing all testimony, upon examination and review of the investigative and staff reports and upon ascertaining all other pertinent facts relative thereto, and upon conclusion of public hearing to make determinations and findings of fact as deemed necessary and to approve proposed General Plan amendment and adoption of a Resolution changing General Plan designation; and

WHEREAS, the Planning Commission of the City of Winters held a duly noticed public hearing on _____, and recommending that the City Council approve a General Plan Amendment to change the General Plan designation from _____ to _____ for the property at _____ shown in Attachment "A"; and

WHEREAS, the City Council of the City of Winters held a public hearing on _____, for this General Plan Amendment following notice duly and regularly given as required by law and interested parties were heard; and

WHEREAS, the City Council has carefully considered all pertinent testimony, staff report and Planning Commission recommendations in the case as presented at the public hearing of _____; and

WHEREAS, the proposed General Plan Amendment is necessary to carry out general purpose and provisions of General Plan; and

WHEREAS, the proposed General Plan Amendment is required by public necessity and convenience, and will promote general welfare.

NOW THEREFORE, the City Council of the City of Winters does hereby resolve as follows:

SECTION 1. Pursuant to the State California Environmental Quality Act (CEQA) Guidelines, the City Council finds that:

9. The City Council has considered the proposed Mitigated Negative Declaration before making a decision on the project.
10. The City Council has considered comments received on the Mitigated Negative Declaration during the public review process.
11. 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.
12. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of Winters.
13. The Mitigated Negative Declaration has been prepared in compliance with CEQA and the State CEQA Guidelines, and is determined to be complete and final.
14. 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.
15. The Mitigation Monitoring and Reporting 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.
16. The City Council hereby adopts the Valadez General Plan Amendment and Rezone Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

SECTION 2. Pursuant to Section _____ of the Winters Municipal Code, the City Council of the City of Winters does hereby approves the adoption of a General Plan Amendment to change the General Plan designation from _____ to _____ for the property at _____ and as designated herein as Attachment "A", attached hereto and made part of this Resolution.

SECTION 3. The City Council of the City of Winters finds that this General Plan Amendment should adopted for the following reasons and findings:

- a) The adoption of the General Plan Amendment will be consistent with the adopted City General Plan goals, policies and programs in that the change in zones will facilitate in-fill development and is consistent with the character of the neighborhood which predominantly includes Single-Family homes.
- b) The adoption of the General Plan Amendment will be compatible with other designations within the vicinity and with surrounding land uses which includes single-family residences on the north and south; the Winters Cemetery on the west and; walnut orchard with a single-family residence on the east.

SECTION 4. Based upon the foregoing findings and summaries, the City of Winters City Council approves the adoption of a General Plan Amendment changing the General Plan designation from _____ to _____ for the property at _____ following a public hearing as required by law.

APPROVED AND ADOPTED this _____ day of _____, 2008 by members of the City Council of the City of Winters, voting as follows:

AYES:
NOES:
ABSENT:
ABSTAIN:

 Mayor

ATTEST:

 City Clerk

CITY OF WINTERS

ORDINANCE NO. 2008-10

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING
THE ZONING MAP TO CHANGE THE ZONING CLASSIFICATION OF CERTAIN
PROPERTY KNOWN AS ASSESOR'S PARCEL NO. 003-391-05**

The City Council of the City of Winters hereby ordains as follows:

SECTION 1: The Zoning Map of the City of Winters is amended to change the zoning classification of the property described in Exhibit "A" and depicted in Exhibit "B", which are attached hereto and incorporated herein as though set forth in full ("Subject Property"), and which is also commonly referred to and known as Assessor Parcel No. 003-391-05 and is approximately 1.42 acres, from the P-R Zone to the R-2 Zone, as depicted on Exhibit "B".

SECTION 2: The change in the zoning classification for the Subject Property provided for in Section 1 hereof shall be subject to, and conditioned upon, compliance with all of the conditions set forth in Exhibit "C", which is attached hereto and incorporated herein as though set forth in full.

SECTION 3: The conditions set forth in Exhibit "C" and incorporated herein shall run with the land and shall be directly enforceable by the City of Winters against the owner(s), successors and assigns of the Subject Property.

SECTION 4: The City Council finds in connection with its adoption of this Ordinance, and the imposition of the conditions enumerated in Exhibit "C" hereof and incorporated herein, that the owners of the Subject Property, or authorized representative of the owners, have consented to the imposition of the conditions enumerated in Exhibit "C" hereof. This consent is memorialized in Exhibit "D" which is attached hereto and incorporated herein as though set forth in full.

SECTION 5: This Ordinance shall be in full force and effect 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this Ordinance to be posted in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on _____, 2008 and was passed and adopted at a regular meeting of the City Council held on _____, 2008 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

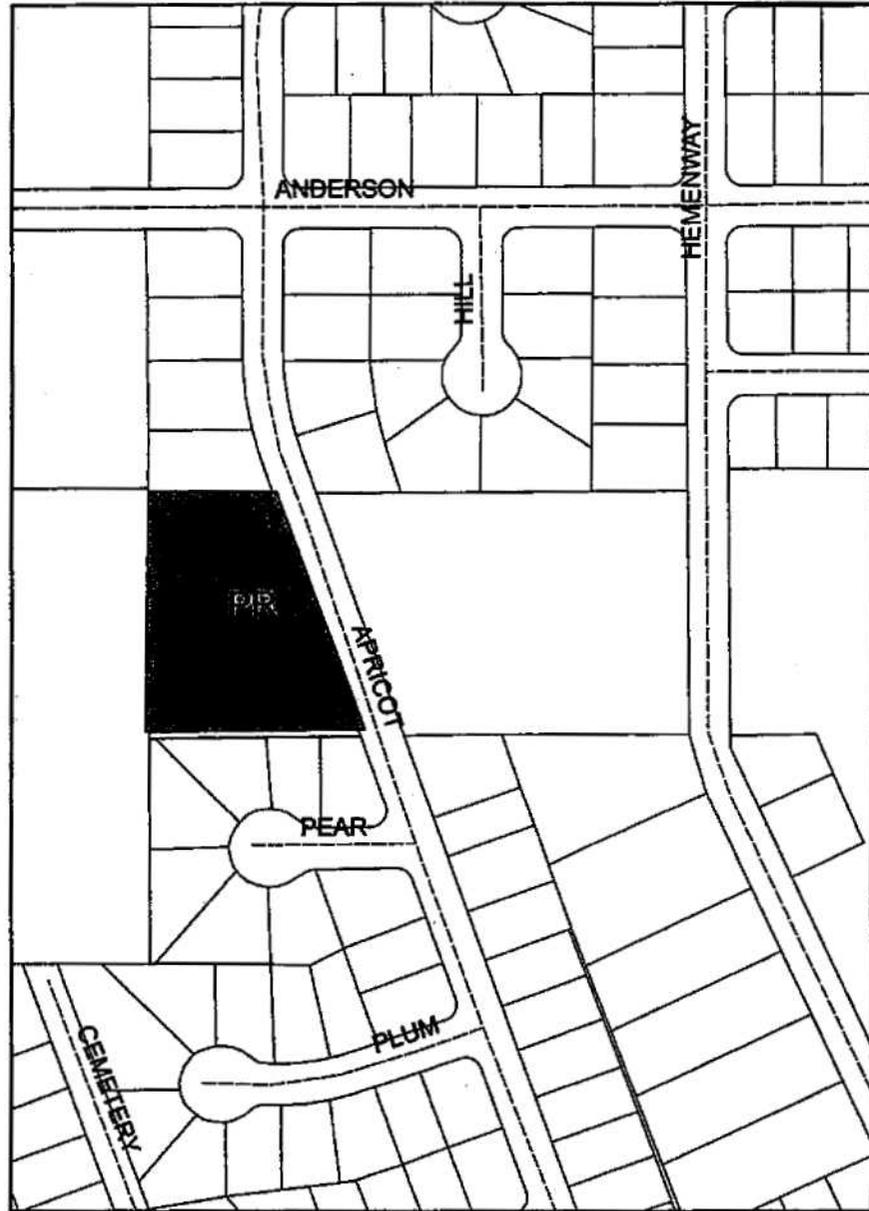
Mayor

ATTEST:

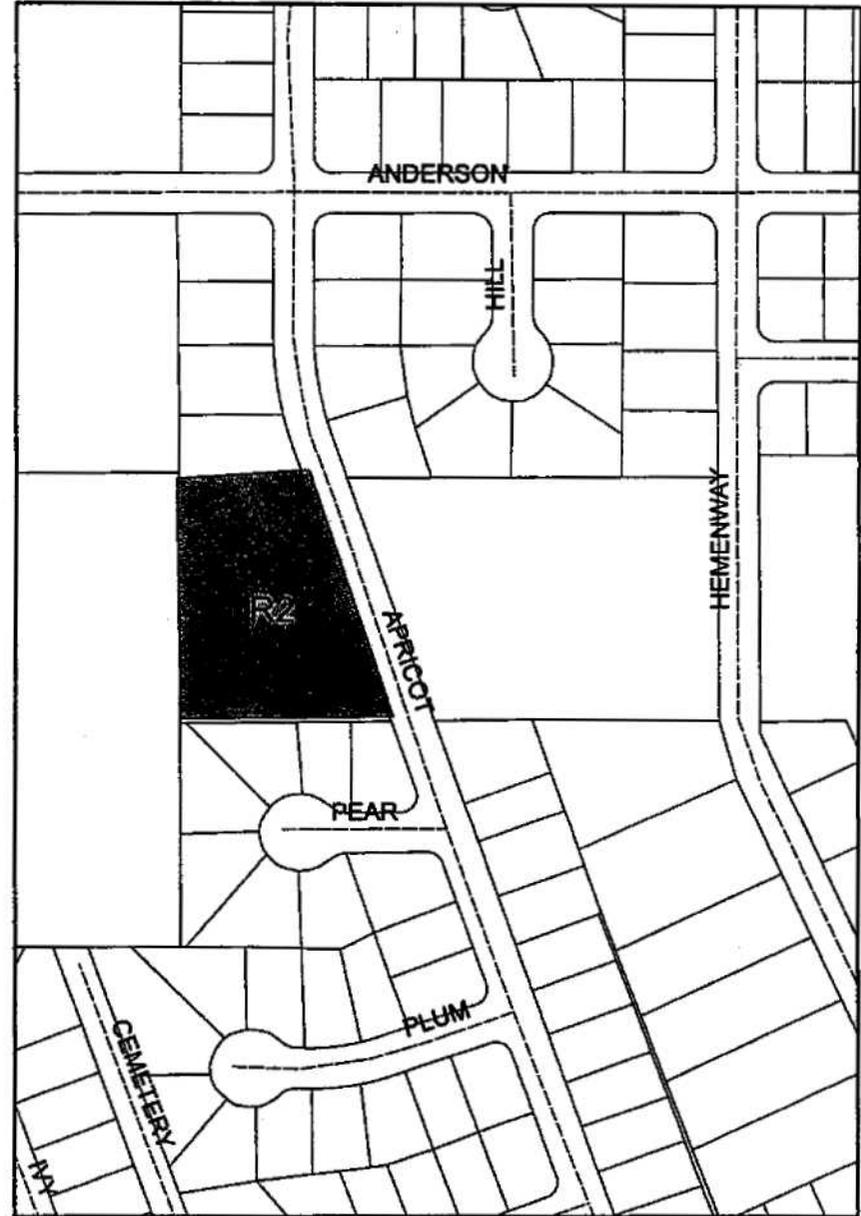
City Clerk

Rezone Exhibit

Existing



Proposed





NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION

TO: Interested Parties
FROM: Winters Community Development Department
DATE: February 14, 2008

SUBJECT: **VALADEZ GENERAL PLAN AMENDMENT – NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION**

Applicant:

Frank Valadez (Trustee and Applicant/Owner)
1137 Williams Way
Yuba City, CA 95991
530-674-5102

Description of the Project: The project is a proposed General Plan Amendment of Assessor Parcel Number 003-391-05 to change the existing General Plan designation from Recreation and Parks (RP) to Medium Density Residential (MR) and rezone the property from Parks and Recreation (P-R) to Single Family, 6000 Square Foot Average Minimum (R-2 Zone). The applicant has indicated that the project site would be developed for single-family residences if the general plan amendment/rezone request is approved.

In order to proceed with the project the following City approvals are needed:

- CEQA clearance in the form of a Negative Declaration and Mitigation Monitoring Plan.
- General Plan Amendment to change the land use designation from Recreation and Parks (RP) to Medium Density Residential (MR).
- Rezone to change the zoning from Parks and Recreation (P-R Zone) to Single Family, 6000 Square Foot Average Minimum (R-2 Zone).

Project Location: The project site is located in the north central area of the City of Winters directly north of Pear Place at Assessor Parcel Number 003-391-05. The property has a situs of Apricot Avenue, but does not have a street address. The property is approximately 1.421 acres in size. The project is north of Pear Place, south of 776 Apricot Avenue, west of a future extension of Apricot Avenue, and east of the Winters Cemetery.

Environmental Determination: Mitigated Negative Declaration.

Comments on the Negative Declaration: The City requests your written comments on the Mitigated Negative Declaration during a **30-day review period** which begins **Thursday, February 14, 2008** and ends **Friday, March 14, 2008**. All comments must be received no later than 4:00 p.m., March 14, 2008. Postmarks are not accepted. Comments should be directed to Winters Community Development Department, 318 First Street, Winters, CA 95694.

Public Hearing: Notice of public hearings before the Planning Commission and City Council will be provided once the hearings have been scheduled.

Availability of Documents: The Mitigated Negative Declaration, supporting documentation, and project file are available for public review at the Community Development Department, Winters City Hall, 318 First Street, Winters, CA 95694. Copies of the Mitigated Negative Declaration and the Initial Study will be available on the City's website (www.cityofwinters.org) under the Community Development Department tab (Reports & Publications option).

For more information regarding this project, please contact the Community Development Department at (530) 795-4910, extension 112.

ENVIRONMENTAL CHECKLIST AND INITIAL STUDY

Project Title: Valadez GPA/Rezone

Lead Agency Name and Address: City of Winters
Community Development Department
318 First Street
Winters, CA 95694

Contact Person and Phone Number: Dan Sokolow
Community Development Director
(530) 795-4910, extension 114

Project Location: The project is located in the north central area of the City of Winters directly north of Pear Place at Assessor Parcel Number 003-391-05. The property has a situs of Apricot Avenue, but does not have a street address. The property is approximately 1.421 acres in size. The project is north of Pear Place, south of 776 Apricot Avenue, west of a future extension of Apricot Avenue, and east of the Winters Cemetery.

Project Sponsor's Name and Address: Frank Valadez (Trustee)
Applicant/Owner
1137 Williams Way
Yuba City, CA 95991
530-674-5102

General Plan Designation: Recreation and Parks (RP).

Zoning: Parks and Recreation (P-R).

Existing Conditions: The project site consists of a long, almost rectangular-shaped parcel with dimensions of approximately 145 feet on the north, 257 feet on the south, 308 feet on the west, and 324 feet on the east. The property is generally flat, but surface elevation information is not known. The current use of the project site is a walnut orchard and the orchard extends across a future extension of Apricot Avenue to a second parcel located at 720 Hemenway Street (APN 003-391-01). The property lies in a FEMA Flood Zone X based on the FEMA Flood Insurance Rate Map (map revised November 20, 1998, Community-Panel Number 060425 0001 C). Zone X is a flood insurance rate zone assigned to property that is determined to be outside the 500-year floodplain. Surrounding land uses include:

North – Single-family residences.

West – Winters Cemetery.

East – Walnut orchard.

South – Single-family residences.

Background: The project site has been used for a walnut orchard for a number of decades. Information is not available on whether the site has supported structures in the past.

Project History:

March 29, 2007 – Application submitted for General Plan Amendment and Rezone.

Previous Relevant Environmental Analysis: The 1992 General Plan was the subject of a certified Environmental Impact Report that examined the environmental impacts associated with adoption of the General Plan, including the development of the site as currently designated.

Description of the Project: The project is a proposed General Plan Amendment to change the existing General Plan designation from Recreation and Parks (RP) to Medium Density Residential (MR) and rezone the property from Parks and Recreation (P-R) to Single Family, 6000 Square Foot Average Minimum (R-2 Zone). The applicant has indicated that the project site would be developed for single-family residences if the general plan amendment/rezone request is approved.

Site Plan

A site plan has not been submitted for residential development of the project area. However, it is estimated that five or six single-family residences could be constructed at the project site.

Roadways

A roadway plan has not been submitted for residential development of the project area; however, under the City's Circulation Master Plan a future extension of Apricot Avenue would be constructed directly east of the project site.

Land Use And Zoning Consistency

The applicant is proposing a general plan amendment to change the land use designation from RP to MR and a rezone to change the zoning from P-R to R-2.

Other Applicable Plans

The project site falls within the redevelopment area of the City of Winters known as the Community Development Agency Project Area. In the event that the site is developed for residential purposes, the California Redevelopment Law requires that 15% of the residential units developed or rehabilitated in a project area by public or private entities other than a redevelopment agency must be affordable to low and moderate income households. For the 15% requirement, 40% of the units must be affordable to very low-income households while the remaining 60% must be affordable to low- to moderate-income households.

Sewer Conveyance

Infrastructure plans have not been submitted for the project site.

Sewer Treatment

The City's Wastewater Treatment Plant (WWTP) has a capacity of 0.92 million gallons per day (mgd). Space remains for approximately 600 additional residential hook-ups. The City's recent project approvals dating back to Spring 2005 exceed this amount and efforts are underway to expand the plant. The Phase 2 expansion will bring the capacity to between 1.2 and 1.6 mgd.

Water Conveyance

Infrastructure plans have not been submitted for the project site.

Drainage Conveyance

Infrastructure plans have not been submitted for the project site.

Off-Site Infrastructure

An analysis to determine what if any off-site infrastructure necessary for development of the project site has not been prepared.

Flooding

The project does not fall within the City's General Plan Flood Overlay Area. The project site lies in FEMA Flood Zone X based on the FEMA Flood Insurance Rate Map (map revised November 20, 1998, Community-Panel Number 060425 0001 C). Zone X is a flood insurance rate zone assigned to property that is determined to be outside the 500-year floodplain.

Parkland

The applicant has not proposed a park for the project site. The site is currently designated under the General Plan and zoned for a future park.

Affordable Housing

In the event that the project site is developed for residential use, the development would be subjected to the City's affordable housing ordinance. The ordinance requires a 15 percent affordable component comprised of 6 percent very low-income, and 9 percent low- to moderate-income.

Required City Approvals

The following entitlements are required for approval of the project.

- CEQA clearance in the form of a Negative Declaration and Mitigation Monitoring Plan.
- General Plan Amendment to change the land use designation from Recreation and Parks (RP) to Medium Density Residential (MR).
- Rezone to change the zoning from Parks and Recreation (P-R Zone) to Single Family, 6000 Square Foot Average Minimum (R-2 Zone).

Other public agencies whose approval may be required (e.g., permits, financing approval, or participation agreement).

- California Department of Fish and Game

- Central Valley Regional Water Quality Control Board
- Yolo-Solano Air Quality Management District

Other Project Assumptions: The Initial Study assumes compliance with all applicable State, Federal, and Local Codes and Regulations including, but not limited to, City of Winters Municipal Code, City of Winters Improvement Standards, the California Building Code, the State Health and Safety Code, and the State Public Resources Code.

Technical Studies: No technical studies have been prepared for the project.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below potentially would be significantly affected by this project, as indicated by the checklist on the following pages.

- | | |
|---|--|
| <input checked="" type="checkbox"/> Aesthetics | <input type="checkbox"/> Mineral Resources |
| <input type="checkbox"/> Agricultural Resources | <input type="checkbox"/> Noise |
| <input checked="" type="checkbox"/> Air Quality | <input type="checkbox"/> Population and Housing |
| <input checked="" type="checkbox"/> Biological Resources | <input checked="" type="checkbox"/> Public Services |
| <input checked="" type="checkbox"/> Cultural Resources | <input checked="" type="checkbox"/> Recreation |
| <input checked="" type="checkbox"/> Geology and Soils | <input checked="" type="checkbox"/> Transportation/Traffic |
| <input checked="" type="checkbox"/> Hazards and Hazardous Materials | <input checked="" type="checkbox"/> Utilities and Service Systems |
| <input type="checkbox"/> Hydrology/Water Quality | <input checked="" type="checkbox"/> Mandatory Findings of Significance |
| <input checked="" type="checkbox"/> Land Use and Planning | <input type="checkbox"/> None Identified |

DETERMINATION:

On the basis of this initial evaluation:

- I find that the Proposed Project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the Proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the Proposed Project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis described in the attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

- I find that although the Proposed Project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to the earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the Proposed Project. Nothing further is required.

Dan Sokolow
Signature

February 12, 2008
Date

Dan Sokolow, Comm. Dev. Director
Printed Name

Community Development Department
Lead Agency

ENVIRONMENTAL CHECKLIST

Introduction

Following is the environmental checklist form presented in Appendix G of the CEQA Guidelines. The checklist form is used to describe the impacts of the Proposed Project. A discussion follows each environmental issue identified in the checklist. Included in each discussion are project-specific mitigation measures recommended as appropriate as part of the Proposed Project.

For this checklist, the following designations are used:

Potentially Significant Impact: An impact that could be significant, and for which no mitigation has been identified. If any potentially significant impacts are identified, an EIR must be prepared.

Potentially Significant Unless Mitigation Incorporated: An impact that requires mitigation to reduce the impact to a less-than-significant level.

Less-Than-Significant Impact: Any impact that would not be considered significant under CEQA relative to existing standards.

No Impact: The project would not have any impact.

Instructions

1. A brief evaluation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, potentially significant unless mitigation is incorporated, or less than significant. "Potentially significant impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
4. "Potentially Significant Unless Mitigation Incorporated" means "Less Than Significant With Mitigation Incorporated". It applies where incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact". The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less-than-significant level (mitigation measures from earlier analyses may be cross-referenced).
5. Earlier analyses may be used where, pursuant to tiering, a program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration (Section 15063(c)(3)(D)). In this case, a brief discussion should identify the following:
 - a. Earlier Analysis Used – Identify and state where available for review.
 - b. Impacts Adequately Addressed – Identify which effects from the above checklist were within the scope of and adequately addressed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c. Mitigation Measures – For effects that are "Potentially Significant Unless Mitigation Incorporated" describe the mitigation measures that were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
7. Supporting Information Sources in the form of a source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
9. The explanation of each issue area should identify: a) the significance criteria or threshold, if any, used to evaluate each question; and b) the mitigation measures identified, if any, to reduce the impact to less than significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
1. AESTHETICS. <i>Would the project:</i>				
a. Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

- a. The project site does not contain a scenic vista and development of the site would not block views of a scenic vista. For these reasons, the proposed project would result in no impact on a scenic vista.
- b. The project site proposed for development does not contain any protected scenic resources. The adjoining roadways are not listed or designated as a "scenic highway" and are not designated as scenic resources by the General Plan. As such, no impact would result.
- c. Development of the project site for residential use would change the visual surroundings of the area; however, the visual characteristics would change also if the site was developed as a park. Based on this and the presence of single-family residences north and south of the site, the impact is considered a less-than-significant.
- d. Development of the project site for residential use, including off-site improvements, would provide additional light and glare in the area. If unshielded, lighting can spill onto adjacent projects, and disturb other residents.

The potential structures constructed under the proposed project would be one or two stories tall, with exterior materials common to residential development, such as wood and stucco. Project buildings would not be constructed of large glass walls or highly reflective exteriors. Therefore, the proposed project would not produce substantial glare.

With the applicant's agreement to accept and implement the following mitigation measure, lighting impacts would be reduced to a less-than-significant level, because light would be focused downward. Therefore, spillover onto other properties would not occur, and the amount of light visible from offsite would be minimized.

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.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
<p>2. AGRICULTURE RESOURCES: <i>In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:</i></p>				
<p>a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>c. Involve other changes in the existing environment which, due to their location or nature, could result in loss of Farmland, to non-agricultural use?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

- a. The project site is not designated as Prime Farmlands, Unique Farmlands, or Farmlands of Local Importance on the City's Important Farmlands Map (1992 General Plan Background Report, Figure VIII-2). The Yolo County Important Farmland Map (California Department of Conservation, 2004) designates the project site as Urban and Built-Up Land.
- b,c. While the project site is used for a walnut orchard, the site is not zoned for agricultural use and is not under a Williamson Act contract. Therefore, the impact on agriculturally zoned land or Williamson Act contract land is less-than-significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
3. AIR QUALITY. <i>Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:</i>				
a. Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

Air quality modeling (URBEMIS) was not used for the project because residential development of the project site would result in a small number of residences. The number of single-family residences that could be constructed at the project site, an estimated five to six residences, falls significantly below the project size, 350 single-family residences for year 2010, that may exceed Yolo-Solano Air Quality Management District's (YSAQMD) thresholds for ROG, NO_x and PM₁₀.

- a. The Yolo-Solano Air Quality Management District is currently a non-attainment for ozone (State and Federal ambient standards) and Particulate Matter (State ambient standards). While air quality plans exist for ozone, none exists (or is currently required) for PM₁₀.

Based on consistency with the regional air plan, the YSAQMD CEQA guidance provides that a development project would have a cumulatively significant impact with respect to a non-attainment pollutant if the project requires a change in the existing land use designation (i.e., general plan amendment), and projected emissions of ozone precursors for the proposed project are greater than the emissions anticipated for the site if developed under the existing land use designation.

While the project would require a change in the existing land use designation of RP (Recreation and Parks), the vehicle trip generation for a residential development may not be more than the trip generation for development of the project site as a park. The estimated vehicle trip generation for a residential

development of five or six single-family residences ranges from 45 to 54 trips per day while the estimated vehicle trip generation for development of the project site as a park is 71 trips per day (San Diego Trip Generation Manual, May 2003). As a result, the impact would be less-than-significant.

- b. Development projects are most likely to violate an air quality standard or contribute substantially to an existing or project air quality violation through generation of vehicle trips. New vehicle trips add to carbon monoxide concentrations near streets providing access to the site. Carbon monoxide is an odorless, colorless poisonous gas whose primary source is automobiles. Concentrations of this gas are highest near intersections of major roads.

Because the proposed project is in an attainment area for carbon monoxide (the State and Federal ambient standards are met), Yolo County has relatively low background levels of carbon monoxide, and the project would not result in significant traffic congestion, the project's impact on carbon monoxide concentrations would be less-than-significant.

The project's maximum daily construction and maximum daily regional (operational) emissions would fall below the YSAQMD thresholds of significance for ROG (10 tons/year), NO_x (10 tons/year), and PM₁₀ (80 lbs/day). Nonetheless, for purposes of consistency the City is imposing the same air quality mitigations measures on this project as it has the last four subdivision projects approved by the City (Casitas at Winters, Anderson Place, Winters Highlands, and Hudson-Ogando). Additionally it should be pointed out that General Plan Policy VI.E.6 requires controls for construction-related dust.

With the applicant's agreement to accept and implement the following mitigation measure, NO_x emissions would be minimized and this impact would be held to a less-than-significant level.

Mitigation Measure #2

- a. Construction equipment exhaust emissions shall not exceed 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 emission opacities, using standards as defined in 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 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 in 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 diesel fuel and or particulate matter traps. These alternative measures, if proposed, shall be developed in consultation with District staff.

With the applicant's agreement to accept and implement the following mitigation measure, PM₁₀ emissions would be minimized and this impact would be held to a less-than-significant level.

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.

With the applicant's agreement to accept and implement the following mitigation measure, ROG emissions would be minimized and this impact would be held to a less-than-significant level.

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.

- c. Project traffic emissions would have an effect on air quality outside the project vicinity. Trips to and from the project and area sources associated with residential uses would result in air pollutant emissions within the air basin. The daily increase in regional emissions from auto travel and area sources for Reactive Organic Gases and Nitrogen Oxides (the two precursors of ozone) and

PM₁₀ would not exceed the YSAQMD thresholds of significance. As a result, project regional (operational) air quality impacts would be less-than-significant.

- d. Construction activities such as clearing, excavation and grading operations, construction vehicle traffic and wind blowing over exposed earth would generate exhaust emissions and fugitive particulate matter emissions that would temporarily affect local air quality for adjacent land uses.

Although the project's maximum daily construction emissions would not exceed the YSAQMD significance thresholds, construction dust emissions would have the potential to cause nuisance. This is a potentially significant impact.

The majority of the PM₁₀ from construction shown would be soil particles, while a small fraction would be from diesel exhaust. Diesel exhaust particulate is a pollutant that has come under increased scrutiny in recent years. In 1998, the California Air Resources Board (CARB) identified particulate matter from diesel-fueled engines as a toxic air contaminant (TAC). CARB has completed a risk management process that identified potential cancer risks for a range of activities using diesel-fueled engines.¹ High volume freeways, stationary diesel engines and facilities attracting heavy and constant diesel vehicle traffic (distribution centers, truckstops) were identified as having the highest associated risk.

Health risks from Toxic Air Contaminants are function of both concentration and duration of exposure. Unlike the above types of sources, construction diesel emissions are temporary, affecting an area for a period of days or perhaps weeks. Additionally, construction related sources are mobile and transient in nature, and the bulk of the emissions occur within the project site at a substantial distance from nearby receptors. The site is level and would not require substantial grading. Because of its short duration, low number of diesel vehicles and distance between equipment and nearby receptors, health risks from construction emissions of diesel particulate would be a less-than-significant impact. The Mitigation Measure contained in 3(b) would mitigate the dust generated from construction of the project to a less-than-significant impact.

- e. During construct the various diesel-powered vehicles and equipment in use on the site would create odors. These odors are temporary and not likely to be noticeable much beyond the project boundaries. The potential for diesel odors impacts is less-than-significant.

¹ California Air Resources Board, Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, October 2000.

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

Discussion

a,b,c,d,e. A biological resources report has not been prepared for the project site and would typically not be required until an application for development had been submitted. The site is surrounded by urban uses on three sides (north, south, and west), is not connected to a riparian corridor, is used as a walnut orchard, and is not known to contain any wetland-type features.

With the applicant's agreement to accept and implement the following mitigation measure, the potential impact to any potential candidate, sensitive, or special status species located at the project site would be mitigated to a less-than-significant level.

Mitigation Measure #4 -- A biological resources assessment shall be prepared for the project site and submitted with the application for development. The recommendations of the report shall be followed.

f. No Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan has been adopted for the project site. The Yolo County and four cities located in it are in the process of developing such a document, but it is not complete. This project would have no

effect on this plan and is not subject to it. For this reason, this impact would be less-than-significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
5. CULTURAL RESOURCES.				
<i>Would the project:</i>				
a. Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Disturb any human remains, including those interred outside of formal cemeteries.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

a,b,c,d. A cultural resources report has not been prepared for the project site and typically would not be required until an application for development has been submitted. With the applicant's agreement to accept and implement the following mitigation measure related to unknown sub-surface cultural resources, the potential for impact would be mitigated to a less-than-significant level by ensuring that such resources are evaluated and protected as appropriate.

Mitigation Measure #5 – A cultural resources report shall be prepared for the project site and submitted with the application for development. The recommendations of the report shall be followed by the applicant. 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.

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

Discussion

ai, ii. There are no known faults within the City of Winters. The Concord-Green Fault is the closest known active fault, and is located approximately 22 miles west of Winters, according to the California Division of Mines and Geology.

The Alquist-Priolo Special Studies Zones Act of 1972 regulates development near active faults to mitigate the hazard of surface fault rupture and prohibits the development of structures for human occupancy across the traces of active faults. The project site is not located within an Alquist-Priolo Special Studies Zone.

The City is located in an area of relatively low seismic activity. According to the Seismic Risk Map of the United States, Winters is in Zone 3. Within Zone 3, the potential for earthquakes is low; however, there is the possibility for major damage (VIII to X on the Modified Mercalli Scale from a nearby earthquake). A

rating of VIII to X on the Modified Mercalli Scale generally means the Richter scale magnitude would be between 6.0 and 7.9. Effects associated with this intensity range from difficulty standing to broken tree branches to damage to foundations and frame structures to destruction of most masonry and frame structures.

Any major earthquake damage on the project site is likely to occur from ground shaking and seismically-related ground and structural failures. Local soil conditions, such as soil strength, thickness, density, water content, and firmness of underlying bedrock affect seismic response. Seismically-induced shaking and some damage should be expected to occur during an event, but damage should be no more severe in the project area than elsewhere in the region. Framed construction on proper foundations constructed in accordance with the requirements of the California Building Standards Code is generally flexible enough to sustain only minor structural damage from ground shaking. Therefore, people and structures would not be exposed to potential substantial adverse effects involving strong seismic ground shaking, and this would be a less-than-significant impact.

- a.iii, c.d. A geotechnical engineering report has not been prepared for the project site and typically would not be required until an application for development has been submitted. With the applicant's agreement to accept and implement the following mitigation measure related to seismic-related ground failure, unstable soil, and expansive soil, the potential for impact would be mitigated to a less-than-significant level by ensuring that such resources are evaluated and protected as appropriate.

Mitigation Measure #6 – A geotechnical investigation report shall be prepared for the project site and submitted with the application for development. The recommendations of the report shall be followed by the applicant.

- a.iv. The project site is relatively flat with elevations similar to the developed areas north, south, and west of the site. There are no drainages with steep slopes running through or adjacent to the project site. Because the site conditions would not result in landslides, no impact would occur.
- b. The project site is relatively flat, and does not contain drainages with steep slopes, so the erosion hazard is slight (see Item 8(a,f) for a discussion of protection of water quality from erosion) and would be considered a less-than-significant impact.
- e. The project would construct sewer pipelines that connect to wastewater treatment facilities and would not involve the construction of septic tanks. Therefore, there would be no impact.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
7. HAZARDS AND HAZARDOUS MATERIALS. <i>Would the project</i>				
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Expose people or structures to the risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

- a. During construction, oil, diesel fuel, gasoline, hydraulic fluid, and other liquid hazardous materials would be used at the project site. Similarly, paints, solvents, and various architectural finishes would be used during construction.

If spilled, these substances could pose a risk to the environment and to human health. In the event of a spill, the City of Winters Fire Department is responsible for responding to non-emergency hazardous materials reports. The use, handling, and storage of hazardous materials are highly regulated by both the Federal Occupational Safety and Health Administration (Fed/OSHA) and the California Occupational Safety and Health Administration (Cal/OSHA). Cal/OSHA is responsible for developing and enforcing workplace safety regulations. Both Federal and State laws include special provisions/training for

safe methods for handling any type of hazardous substance. The City currently complies with the City's Emergency Response Plan, and the Yolo County Hazardous Waste Management Plan.

Because residential uses do not typically use, transport or dispose of large amounts of hazardous materials, and the routine transport, use, and disposal of hazardous materials are regulated by Federal, State, and local regulations, this impact is considered less-than-significant.

- b. A Phase One Environmental Site Assessment (ESA) has not been prepared for the project site and typically would not be required until an application for development has been submitted. An ESA report evaluates a project site and surrounding properties for evidence of potential soil and groundwater contamination resulting from current or former on-site and off-site activities. With the applicant's agreement to accept and implement the following mitigation measure, impacts of hazards and hazardous materials will be reduced to a less-than-significant level.

Mitigation Measure #7 – A Phase One Environmental Site Assessment shall be prepared for the project site and submitted with the application for development. The recommendations of the assessment shall be followed by the developer.

- c. The project site is located near the Winters High School and Winters Middle School; however, as discussed in Item 7(a,b), above, construction and occupation of the proposed project would not generate substantial amounts of, or particularly dangerous, hazardous materials. Therefore, the impact on the schools would be less-than-significant.
- d. The project is not located on a site that is included on a list of hazardous materials sites compiled by the Yolo County Environmental Health Department-Hazardous Waste Site Files pursuant to Government Code 65962.5. Therefore, no impact would occur.
- e. The project site is not within two miles of a public airport, and is not within the runway clearance zones established to protect the adjoining land uses in the vicinity from noise and safety hazards associated with aviation accidents. Therefore, there would be no impact.
- f. There are no private airstrips in proximity of the project site, so there would be no impact.
- g,h. The proposed project would have no effect on any emergency plan, because it would not alter the existing street system, and residential construction would provide connections to the project site. The project area does not qualify as "wildlands" where wildland fires are a risk. For these reasons, no impact would occur in these categories.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
8. HYDROLOGY AND WATER QUALITY				
<i>Would the project:</i>				
a. Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems to control?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Place housing within a 100-year floodplain, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Place within a 100-year floodplain structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

- a,f. Surface water quality can be adversely affected by erosion during project construction, or after the project is completed, if urban contaminants in stormwater runoff are allowed to reach a receiving water (e.g., Putah Creek). Construction activities disturbing one or more acres are required by the Central Valley Regional Water Quality Control Board (CVRWQCB) to obtain a General Construction Activity Stormwater Permit and a National Discharge Elimination System (NPDES) permit. These permits are required to control both construction and operation activities that could adversely affect water quality. Permit applicants are required to prepare and retain at the construction site a

Stormwater Pollution Prevention Plan (SWPPP) that describes the site, erosion and sediment controls, means of waste disposal, implementation of approved local plans, control of post-construction sediment and erosion control measures and maintenance responsibilities, and non-stormwater management controls. Dischargers are also required to inspect construction sites before and after storms to identify stormwater discharge from construction activity, and to identify and implement controls where necessary.

The proposed project is composed of approximately 1.421 acres, and thus would fall subject to these requirements. Compliance with these required permits would ensure that runoff during construction and occupation of the project site would ensure that runoff does not substantially degrade water quality. Therefore, this is a less-than-significant impact.

- b. The project site is not identified as a recharge area and has been planned for development since at least 1969, and the majority of groundwater recharge in Winters occurs along drainages. Therefore, it can be concluded that development of the project site would not substantially affect the aquifer and the effect on the aquifer would be less-than-significant.

The City of Winters would supply groundwater to the Proposed Project. As discussed in more detail in Item 16(d), while the Proposed Project would contribute to an increase in municipal groundwater use, total groundwater use within the City would exceed historic water use levels only slightly in wet years, and would be lower than historic pumping levels in wet years. Groundwater levels have been fairly stable in the City of Winters, even with the highest historic pumping levels. Therefore, impacts on groundwater would be less-than-significant.

- c,d,e. The proposed project would change absorption rates, drainage patterns, and the rate and amount of surface runoff, but would not alter the course of a river or stream. The City's storm drainage system has been planned to accommodate development of the General Plan, including the project site.

Conditions of Approval will address the need to identify and implement construction and post construction Best Management Practices (BMPs). The project is not located in a FEMA Special Flood Hazard Zone. However, Conditions of Approval will require the applicant to coordinate with FEMA with regards to floodplains along Dry Creek and Putah Creek. Because the Proposed Project can be accommodated within the City's planned storm drain system, the increase in runoff is considered less-than-significant.

- g,h. The project site is not located in a 100-year flood hazard area on the FEMA Flood Insurance Rate Map (map revised November 20, 1998, Community Panel Number 060425 0001 C). The site is located in a Zone X, this is a flood insurance rate zone assigned to property that is determined to be outside the 500-year floodplain. As a result, the proposed project would not place housing or other structures in a 100-year flood hazard area. For these reasons, there would be no impact as related to 100-year floodplain and less-than-significant impact as related to localized flooding.

- i. The project site is located approximately 10 miles east of the Monticello Dam on Lake Berryessa. Failure or overtopping of the dam could result in severe flooding of the Winters' area and loss of life. However, this occurrence, which is addressed in the Yolo County Emergency Plan, is not considered a likely or substantial risk. Therefore, the Proposed Project would not expose individuals to a substantial risk from flooding as a result of the failure, and the impact would be less-than-significant.

- j. The project area is not located near any large bodies of water that would pose a seiche or tsunami hazard. In addition, the project site is relatively flat and is not located near any physical or geologic features that would produce a mudflow hazard. Therefore, no impact would occur.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
9. LAND USE AND PLANNING. <i>Would the project:</i>				
a. Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conflict with any applicable land use plans, policies, or regulations of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating on environmental effect?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Conflict with any applicable habitat conservation plan or natural communities conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

- a. Development of the project site for either residential or recreation and parks use would require the construction of a roadway section to connect the north and south sections of Apricot Avenue. Currently, there is a gap between the north and south sections of Apricot. Construction of the roadway section would improve connectivity for pedestrians, bicyclists, and vehicle users. As a result, no impact would occur.
- b. The General Plan designates the project site for recreation and parks use while the site is zoned for same use under the Zoning Ordinance (Winters Municipal Code, Title 17). In 1992, the site was re-designated and re-zoned from residential to recreation and parks. Prior to 1992, the site was designated and zoned for residential use since at least 1969. The proposed project would re-designate and re-zone the site for residential use. Design review will be required so that residential development would be compatible with existing development in Winters and satisfy the Community Design Guidelines. With the applicant's agreement to accept and implement the following mitigation measure, the potential impact of the residential design would be mitigated to a less-than-significant level.

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.

- c. The project site is not in an area currently subject of a habitat conservation plan or natural community conservation plan. As discussed under Item 4(f), if the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan is adopted, the proposed project could participate. The proposed project would not preclude or interfere with development or adoption of the Yolo County HCP/NCCP. For these reasons, this impact is considered less-than-significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
10. MINERAL RESOURCES. <i>Would the project:</i>				
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?	□	□	■	□
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	□	□	■	□

Discussion

a,b. The project site is not designated as a mineral resource zone or locally important mineral resource recovery site. The construction of the proposed project would not result in the loss of any known mineral resources. Impacts would be less-than-significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
11. NOISE. <i>Would the project result in:</i>				
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

- a. The Noise Element of the City of Winters General Plan establishes an exterior noise level standard of 60 dB CNEL (Community Noise Equivalent Level) at the outdoor activity areas of new residential uses affected by roadway noise. An exterior noise level of up to 65 dB CNEL is considered to be Conditionally Acceptable and may be allowed only after a detailed acoustical analysis is performed and needed noise abatement features are included in the design. The Noise Element also establishes an interior noise level standard of 45 dB CNEL for residential uses.

A noise analysis has not been prepared for this project and it is not anticipated that one would be required for residential development of the project site since the site is not located adjacent to noise producers such as industrial operations or roadways with significant traffic volumes. Because of the location of the site, the impact in this area is less-than-significant.

- b. Some groundborne vibration could occur during construction of a residential project. However, the activities that typically generate excessive vibration, such as pile driving, would not be necessary for one to two story residential construction. Furthermore, the City's Zoning Ordinance prohibits operations that habitually or consistently produce noticeable vibration beyond the property line.

Therefore, adjacent and nearby residents should not be disturbed by ground vibration during project construction. This impact would be less-than-significant.

- c. Traffic associated with the proposed project would contribute to existing noise levels in the project vicinity. Under the General Plan, a 60 dB CNEL exterior noise level would occur up to a distance of 40-feet from the centerline of the extension of Apricot Avenue required for development of the project. Since this noise level does not exceed the exterior noise level, this impact is considered less-than-significant.
- d. Construction activities associated with the project could generate noise levels in the range of 80-90 dB CNEL at a distance of 50 feet. Noise levels at the nearest residence could approach these levels during construction activities along the project boundary. However, construction noise would be for a short duration, and limited to the construction hours (typically daylight hours). The City has both a Noise Ordinance and Standards Specifications that regulate construction noise. These regulations restrict construction activities to 7:00 a.m. to 7:00 p.m. Monday through Friday only (holidays excluded). Therefore, the project would have a less-than-significant impact related to temporary or periodic increase in ambient noise levels.
- e. The nearest public airport is over 2 miles away and the project site is not within an airport land use plan. Therefore, project residents would not be exposed to excessive air traffic noise, and this impact would be less-than-significant.
- f. The project site is not located near a private airstrip and would not be exposed to noise from a private airstrip. As a result, no impact would occur.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
12. POPULATION AND HOUSING. <i>Would the project:</i>				
a. Induce substantial growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

- a. Development of the project site for either residential or parks and recreation use would require the extension of new infrastructure to the project site. However, the new infrastructure would be extended within the City limits and it is estimated that an additional five or six housing units would be constructed under a residential use scenario. The proposed project, construction of five or six housing units, would not induce substantial growth in total. Furthermore, the proposed pace and timing of growth from this project is not considered significant. Over the last nine years (1999 – 2007) the City has grown by an average of 45 new units per year (403 new occupied units ÷ 9). As a result, the impacts from the construction of five or six units would be less-than-significant.

Calendar Year	Certificates of Occupancies Issued	Building Permits Issued
2007	42	3
2006	4	36
2005	2	4
2004	40	33
2003	107	100
2002	83	56
2001	39	45
2000	36	46
1999	50	36
TOTALS	403	359

- b,c. The project site does not have a history of residential use. As a result, the project involves no displacement of housing or people and there would be no impact in this category.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
13. PUBLIC SERVICES. <i>Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:</i>				
a. Fire protection?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Police protection?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Parks?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Other public facilities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Discussion

a, b. The City of Winters Fire Department provides primary fire protection service to the project site. The City of Winters Police Department provides primary police protection service. The proposed project could increase demand for these fire and police protection services by increasing the amount of development and number of residents within the Departments' service areas. Development within the project site would contribute taxes toward the City's General Fund, which would be used, in part, to fund fire and police protection services needed by the project. Because the project site is already in the City, the proposed project would not increase the size of the service area of the Fire or Police Department. However, the City's fiscal health over the years has been severely impacted by actions of the State. The City will require the preparation of a fiscal impact analysis to analyze impacts of the project on the General Fund and to make recommendations to ensure that project tax revenues fully fund project service expenses.

With the applicant's agreement to accept and implement the following mitigation measure, potential impacts to the provision of police and fire services will be mitigated to less-than-significant levels.

Mitigation Measure #9 – 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.

- c. The project site is served by the Winters Joint Unified School District, which serves the City of Winters and surrounding unincorporated areas of Yolo and Solano Counties. The District is comprised of the Clayton Education Center (continuation high school), Waggoner Elementary School (grades K-3), Shirley Rominger Intermediate School (grades 4-5), Winters Middle School (grades 6-8), and Winters High School (grades 9-12). Students from the proposed project would be expected to attend these schools.

As shown below, the proposed project would generate 4 students, including 2 elementary school (K-6) students, 1 intermediate school (7-8) student, and 1 high school (9-12) students.

VALADEZ STUDENT GENERATION			
<i>Grade Level</i>	<i>Number of Units</i>	<i>Students/Unit Rate¹</i>	<i>Number of Students</i>
K-6	5 or 6	0.4030	2
7-8	5 or 6	0.1234	1
9-12	5 or 6	0.2156	1
Total	5 or 6	0.7420	4

¹School Facility Needs Analysis, September 2007.

According to the District's September 2007 School Facility Needs Analysis, existing available school capacity is 2,139 students, while enrollment totals 1,952 (potential enrollment from existing homes, 2007/08). The Analysis indicated that there is capacity available at the elementary school level (141 students for grades K-6) and limited capacity at the middle school (24 students for grades 7-8) and high school levels (22 students for grades 9-12). Based on the Analysis and adding in potential students from residential development of the Valadez project site, new development in Winters is estimated to increase the number of students by 460 over a five-year period. Because the WJUSD grades 7-8 and 9-12 facilities are estimated to be at near capacity, these new students will result in the need for additional school facilities at the grades 7-8 and 9-12 levels. The proposed project would contribute to this need for additional facilities.

Funding for schools and impacts for school facilities impacts is preempted by State law. Policies I.F.2, I.F.3, IV.H.5, and IV.H.6 of the General Plan related to funding and timing of school facilities have been superseded by State law (Proposition 1A/SB 50, 1998, Government Code Section 65996) which governs the amount of fees that can be levied against new development. Payment of fees authorized by the statute is deemed "full and complete mitigation." These fees are used to construct new schools.

Because the proposed project would be required to pay applicable school fees and because the amount of these fees is pre-empted by the State, the increase in students is considered by law to be a less-than-significant impact.

- d. The City of Winters General Plan Policy V.A.2 requires new residential development to dedicate improved parkland based on the standard of 5 acres per 1,000 residents. The General Plan also has a goal of 7 acres of developed parkland per resident (Policy V.A.1). The proposed project would generate 16 to 19 persons at build-out (5 x 3.156 to 6 x 3.156). Based on this number, the project is required to provide 0.112 (16/1000 x 7) to 0.133 (19/1000 x 7) acres of park to meet the City goal of 7 acres per 1,000 residents.

The project does not include any land onsite for park development. Given the small amount of parkland triggered, park obligations would be met by the payment of mitigation fees for the actual obligation. With the applicant's agreement to accept and implement the following mitigation measure, park impacts would be less-than-significant.

Mitigation Measure #10 – The applicant shall pay park mitigation fees to satisfy the obligation for 0.112- (based on 5 residential units) or 0.133-acre (based on 6 residential units) 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.

- e. The proposed project would create incremental increases in demand for other services and facilities in the City of Winters. Implementation of Mitigation Measure #9 would ensure that the potential fiscal impacts would be less-than-significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
14. RECREATION.				
a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

- a. As discussed in Item 13(d), the Proposed Project would provide adequate parkland for residents. Mitigation Measure #13 will ensure that the park facilities are provided to serve new residents. Therefore, the potential for impacts to off-site parks will be mitigated to a less-than-significant level.
- b. The proposed project does not include a park and would be required to pay mitigation fees for a future off-site park. Potentially, these fees could be used for construction of planned parks in the Winters Highlands Subdivision ("Linear Park") or at the Winters Landfill ("Sports Park"). The CEQA process has been completed for both parks. As a result, the potential impacts in this area are less-than-significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
15. TRANSPORTATION/CIRCULATION. <i>Would the project:</i>				
a. Cause an increase in traffic which is substantial in relation to the existing load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Conflict with adopted policies supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

The property is approximately 1.421 acres in size. The project is north of Pear Place, south of 776 Apricot Avenue, west of a future extension of Apricot Avenue, and east of the Winters Cemetery. Development of the project site for either residential or parks and recreation use would require the construction of a roadway section to connect the north and south sections of Apricot. Currently, there is a gap between the north and south sections of Apricot.

- a,b. The construction of a new roadway section to connect the existing north and south sections of Apricot is consistent with the Winters General Plan Circulation Element (May 19, 1992) which calls for the existing sections of Apricot to be connected. Apricot is categorized as a local residential street under the Winters Design Standards (September 2003) and does not involve a roadway subject to a level of service standard established by the county congestion management agency. The resulting impacts in these areas are less-than-significant.

- c. The project site is not located near an airport and it does not include any improvements to airports or change in air traffic patterns. No impact would occur.
- d,e. Development of the project site for either residential or parks and recreation use would require the construction of a roadway section to connect the existing north and south sections of Apricot Avenue. The new roadway section would not include any tight curves or other design hazards. The roadway section would provide connectivity for the site and other areas in the City. For these reasons, impacts related to roadway hazards or interference with emergency access would be less-than-significant.
- f. Any development of the project site would need to comply with the off-street parking provisions of the Winters Municipal Code (Title 17, Zoning). As a result, the impact would be less-than-significant.
- g. The project would not conflict with adopted policies, plans, or programs supporting alternative transportation. Development of the project site would require the construction of pedestrian sidewalk on the east side of the site. Therefore, this impact would be less-than-significant.

Issues	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less-Than-Significant Impact	No Impact
16. UTILITIES AND SERVICE SYSTEMS.				
<i>Would the project:</i>				
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

- a. Currently there is no public sewer service to the project site. Each building constructed as part of the proposed project will be required to connect to the City sewage treatment plant for wastewater treatment. The City's plant is permitted by the State and must meet applicable water quality standards. Development of the site for residential or parks and recreation use is not anticipated to generate wastewater that contains unusual types or levels of contaminants, so it would not inhibit the ability of the Winters Wastewater Treatment Plant (WWTP) to meet State water quality standards. For these reasons, this would be a less-than-significant impact.

- b,e. Development of the project site would require sewer and water service from the City of Winters. Infrastructure improvement plans have not been prepared for the site.

The City's Wastewater Treatment Plant (WWTP) has a capacity of 0.92 million gallons per day (mgd). Space remains for approximately 600 additional residential hook-ups. The City's recent project approvals dating back to Spring 2005 exceed this amount and efforts are underway to expand the plant. The Phase 2 expansion will bring the capacity to between 1.2 and 1.6 mgd. The

timing of this expansion is not set. The Phase 2 expansion is not needed to serve this project.

With the applicant's agreement to accept and implement the following mitigation measure, this potential impact would be mitigated to a less-than-significant level by ensuring that adequate wastewater treatment capacity is available.

Mitigation Measure #11 – 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.

- c. The construction of impervious surfaces on the project site for residential or parks and recreation development would increase storm water runoff in the project vicinity. While the site is located outside of the 500-year floodplain, infrastructure improvement plans have not been prepared.

With the applicant's agreement to accept and implement Mitigation Measure #11, the impact to storm drainage would be mitigated to a less-than-significant impact.

- d. The proposed project would be served by the City of Winters, which uses groundwater for the municipal water supply. The City of Winters currently operates five groundwater wells to meet urban demand for water. During the period of 1995 – 2003, the City's pumping has ranged from a low of 1,540 acre-feet to a high of 1,830 acre-feet. In 2003, production of 1,565 acre-feet was generated from the five wells. In addition to the City's pumping, local agriculture, three local industries, one commercial enterprise, and several rural residences also pump water from the aquifer underlying the General Plan boundary. For the period of 2002 – 2003, this additional pumping totaled approximately 90 acre-feet/year on top of the City's pumping. In summary, currently between 1,655 and 1,920 acre-feet per year of groundwater is pumped to serve uses within the General Plan boundary. This compares to pumping in 1990 of about 2,660 acre-feet. The difference is due to whether or not surface water was available for agriculture. When less surface water is available, as was the case in 1990, there is greater groundwater pumping by agriculture.

By 2020, demand for groundwater within the City is estimated to increase to 3,620 acre-feet per year unrestricted and 3,250 acre-feet per year assuming a conservation scenario of six percent. Development of the project site for residential use is estimated to generate a demand for municipal water of 4.59 acre-feet of water annually without a conservation factor as shown in the following table.

Valadez Estimated Water Demand (Residential Development Scenario)			
Land Use	Size (acres)	Production Factor (acre-feet/year)	Estimated Volume (acre-feet/year)
Single Family Residential	1.421	3.23	4.59
Source: Revised 2004 Water Supply Assessment for water use rates.			

The increment of pumping needed to serve the proposed project would be available and would not adversely affect groundwater levels or storage underlying the City. This impact is less-than-significant. However, analysis for the City's Water Master Plan Update recommended that a new well will be required for any future development in the City. The City has drilled a new well, Well #7, near the northwest intersection of West Grant Avenue and West Main Street; however, construction of the second (completion) phase of the project has not begun. Funding for the second phase with an estimated cost of \$700,000 to \$850,000 from the developers of new residential projects has not been provided because of the slowdown in the residential development field.

With the applicant's agreement to accept and implement the following mitigation measure, the potential for impact associated with water supply will be mitigated to a less-than-significant level.

Mitigation Measure #12 – Based on City water modeling a new well is needed to serve the existing City and new development. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units.

- f., g. Solid waste from the project site will be collected by the City of Winters and disposed of at the Yolo County Central Landfill, a 722-acre facility. The landfill has a capacity of 12.3 million tons with an anticipated 2047 closure date. The Yolo County Board of Supervisors has approved a revised conditional use permit for the facility to increase the future "cell" units (disposal areas) from 80 to 140 feet above mean sea level; this would push back the closure date to 2100 and add additional capacity. Approval of the California Regional Water Quality Control Board and the California Integrated Waste Management Board (CIWMB) is required before the height of the future cell units can be increased. Based on the residential disposal household per household provided by the CIWMB, the proposed project under a residential development would generate up 6.7 to 8 tons per year, assuming 2.31 pounds per day per person ($16 \times 2.31 \times 365 + 2000$ to $19 \times 2.31 \times 365$). This would represent a minute fraction of landfill capacity by 2047, and would not substantially shorten the life of the landfill, or require unplanned expansion of the landfill. Therefore, this impact is considered less-than-significant.

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

Discussion

- a. No important examples of major periods of California history or prehistory in California were identified, and mitigation identified in Section 5 would ensure that subsurface resources, if present, would be protected.
- b. As discussed throughout this Initial Study, mitigation measures have been prepared to mitigate the potential impacts to less-than-significant levels and the project would not result in significant new or increased cumulative effects.
- c. As discussed in Sections 3 (Air Quality), 6 (Geology and Soils), 7 (Hazards and Hazardous Materials), and 11 (Noise), the potential for impacts on human beings would be reduced to less-than-significant levels by mitigation identified in these sections.

Summary of Mitigation Measures

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.

Mitigation Measure #2

- a. Construction equipment exhaust emissions shall not exceed 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 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 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 in 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 diesel fuel and or particulate matter

traps. These alternative measures, if proposed, shall be developed in consultation with District staff.

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.

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.

Mitigation Measure #5 – A cultural resources report shall be prepared for the project site and submitted with the application for development. The recommendations of the report shall be followed by the applicant. 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.

Mitigation Measure #6 – A geotechnical investigation report shall be prepared for the project site and submitted with the application for development. The recommendations of the report shall be followed by the applicant.

Mitigation Measure #7 – A Phase One Environmental Site Assessment shall be prepared for the project site and submitted with the application for development. The recommendations of the assessment shall be followed by the developer.

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.

Mitigation Measure #9 – 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.

Mitigation Measure #10 – The applicant shall pay park mitigation fees to satisfy the obligation for 0.112- (based on 5 residential units) to 0.133-acre (based on 6 residential units) 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.

Mitigation Measure #11 – 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.

Mitigation Measure #12 – Based on City water modeling a new well is needed to serve the existing City and new development. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units.

Attachments:

1. Vicinity Map
2. Location Map
3. Mitigation Monitoring Plan (MMP)

**VALADEZ
MITIGATION MONITORING PLAN**

The California Environmental Quality Act requires public agencies to report on and monitor measures adopted as part of the environmental review process (Section 21081.6, Public Resources Code [PRC]; Section 15097 of the CEQA Guidelines). This Mitigation Monitoring Plan (MMP) is designed to ensure that the measures identified in the Mitigated Negative Declaration are fully implemented. The MMP describes the actions that must take place as a part of each measure, the timing of these actions, the entity responsible for implementation, and the agency responsible for enforcing each action.

The City has the ultimate responsibility to oversee implementation of this Plan. The Community Development Director serves as the Project Monitor responsible for assigning monitoring actions to responsible agencies. Due to financial constraints, the City will require the applicant to fund a contract Project Monitor to undertake this effort. The commitment for this will be addressed in the Development Agreement and Conditions of Approval for the project.

As required by Section 21081.6 of the PRC, the Winters Community Development Department is the "custodian of documents and other material" which constitute the "record of proceedings" upon which a decision to approve the proposed project was based. Inquiries should be directed to:

Dan Sokolow, Community Development Director
City of Winters
530-795-4910 x 114

The location of this information is:

Winters City Hall
Community Development Department
318 First Street
Winters, California 95694

In order to assist implementation of the mitigation measures, the MMP includes the following information:

Mitigation Measure: The mitigation measures are taken verbatim from the Negative Declaration.

Timing/Milestone: This section specifies the point by which the measure must be completed. Each action must take place during or prior to some part of the project development or approval.

Responsibility for Oversight: The City has responsibility for implementation of most mitigation measures. This section indicates which entity will oversee implementation of the measure, conduct the actual monitoring and reporting, and take corrective actions when a measure has not been properly implemented.

Implementation of Mitigation Measure: This section identifies how actions will be implemented and verified.

Responsibility for Implementation: This section identifies the entity that will undertake the required action.

Checkoff Date/Initials: This verifies that each mitigation measure has been implemented.

Pursuant to Section 18.04.090 of the Winters Municipal Code related to the required CEQA Mitigation Monitoring Plan, sign-off on the completion of each mitigation measure in the adopted Mitigation

Monitoring Plan (MMP) shall constitute the required "Program Completion Certificate".

The Mitigation Monitoring Plan shall be adopted pursuant to the requirements of Section 18.04.060.A and implemented pursuant to Section 18.04.070.A - E, of the Winters Municipal Code.

The applicant shall fund the costs of implementing the MMP including the payment of fees specified in Section 18.04.100.A - D of the Winters Municipal Code.

Pursuant to Section 18.04.050 of the Winters Municipal Code related to the required CEQA Mitigation Monitoring Plan (MMP), the following items shall apply:

- The adopted MMP shall run with the real property that is the subject of the project and successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted Plan.
- Prior to any lease, sale, transfer, or conveyance of any portion of the real property that is the subject of the project, the applicant shall provide a copy of the adopted Plan to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.
- The responsibilities of the applicant and of the City, and whether any professional expertise is required for completion or evaluation of any part of the Plan, shall be as specified in the Plan and as determined by the Community Development Director or designated Project Monitor in the course of administering the MMP.
- Cost estimates for the implementation of this Plan and satisfaction of each measure are not known or available, but shall be developed by the applicant in the course of implementing each mitigation measure.
- Civil remedies and criminal penalties for noncompliance with the adopted MMP are as specified in Sections 18.04.110 and 18.04.120 of the Winters Municipal Code.

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.

Timing/Milestone – Prior to issuance of a building permit.

Responsibility for Oversight – City of Winters.

Implementation of Mitigation Measure – Prior to issuance of a building permit for each phase or subdivision, the applicant shall submit a photometric and proposed lighting plan to the satisfaction of the Community Development Department to ensure no spillover light and glare onto adjoining properties.

Responsibility for Implementation – Applicant and subsequent home builders.

Checkoff Date/Initials/Notes –

Mitigation Measure #2

- a. Construction equipment exhaust emissions shall not exceed 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 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 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

In lieu of or in 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 diesel fuel and or particulate matter traps. These alternative measures, if proposed, shall be developed in consultation with District staff.

Timing/Milestone – Prior to and during grading, and during appropriate period of construction.

Responsibility for Oversight – Yolo-Solano Air Quality Management District.

Implementation of Mitigation Measure – The applicant shall satisfy the terms of the measure. Evidence of this shall be provided to the City.

Responsibility for Implementation – Applicant and subsequent home builders.

Checkoff Date/Initials/Notes –

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.

Timing/Milestone – Prior to and during grading, and during appropriate period of construction.

Responsibility for Oversight – Yolo-Solano Air Quality Management District.

Implementation of Mitigation Measure – The applicant shall satisfy the terms of the measure. Evidence of this shall be provided to the City.

Responsibility for Implementation – Applicant and subsequent home builders.

Checkoff Date/Initials/Notes –

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.

Timing/Milestone – During all phases of construction of the project.

Responsibility for Oversight – City of Winters

Implementation of Mitigation Measure – This shall be noted on the building plans and verified by City staff during plan check and prior to occupancy.

Responsibility for Implementation – Applicant and subsequent home builders

Checkoff Date/Initials/Notes –

Mitigation Measure #5 – A cultural resources report shall be prepared for the project site and submitted with the application for development. The recommendations of the report shall be followed by the applicant. 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.

Timing/Milestone – During grading, construction of infrastructure, and construction of each building.

Responsibility for Oversight – City of Winters; Yolo County Coroner; State Native American Heritage Commission.

Implementation of Mitigation Measure – If human remains are found, all grading and activity in the immediate area shall cease, the find shall be left in place, and the applicant shall immediately notify the Yolo County Coroner at (530) 666-8282 and the Community Development Department at (530) 795-4910 x114 to assess the find and determine how to proceed. If the remains are found to be of Native American

descent, the Native American Heritage Commission shall also be notified at (916) 653-4082, pursuant to the terms of the measure.

If other archeological or cultural resources are found, all grading and activity in the immediate area shall cease, the finds shall be left in place, and the project archeologist and the Community Development Department shall be contacted to assess the find and determine how to proceed.

Responsibility for Implementation – Applicant and subsequent home builders.

Checkoff Date/Initials/Notes –

Mitigation Measure #6 – A geotechnical investigation report shall be prepared for the project site and submitted with the application for development. The recommendations of the report shall be followed by the applicant.

Timing/Milestones – Prior to the submittal of improvement plans or building plans, whatever occurs first.

Responsibility for Oversight – City of Winters.

Implementation of Mitigation Measure – The applicant and subsequent home builders shall satisfy the terms of the measure.

Checkoff Date/Initials/Notes –

Mitigation Measure #7 – A Phase One Environmental Site Assessment shall be prepared for the project site and submitted with the application for development. The recommendations of the assessment shall be followed by the developer.

Timing/Milestones – Prior to submittal of a development application.

Responsibility for Oversight – City of Winters

Implementation of Mitigation Measure – The applicant and subsequent home builders shall satisfy the terms of the measure.

Checkoff Date/Initials/Notes –

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.

Timing/Milestone – Prior to issuance of a building permit for each phase of construction of the project, the applicant shall submit full architectural renderings, including building elevations and floor plans, for design review and approval.

Responsibility for Oversight – City of Winters

Implementation of Mitigation Measure – Per the terms of the measure.

Responsibility for Implementation – Applicant and subsequent home builders

Checkoff Date/Initials/Notes –

Mitigation Measure #9 – 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.

Timing/Milestone – Prior to final approval of a development project.

Responsibility for Oversight – City of Winters.

Implementation of Mitigation Measure – The applicant shall satisfy the terms of the measure.

Responsibility for Implementation – Applicant.

Checkoff Date/Initials/Notes –

Mitigation Measure #10 – The applicant shall pay park mitigation fees to satisfy the obligation for 0.112- (based on 5 residential units) to 0.133-acre (based on 6 residential units) 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.

Timing/Milestone – Prior to issuance of first building permit.

Responsibility for Oversight – City of Winters

Implementation of Mitigation Measure – Payment of fees to City Finance Department.

Responsibility for Implementation – Applicant.

Checkoff Date/Initials/Notes –

Mitigation Measure #11 – 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.

Timing/Milestone – Prior to approval of a subdivision or parcel map for the project site.

Responsibility for Oversight – City of Winters.

Implementation of Mitigation Measure – As specified in the measure.

Responsibility for Implementation – Applicant.

Checkoff Date/Initials/Notes –

Mitigation Measure #12 – Based on City water modeling a new well is needed to serve the existing City and new development. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units.

Timing/Milestone – Prior to issuance of building permits.

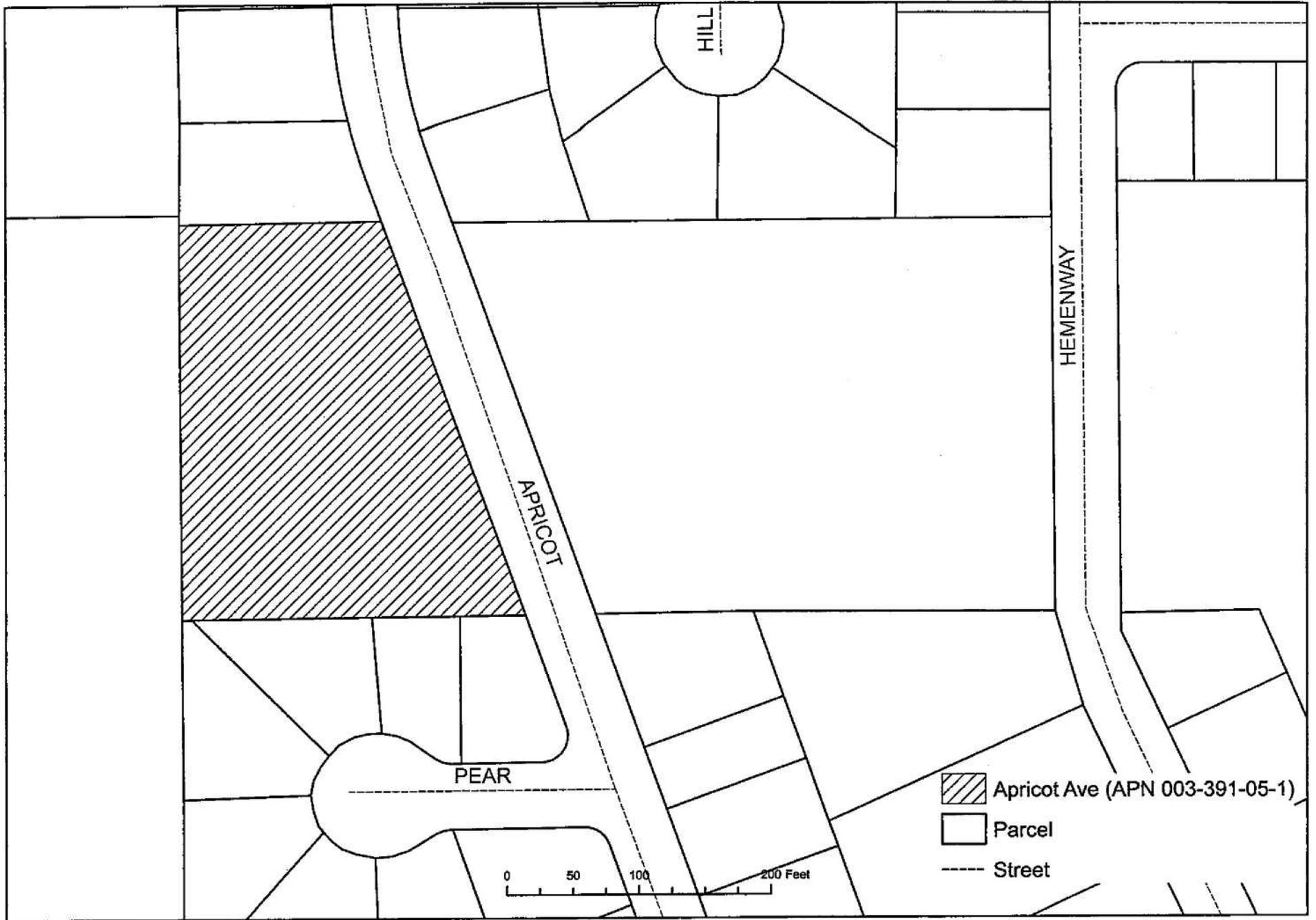
Responsibility for Oversight – City of Winters.

Implementation of Mitigation Measure – As specified in the measure.

Responsibility for Implementation – Applicant.

Checkoff Date/Initials/Notes –

Valadez GPA/Rezone



CRAIG A. PRIDGEN
ATTORNEY AT LAW
2800 - 5th Street, Suite 130
Davis, California 95618
Phone: (530) 756-0200/Fax: (530) 756-0202

June 4, 2008

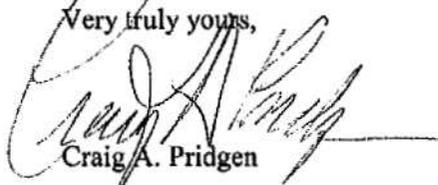
Steven Rudolph
MEYERS NAVE
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: City of Winters - Ordinance Re-zoning Parcel No. 003-391-05

Dear Mr. Rudolph:

Enclosed please find Exhibit "D", Consent of Owner(s) to Imposition of Rezone Conditions, which has been executed by Frank Valadez on June 2, 2008. If you have any questions concerning the same, please feel free to contact me.

Very truly yours,



Craig A. Pridgen

CAP/mb
Enclosure

cc: Frank Valadez

EXHIBIT "D"

CONSENT OF OWNER(S) TO IMPOSITION OF REZONE CONDITIONS

I am the Trustee of the Valadez Family Trust, which includes real property described in Exhibit "A" and depicted in Exhibit "B" of this Zoning Ordinance attached thereto and incorporated therein as though set forth in full ("Subject Property"), and commonly referred to and known as Assessor Parcel No.003-391-0505 and which is approximately 1.421 acres. As the authorized representative of the Subject Property, I have applied to have the Subject Property rezoned from the P-R Zone to the R-2 Zone.

On behalf of Valadez Family Trust, I understand that certain conditions have been attached to the rezoning of the Subject Property. I acknowledge that those rezone conditions are enumerated in Exhibit "C" of this Zoning Ordinance, which is attached thereto and incorporated therein as though set forth in full ("Rezone Conditions").

On behalf of the Valadez Family Trust, I, as trustee, hereby represent that I have received a copy of the Zoning Ordinance, including Exhibits "A", "B", "C" and "D" in their entirety, and have carefully reviewed and fully understand the Rezone Conditions set forth in Exhibit "C". In my capacity as Trustee of the Valadez Family Trust, I consent to the imposition of the Rezone Conditions and agree to fully comply with the Rezone Conditions.

On behalf of the Valadez Family Trust, I, as trustee, consent to the recordation of this Zoning Ordinance, including Exhibits "A", "B", "C" and "D" in their entirety by the county recorder of Yolo County.

DATED: 6/2/08

SIGNED: 

EXHIBIT A

Attachment E

All that real property situated in the City of Winters, County of Yolo, State of California, described as follows:

A portion of Block 13 of Hills Subdivision of the Northeast Quarter of Section 21, Township 8 North, Range 1 West, M. D. B. & M., according to the official plat thereof, filed for record in the office of the Recorder of Yolo County, California, on August 31, 1885, in Book 39 of Deeds, at page 63, described as follows:

That portion of said block which lies South of a line which commences on the East boundary of said block, distant thereon 322.85 feet South of the Northeast corner thereof, and extends thence West, at right angles, 690.36 feet to the West line of said block.

Excepting therefrom the following described real property situated in the City of Winters, County of Yolo, State of California:

A portion of Block 13 of Hills Subdivision of the N.E. one-quarter of Section 21, Township 8 North, Range 1 West, M.D.B. & M., as said subdivision is shown on that map filed in Book 39 of Deeds, at page 63 of Official Records of Yolo County, California, and being more particularly described as follows: BEGINNING at the northerly terminus of the center-line of Apricot Avenue that is distant South 89 Deg. 42'24" West 140.91 feet from the Northeast Corner of Subdivision No. 2110, also known as Kaiser-Aetna, Winters, as said subdivision is shown on that map filed in Book 8 of Maps at pages 32 and 33 of Official Records of Yolo County; thence, from said point of beginning along the northerly boundary of said Subdivision No. 2110, South 89 Deg. 42'24" West 26.54 feet; thence, leaving said northerly boundary, North 19 deg. 55' 12" West approximately 324.48 feet plus or minus to the southerly boundary of that parcel of land conveyed to the Dearborn Development Co. by Stanley M. Davis and Ruth Wood Davis by deed November 19, 1965, in Book 830 of Official Records of Yolo County, at pages 84 and 85; thence, along said southerly boundary, North 89 deg. 47' 37" East 53.11 feet; thence, leaving said southerly boundary, South 19 deg. 55' 12" East approximately 324.39 feet plus or minus to the northerly boundary of said Subdivision No. 2110; thence, along said northerly boundary, South 89 deg. 42' 24" West 26.55 feet to the point of beginning.

Yolo County A.P.N. 3-392-01

Yolo County A.P.N. 3-391-05

EXHIBIT A

Felix Valadez Family Trust
Petition for Reissuance of Order Nunc Pro Tunc

REZONE CONDITIONS

1. In order to promote the compatibility of the development with the surrounding neighborhood, a development plan for the entire 4.14 acre parcel, which includes APN # 003-391-05 (1.421 acres) and APN #003-0392-01 (2.719 acres) shall be presented to the City of Winters for consideration at one time, as opposed to submitting separate and independent plans for either the eastern or western portion of the site.
2. The property owner understands and acknowledges that at the time of development of the 4.14 acre parcel, which includes the Subject Property, there will be a requirement to dedicate land and/or pay fees for park or recreational purposes, in accordance with then-existing City ordinances, and the property owner agrees to comply with such ordinances.
3. The property owner agrees to provide any successor-in-interest to the 4.14 acre parcel, which includes the Subject Property, or any portion thereof, with a complete copy of this Ordinance.

CITY OF
WINTERS
CALIFORNIA
CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE : September 2, 2008
THROUGH: John W. Donlevy, Jr., City Manager. 
FROM: Elliot Landes, Associate
SUBJECT: Choice of Sign Designs at Four City Parks

RECOMMENDATION: The Council consider staff suggestions for sign designs at four City parks, and choose designs.

BACKGROUND: The City Council at the Tuesday, Oct. 16, 2007 meeting, unanimously approved the priority list of expenditures for the Workforce Housing Reward Program, including \$15,345 for the purchase of concrete signs for Rotary Park, City Park, Blue Oak Park and Valley Oak Park. The Workforce Housing Reward Program is funded through the Department of Housing and Community Development and is based on a per-bedroom analysis for each residential unit affordable to very-low and low-income households permitted during the program year. The contract for this grant program was executed in Oct. for funds in the amount of \$136,254.

Staff proposed monument signs – the same design as the sign at the Bobbie Greenwood Swim Center -- for the various park locations, at the May 16 City Council meeting.

Council members made the following comments:

- 1) Council member Aguiar-Curry objected to the tombstone-like monument sign proposed, and asked for multiple design choices.
- 2) Mayor Fridae wanted the various signs at City Park removed and the commemorative plaques there integrated into a new park sign.
- 3) Council member Aguiar-Curry said the Rotary Park sign should be left to the future, awaiting a comprehensive plan for park improvements.

Staff is recommending sign designs for four City parks, as well as offering alternate designs.

The four sites are:

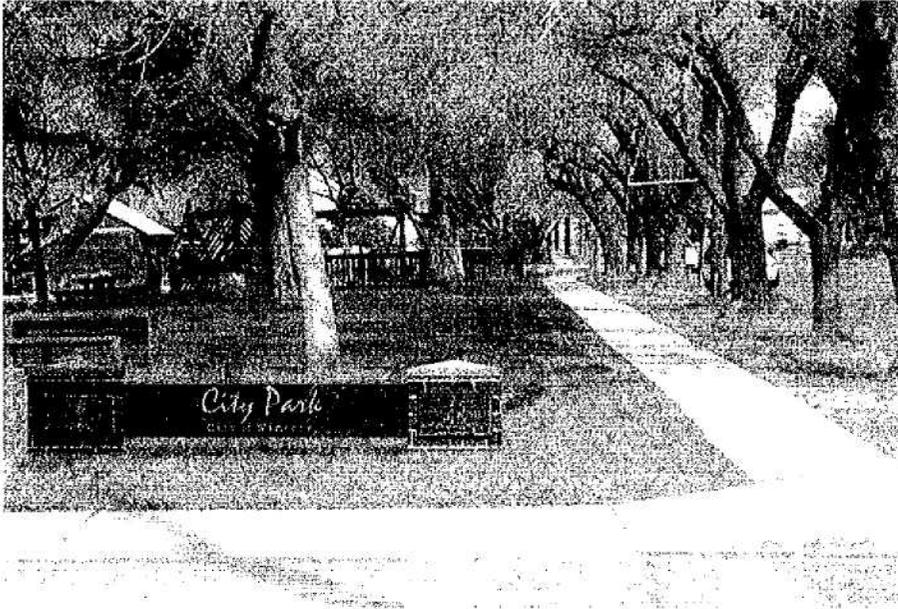
- 1) City Park
- 2) Blue Oak Park
- 3) Valley Oak Park
- 4) Winters Putah Creek Nature Park

City Park:

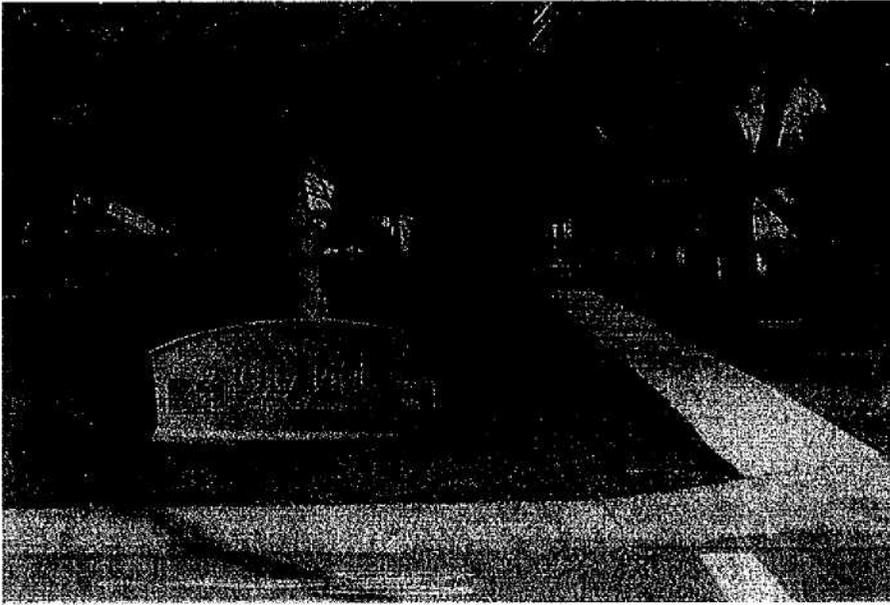
Currently at the site is a worn wood sign and two stone pedestals with plaques. One plaque is in honor of war veterans, and one honors Felicia Diaz, who worked hard to make the City Park a reality in 1953.

Staff is suggesting two choices for this site:

1) A sign with a metal bar bridging between two brick pilasters. The bar would be rusted metal, with cutout stainless letters that sit proud of the metal bar. The two pedestals and plaques at the site would be removed. The two plaques will be installed on the two brick pilasters.



2) As an alternative, the monument style sign in place at the swim center could be used, with the plaques mounted.



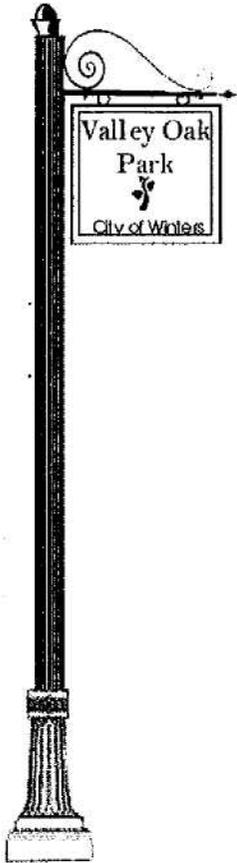
Either sign will be near the corner of Fourth and Main, facing south.

Blue Oak Park and Valley Oak Parks:

Staff is suggesting three choices.

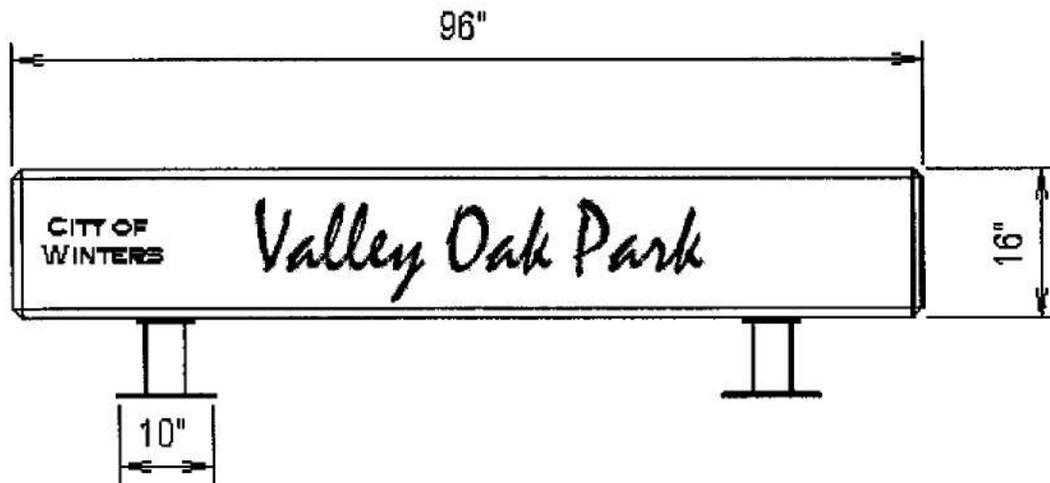
1) Flag style sign

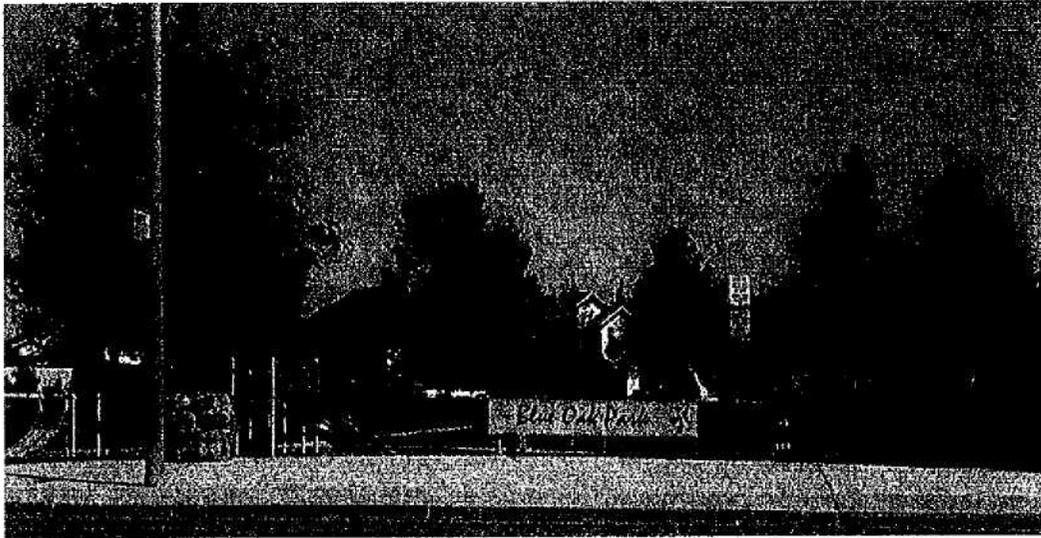
Each park has a walkway, and the fifteen foot high pole with a hanging sign would stand alongside the walkway, with the sign hanging over the walkway. The sign itself can be carved high density urethane, or cast aluminum. Urethane will have a richer look for lower cost, and aluminum will be more durable, and more likely to be stolen.



2) Slab style sign

This is a cast concrete sign with metal letters cast into the sign, in the style of work done by Briggs Studio.





Blue Oak Park

A flag style sign can be located beside the beginning of the zig zag path that starts at the north end of the plaza near the current sign and bus stop, on East Main Street. If the Briggs style sign is used, it would go just south of the semi-circle of the plaza.

Valley Oak Park

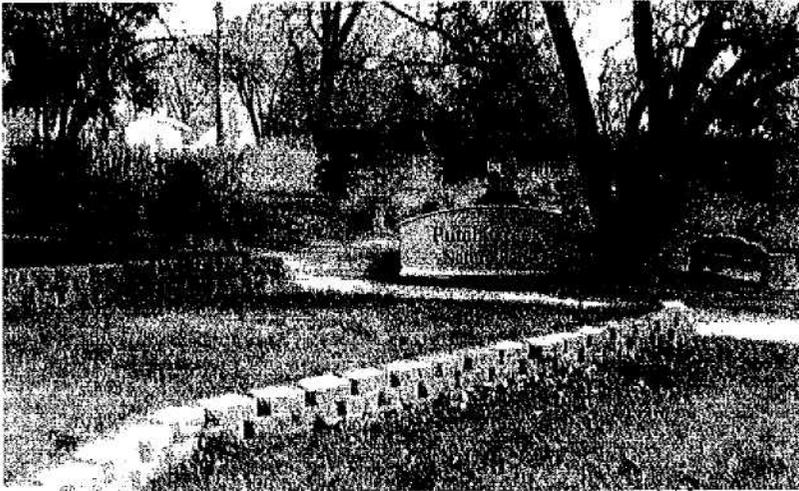
The flag sign can be located on the south edge of the walkway that leads into the park. If the Briggs style sign is used, it would go north of the walkway, six feet west of the sidewalk along Valley Oak Drive. The current wood sign will be removed.

Winters Putah Creek Nature Park

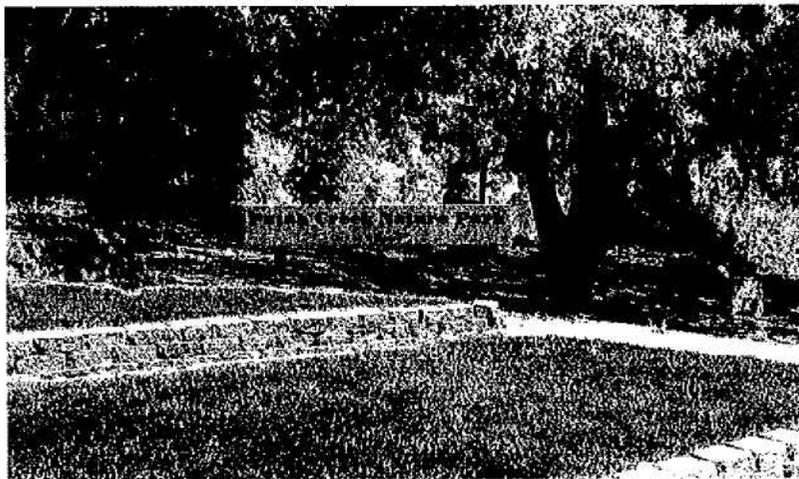
The sign will be located facing the east edge of the amphitheater green, on the south side of the path that leads west from that spot. Council can decide not to put in a sign for this park, and put one in Rotary Park instead, because the funding only covers four signs total.

Choices:

- 1) A monument style sign similar to that at the Swim Center.



- 2) A Briggs style sign



FISCAL IMPACT:

\$15,345, to be paid from the Workforce Housing Reward Program.



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: September 2, 2008
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: Major Projects Review

RECOMMENDATION:

That the City Council receive a staff presentation on major projects scheduled to occur between 2008 and 2011.

BACKGROUND:

The City currently has a number of key projects in the areas of facilities, water, sewer, streets and infrastructure which are scheduled over the next three (3) fiscal years. Attached as Exhibit A is a table listing all projects and the current status and budgets for each.

Staff will be presenting an overview of each project and will ask input and/or questions regarding each.

ATTACHMENT:

Major Projects List- 2008-09

**City of Winters
Major Projects Report
2008-09**

Project	Description	Start Date	Status	Budget	Project Manager
Facilities					
Public Safety Facility	Construction of a 36,000 Sf joint use police and fire facility	February, 2009	Project approved and in design for construction. Bid in November, 2008	\$8.4 Million	Bruce Muramoto
Winters Library	Construction of 11,000 sf co-located joint use library on the Winters High School Campus	September, 2008	Groundbreaking to occur in September, with completion estimated in September, 2009.	\$6 million	Yolo County
Solar Array Project	300kw solar array to be constructed at the wastewater treatment facility.		Agreements approved and project in design.	TBA	Elliot Landes
Water Enterprise Projects					
Well Rehabilitation Projects					
Well 2 (future)	Comprehensive rehabilitation including well head, bowels, column rehab and cleaning.	Unknown	Awaiting completion of Well 5	\$57,500	Carol Scianna/ Jim Fletter
Well 3	Comprehensive rehabilitation including well head, bowels, column rehab and cleaning.	Unknown	Awaiting completion of Well 5. Age and condition of well may dictate minimal rehabilitation.	\$50,313	Carol Scianna/ Jim Fletter
Well 4	Comprehensive rehabilitation including well head, bowels, column rehab and cleaning.	Completed in May, 2008.	Completed	\$50,313	Carol Scianna/ Jim Fletter
Well 5	Comprehensive rehabilitation including well head, bowels, column realignment and screen cleaning.	Currently in process	Analysis, testing, and well complete. Developing pump reconditioning plans.	\$50,313	Carol Scianna/ Jim Fletter

Project	Description	Start Date	Status	Budget	Project Manager
Well 6(future)	Review condition of well. Determine need to replace bowl assembly based on other four well conditions	Unknown	Awaiting completion of other four wells.	\$64,688	Carol Scianna/ Jim Fletter
Well Construction					
Well 7	Construction of 3,200 gpm well located adjacent to public safety facility at W. Main St and Grant Ave.	February, 2009	\$1.2 million including \$350k impact fees, \$350 CDA and \$500k water bond funds.	\$1.2M	Nick Ponticello/Jim Fletter
Water/Sewer Line Expansion					
Grant Ave to 505	Installation of water and sewer utilities along Grant Ave. from East Main St. to I505. Project is an economic incentive project to encourage freeway development.	TBA	Project has preliminary design and cost estimates. The focus has shifted from the south to north side of Grant.	\$1 million of combined water and sewer bond funds.	Nick Ponticello/ Jim Fletter
Water Line Replacement					
Edwards Street	Replace water line between Railroad Ave. and East Street	November 2008	Finalizing design and bid documents	Combine water replacement budget \$1,135,000	Asa Utterback
Russell Street	Replace water line between Emery St. and Railroad Ave.	November 2008	Finalizing design and bid documents	\$1,135,000	Asa Utterback
Third Street	Water line replacement and upgrade.	November, 2008	Finalizing design and bid documents.	Combined budget \$1.1 m	Jim Fletter
Water/Sewer SCADA	Installation of a water and sewer supervisory control and data acquisition system for all water wells, sewer lift stations and pump facilities.	In Progress	System design is complete and first well will be installed in September, 2008. Total install to be completed in 2008/2009.	\$293,793	Jim Fletter
Sewer Enterprise Projects					
East St. Pump Station Rehabilitation	Rehabilitation of electrical system, head works and the replacement of both 88hp main pumps.	Completed	Completed		Carol Scianna/Jim Fletter

City of Winters
Major Projects Update- September 2, 2008
Page 3

Project	Description	Start Date	Status	Budget	Project Manager
Lift Station Rehabilitation Program					
Walnut Lane	Replacement of two main pumps, rehabilitation of internal structure of the well and electrical upgrades. Installation of phone dialer notification system. SCADA will be installed as part of this well rehabilitation.	Complete	Replacement of pumps and electrical system upgrades are completed. SCADA will be installed in 2009.	\$40,411	Jim Fletcher/ Wes Mercado
Carter Ranch	Replacement of two main pumps, and electrical upgrades. Installation of phone dialer notification system. SCADA will be installed as part of this well rehabilitation.	Complete	Replacement of pumps and electrical system upgrades are completed. SCADA will be installed in 2009.	\$40,411	Jim Fletcher/ Wes Mercado
East Street Pump Station Motor Control Center	Design a replacement motor control center	In Process	Designs are 50% complete. City needs to authorize construction.	\$24,000	Jim Fletcher
Sewer Line Replacement Program					
Russell Street	Replace sewer line between Emery Street and First Street	November 2008	Finalizing design and bid documents	Combined sewer replacement budget \$2,466,000	Asa Utterback
Walnut Lane	Replace sewer line from north end of Walnut to Grant Ave.	November 2008	Finalizing design and bid documents	Combined sewer replacement budget \$2,466,000	Asa Utterback
Second Street	Replace sewer line between Wolfskill to Russell	November 2008	Finalizing design and bid documents	Combined sewer replacement budget \$2,466,000	Asa Utterback
Mermod Place	Replace sewer line between Mermod	November	Finalizing design and bid	Combined	Asa Utterback

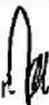
Project	Description	Start Date	Status	Budget	Project Manager
	Road to Anderson Ave.	2008	documents	sewer replacement budget \$2,466,000	
Edwards Street	Replace sewer line between Railroad Ave. and East Street	November 2008	Finalizing design and bid documents	Combined Sewer replacement budget \$2,466,000	Asa Utterback
WWTF Upgrades					
Aeration Rehabilitation	Rehabilitation of aeration pumps for ponds.				Southwest Water
Irrigation Automation Project	Installation of automated irrigation system for all spray fields.	TBA	In development.	TBA	Wes Mercado
WWTF Master Plan	Update of Wastewater Treatment Facility Master Plan. This is an update to the previously adopted 1998 Master Plan.	In Process	Plan is under engineering review.		Nick Ponticello/Bob Smith
Roadway Maintenance Program					
Hemenway/Rosa/Mermod	Planned repair of intersection and street work at Hemenway and Rosa. The repaving of Mermod will also occur.	TBA	Project specifications are in development and the project will bid in either September or October.	\$100,000	Elliot Landes/ Asa Utterback
Prop 1B Slurry/Rehab	Sealing and maintenance project for almost 50% of all City streets. The project will include a maintenance coating to increase the surface life of streets.	TBA	Bid specifications are complete and the project will be bid in September.	\$400,000	Elliot Landes/ Asa Utterback
Safe Routes to School	Install sidewalk and handicap ramps along Edwards Street fronting Waggener Elementary and along Hemenway between Mermod Road and Grant Ave.	In Process	Construction is near completion. Work will be completed by Mid September 2008	\$148,500	Asa Utterback

Project	Description	Start Date	Status	Budget	Project Manager
Putah Creek					
Phase I- Perc Dam Removal	Removal of the collapsed percolation dam and channel alignment.	In design	Project to commence in June, 2009	Approximately \$500,000	Rich Marovich
Phase II- Design Channel/ Flood Plain	Construction of flood planes and design channel between the Railroad Trestle Bridge and the collapsed percolation dam.	In design	Project to commence in June, 2009	\$985,000	Rich Marovich
Phase III-Design Channel/Flood Plain	Flood plane and channel design and construction east of the collapsed percolation dam site.	Grant document in preparation	Grant application being prepared.	TBA	Rich Marovich
PC- Bike/Ped Bridge Project	Construction of bike and pedestrian improvements between the car bridge and I505.	Conceptual process.	Staff is developing concepts and cost estimates for Caltrans review. This project will be forwarded to the WPCC.	\$2 million	Alan Mitchell
Winters Car Bridge					
Bridge Replacement	Replace car bridge over Putah Creek	February 2005	Environmental process underway and estimated to be completed in 2009 with final design to follow	\$5,128,000 \$4,102,400 fed \$1,025,600 local	Alan Mitchell
Bridge Approaches	Design and construction of an approach to the Putah Creek Bridge with ped/bike path and maintenance road, ped/bike bridge, and environmental mitigation plantings.	February 2008	MTIP Amendment approved and Request for PE Authorization submitted to Caltrans. Next step is to prepare in RFP for design services.	\$2,000,000 \$1,600,000 fed \$400,000 local	Alan Mitchell
AB 1600 Impact Fees					Nick Ponticello/ Shelly Gunby

Project	Description	Start Date	Status	Budget	Project Manager
Major Projects Funding Plan Update					Nick Ponticello



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: September 2, 2008
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Nanci G. Mills, Director of Administrative Services & Recreation 
SUBJECT: Bobbie Greenwood Community Swim Center Update and Costs

RECOMMENDATION:

Discussion and consideration by the City Council.

BACKGROUND:

The Winters Pool Committee has met several times during the last year to review and discuss all aspects of the pool since the opening of the Bobbie Greenwood Community Swim Center. Attached you will find a spread sheet that includes the past years expenses.

The total cost for Operations and Maintenance alone is \$68,979.13. The City and the Winters Joint Unified School District would share the operations and maintenance expense of the pool. The School District is working with PG&E to audit the facility in hopes that the O&M costs can be reduced.

Representatives from individual user groups were present for discussion. It was agreed upon by all groups present to close the swimming pool during the month of December and the first half of January in order to save energy costs. Closing the pool during the coldest months would result in a savings of approximately \$12,947.57.

Attached you will also find a draft flyer on programs and user groups allowing for efficient and effective means for the competitive, recreational and fitness swimming needs of the Community. These programs would ensure some fiscal stability to meet the short and long term needs as well as continuing to provide a high quality of city services that meet the needs of residents. Other programs that we will be exploring are water aerobics, water polo, etc.

FISCAL IMPACT:

The cost of operations and maintenance offset by program revenues.

ATTACHMENTS:

Expense Spread Sheet
Draft Program Flyer



**PROGRAMS AT THE BOBBIE GREENWOOD
COMMUNITY SWIM CENTER 2008**

(Effective September 1, 2008 through May 28, 2009)

***The pool will be closed December 1, 2008-January 16, 2009.**

Adult Lap Swim:

September-October 31st

Monday-Thursday 7:30-8:30 p.m.

Saturday & Sunday 10:00 a.m.-12:00 p.m.

November-May

Monday-Thursday 7:00-8:00 p.m.

Saturday & Sunday 10:00 a.m.-12:00 p.m.

Cost: \$30 per month

\$15 for a 5 use punch card (expires 30 days after purchase)

Payable at City Hall in the City Clerk's Office.

For more information, please contact Traci Nakamura at 530-795-4910 x102.

Masters Swimming:

September-October 31st

Monday-Friday 6:00-7:00 a.m. & 6:30-7:30 p.m.

Saturday & Sunday 10:00 a.m.-12:00 p.m.

November-May

Monday-Friday 6:00-7:00 a.m. & p.m.

Saturday & Sunday 10:00 a.m.-12:00 p.m.

Cost: \$45 per month

For more information, please call Dave Kelley at 795-2265 or visit

<http://WintersAquaticClub.memberlodge.org> or email SwimWinters@sbcglobal.net

Youth Year Round Swim Team:

September-October 31st

Monday-Friday 5:30-7:30 p.m.

November-May

Monday-Friday 4:00-6:00 p.m.

Cost: \$45 per month

For more information, please contact Kevin Chester at 760-567-8081.



**COMMUNITY DEVELOPMENT AGENCY
STAFF REPORT**

TO: City of Winters Community Development Agency
DATE: September 2, 2008
THROUGH: John W. Donlevy, Jr., City Manager
FROM: John C. Wallace, Agency Counsel
SUBJECT: Bid Protest by C&C Construction on
Downtown Streetscape Improvement Project Phase I (Project 06-07)

RECOMMENDATION: Legal counsel recommends that the Community Development Agency:

(1) waive the irregularities in the bid submitted by Maxicrete, Inc. for construction of the subject project as minor irregularities and accept Maxicrete's bid; (2) reject the bid protest submitted by C&C Construction of Rocklin as having insufficient merit; and (2) reaffirm the award of the construction contract for the Downtown Streetscape Improvement Project Phase I (Project 06-07) to Maxistone, Inc. dba Maxicrete, Inc. of Fairfield in the amount of Eight Hundred Sixty Three Thousand Seven Hundred Sixty Two Dollars and Eighty Cents (\$863,762.80).

BACKGROUND: A notice to contractors inviting bids for construction of the Downtown Streetscape Improvements was advertised on July 24, and sealed bids were opened at City Hall on Tuesday, Aug. 12, 2008. Maxistone, Inc., dba Maxicrete, Inc. of Fairfield, California submitted the lowest bid for the project, but, as the Board was informed in the report recommending award on August 19, 2008, Maxicrete's bid contains irregularities that must be considered. The Agency awarded the project to Maxicrete on August 19, 2008.

C&C Construction, Inc. of Rocklin, California submitted a bid protest letter via facsimile on August 25, 2008 to the City claiming that they consider the bid submitted by Maxicrete to be non-responsive. They protest the award of the contract to Maxicrete. C&C Construction is the contractor who submitted the second lowest bid. A complete copy of the protest letter with C&C's submitted backup information (11 pages altogether) is attached. In summary, C&C Construction stated the following bases for their claim:

1. Under Item No. 32, Maxicrete failed to fill out the unit prices for the addition and deduction values in the bid form.
2. For Item No. 34, Maxicrete provided the unit price, but did not fill in the extended total of that line item.
3. C&C contends that Maxicrete's extended bid values do not add up to their written total bid, apparently based on their opinion that Maxicrete's written unit price for Item No. 51 is \$435.00, and not \$4.25, as reported in the bid tabulation.
4. C&C's protest letter also contains a patently incorrect statement that "a total was not entered for item #32". See the attached copy of the Maxicrete bid.

The City Attorney's office has reviewed the protest and has the following responses to the stated issues:

Analysis: The Community Development Agency's procedure for soliciting bids and awarding bids is governed by State Law, specifically the Public Contract Code of the State of California. Section 20162 provides that when a public project will cost over \$5,000, it must be contracted for and let to the lowest responsible bidder after notice. Pursuant to the code, the bid documents were prepared and notice given. Six bids were received. The factual summary is laid out in more detail in the Staff Report by Asa Utterback, incorporated herein by reference, leading to the award by the Agency of the construction contract to Maxicrete

The Community Development Agency has discretion in awarding a contract pursuant to bidding. The Agency may reject any bids and readvertise. The Agency may waive inconsequential deviations from contract specifications in a public contract bid. To be considered inconsequential, a deviation must neither (1) give the bidder an unfair competitive advantage; nor (2) otherwise defeat the goals of insuring economy and preventing corruption in the public contracting process. A determination of whether a deviation is inconsequential is to be made by the Agency. The Agency did so on August 19, 2008. These considerations must be evaluated from a practical standpoint, based on the factual circumstance of each case. They are to be viewed by the Agency in light of the public interest, rather than the private interest of a disappointed bidder (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897. "It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal . . . of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy." (*Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377). The protest claims that the bid by Maxicrete was "unresponsive". The Agency has already considered the issue and found the Maxicrete bid responsible and responsive, having found as follows:

1. The Board has already considered at its August 19, 2008 regular meeting the issue of the addition and deduction values for Item No. 32 not being provided

on the bid form by Maxicrete. This issue has been waived as a minor irregularity by the Board at that meeting. A copy of the staff report is attached for reference.

The primary unit price and item total for Bid Item 32 were provided clearly by Maxicrete and were consistent with the Total Bid value they provided. The absence of the adjustment values does not affect the value of the bid. Though the use of the addition and deduction values would provide a convenient pre-determined means for assigning costs to any such potential adjustments, the construction contract also has other equivalent means for fairly determining such a cost adjustment.

2. Maxicrete's failure to fill in the extended item value for Item No. 34 is also a minor irregularity in that:
 - a. the unit price was clearly and legibly provided on the bid form,
 - b. the unit price that was provided by Maxicrete for Item 34 results in the same total bid value that was written into the bid form by Maxicrete. In other words, the Item total for Item No 34, though left unstated in Maxicrete's bid form was included in the bid form by nature of the fact that the Total Bid value incorporated the exact value that should have been entered for the Item Total based on the given Unit Price. No interpretation or adjustment was required.
 - c. the unit price prevails in the determination of bid value in the absence of or conflict with a stated extended value. This is based upon:
 - i. The second paragraph on Page 00400-4 of the Bid forms states that in case of a discrepancy, the item unit price shall prevail. The paragraph goes on to state that the item total shall prevail only if the unit price is ambiguous, unintelligible, uncertain, omitted or the same value as the total. A clearly written unit price is, therefore, sufficient, even in the absence of a separately written item total for interpretation of the bid value.
 - ii. Section 3-3 of the City Standard Specifications states that a unit price will govern in any case where the value provided as the item total creates a discrepancy. This provision goes on to provide for rejection of the bid if the unit price is not filled in, but without providing for bid rejection on the basis of a problem with the item total.
3. The copy of Maxicrete's bid forms that was initially provided to C&C Construction was a scan of a low quality copy of the bid forms, so C&C's interpretation that Maxicrete's quoted unit price on Item No. 51 is \$435 is based on the poor quality copy, whereas the original of Maxicrete's bid form clearly enumerates \$4.25 as the unit price, with a formation of the written numbers that is consistent with the rest of the bidder's printed numbers. The

unit price of \$4.25 is exactly consistent with the item total provided by Maxicrete (\$7,112.75) and with the resultant Total Bid as quoted.

In Summary, Maxicrete's monetary bid figure was complete, as was that of C&C Construction. The Agency can, within its discretion, waive the irregularity. The Agency has done so, and is contractually now obligated to Maxicrete. That is the basis for the recommendations above.

As noted in the staff report for bid award on August 19th, Maxicrete was found to be responsible and responsive in all other aspects. However, if the bid from Maxicrete is rejected, the Agency would need to either (1) award the construction contract for the streetscape improvements to C & C Construction, Inc. of Rocklin as the second lowest responsible, responsive bidder in order to move forward with the project, or (2) reject all bids and solicit new bids. C&C Construction submitted a bid in the amount of Nine Hundred Fifty Six Thousand One Hundred Seventy Dollars and Eighty Two Cents (\$956,170.82).

FISCAL IMPACT: The project is funded by the City of Winters Community Development Agency Redevelopment funds. The construction authorization amount associated with an award to Maxicrete is within the approved Project Budget Sheet amount. None of the other bids were within the budgeted amount for construction, so rejection of Maxicrete's bid and award of the contract to C&C Construction or any of the other bidders will result in a need to increase the total funding budgeted for this project.

ATTACHMENTS:

- Bid Protest letter from C&C Construction with attachments (11 pgs)
- Staff Report for Downtown Streetscape Bid Award on August 19, 2008
- Color copy of the Schedule of Bid Prices completed by Maxicrete, Inc.



4220-A Duluth Ave., Rooklin, CA 95765

(916) 434-5280 - (916) 434-5288 (FAX)

ccconst@nwnwest.net

August 25, 2008

Department of Public Works
City of Winters
318 First Street
Winters, CA 95694

Attn: Asa Utterback/Allen Mitchell/Nicholas Ponticello/City Clerk

RE: Downtown Streetscape Improvements: Project # 06-07

Gentlemen,

We have reviewed the bid documents for Maxistone Inc. DBA Maxicrete Inc, herein referred to as Maxicrete. We were provided these documents on 8/22/08 by the Asa Utterback at the request of Alan Mitchell (see attached documentation). We had requested in writing these documents on 8/13/08 and again on 8/15/08. We also left a message with the City of Winters on 8/18/08. Since we did not have an opportunity to review the bid form of Maxicrete until Friday 8/22, we are within the time to protest an award of the bid per the Public Contract Code. C&C Construction Inc. is the low responsible bidder for this project. The total presented by Maxicrete states their price to be \$863,762.80 they should not be awarded the project as their bid is non-responsive and the total listed is not correct. Please consider this letter our formal protest of any award to Maxicrete. The following outlines the problems with the Maxicrete bid:

The spec clearly states that the bidder must quote all of the items in the bid form (ref: Instructions to bidders Section 00200, paragraph 1.01). It goes on to state in paragraph 1.05 that "All blank spaces in the Bid Proposal Form shall be filled in". The bid form also clearly states "The bidder shall set forth for each unit basis of work an item of work, an item price and a total for the item, and for each lump sum item a total for the item; all in clear legible figures in the respective spaces provided for this purpose. In the case of unit basis items, the amount set forth under the TOTAL column shall be the extension of the item bid price on the basis of the estimated quantity for the item".

When one closely examines the Maxicrete bid it is obvious that they are non-responsive:

-Under item #32, Maxicrete failed to fill out the unit prices for the additions and deductions as outlined in the bid form.

-For item #34 they did not fill in a total. A total is necessary to resolve any dispute between totals and unit prices and is a requirement of the bid form.

When one looks at the actual extensions of Maxicrete's bid it is obvious that the totals do not add up to what they presented on their bid form:

-A total was not entered for item #32.

-Item #51 states that the unit price is \$435 and the total is \$511,235. Since there is a discrepancy the unit price of \$435 would prevail and the total of the item would be \$523,305. The total of the bid then comes to \$1,381,955.05. not low.

C&C CONSTRUCTION, Inc.
General & Engineering
Contractor
Lic. No. 717740

4220-A Dufuth Ave., Rocklin, CA 95765

(916) 434-5280 • (916) 434-5288 (FAX)
ccconst@surewest.net

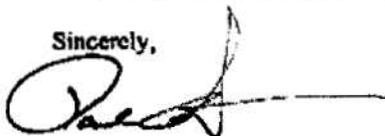
Maxicrete's bid should be rejected as non-responsive. If the Maxicrete bid is allowed it enables them to keep a figurative "string on his bid", which would allow them to pull their bid, if after a post bid opening review of their bid they were not satisfied with their prices. If not happy with their own prices after reviewing the bid results, they could claim they did not qualify under the specifications and should be rejected. If happy with their prices they would remain silent. Other bidders would not have that advantage. They could also negotiate the adds and deducts required by the bid documents after the bid. This unfair advantage is not allowed - see Valley Creek Landscape, Inc. v. City Council of Davis (1996) 41 Cal.App.4th 1432, 1441.

It is incumbent upon the City to award us the project and follow its own rules and guidelines as outlined in the specifications - REF: Pozar vs. Department of Transportation (1983) 145 Cal.App.3d, 269.

C&C Construction Inc. specializes in streetscape type projects, many in high traffic density areas. We have a reputation for finishing a job on time, doing quality work and avoiding disputes and claims on the job. I personally am involved in all projects undertaken by C&C Construction, Inc.

We are available to discuss this situation at any time, and look forward to your contract award.

Sincerely,



Paul Cavaghan
C&C Construction, Inc.
CEO/President
Faxed/Return Receipt Requested

SECTION 00200**INSTRUCTIONS TO BIDDERS****PART 1.00 - GENERAL****1.01 PROPOSAL FORMS**

All proposals shall be made upon the blank forms contained within this volume. Proposals submitted on forms other than the one issued to the bidder will be disregarded. All proposals must give the prices proposed in the manner required by the proposal, both in writing and figures, and shall be signed in ink by the bidder, with his address. Where required on the bid form, bidders must quote on all items and they are hereby warned that failure to do so may disqualify the bid. If the proposal is made by an individual, his name and post office address shall be shown; if made by a corporation, the proposal shall show the name of the State under the laws of which the corporation was chartered, and the name, titles and business addresses of the President, Secretary and Treasurer.

It is the sole responsibility of the bidder to see that his bid is received by the proper time. All bids received after the scheduled closing time for receipt of the bids shall be returned to the bidder unopened.

1.02 PREBID CONFERENCE

There will be no prebid conference; the proposed site is open to access, so bidders may visit the job site when each desires.

EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS AND SITE OF THE WORK

The bidder shall examine carefully the site of the work contemplated, and the proposal, plans, specifications, and contract forms therefore. It will be assumed that the bidder has investigated and is satisfied as to the conditions to be encountered, regarding character quality and quantities of work to be performed and the materials to be furnished, and as to the requirements of these specifications, the Supplementary Conditions, and the Contract. It is mutually agreed that submission of a proposal shall be considered "prima facie" evidence that the bidder has made such examination.

1.04 BASIS OF BIDS

The Bidder must include all requested information shown on the forms provided; failure to comply may be cause for rejection. No segregated bids or assignments will be considered.

1.05 PREPARATION OF BID PROPOSAL FORM

All blank spaces in the Bid Proposal Form shall be filled in, in ink or by typewriter. Any proposal may be modified at any time prior to the time fixed for the opening of bids, provided the modifications are initialed as approved by the Bidder. All alternations, corrections or

The bidder shall set forth for each unit basis of work an item of work an item price and a total for the item, and for each lump sum item a total for the item; all in clear legible figures in the respective spaces provided for this purpose. In the case of unit basis items, the amount set forth under the "TOTAL" column shall be the extension of the item price bid on the basis of the estimated quantity for the item.

In case of discrepancy between the item price and the total set forth for a unit basis item, the item unit price shall prevail. If the amount set forth as an item unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "TOTAL" column, then the amount set forth in the "TOTAL" column for the item shall prevail and shall be divided by the estimated quantity for the item. The price thus obtained shall be the item price.

The bid item quantities are approximate only, being given as a basis for the comparison of bids. The City of Winters does not expressly or by implication agree that the actual amount of work will correspond therewith, and reserves the right to increase, decrease or omit the amount of any portion of work as deemed necessary or advisable by the Engineer.

The undersigned agrees to accept the listed unit prices as compensation for any additions or deductions caused by variation in quantity due to more accurate measurements or by any changes or alterations in the plans or specifications of the work.

In submitting this bid, bidder represents that bidder has examined copies of all the Contract Documents and acknowledges receipt of the following agenda:

Addendum No.

1

LEGAL NAME OF BIDDER: MAXISTONE INC. dba MAXICRETE INC.

ADDRESS: 1125 MISSOURI ST. STE 201
FARFIELD, CA 94533

AUTHORIZED SIGNATURE *Max Stone* DATE: 9/12/2008

CONTRACTOR COMPANY NAME Maxstone Inc dba Maxcrete Inc.

**Downtown Streetscape Improvements
Project No. 06-07
BID SCHEDULE OF UNIT PRICES**

No.	ITEM DESCRIPTION	Unit	Quantity	Unit Price	Extended Price
Lump Sum Items					
1	Mobilization	LS	1	75,000	75,000
2	Traffic Control	LS	1	30,000	30,000
3	Water Pollution Control Plan	LS	1	35,000	35,000
4	Temporary water pollution control work	LS	1	33,000	33,000
5	Business access requirements & public signage	LS	1	10,000	10,000
6	Remove & Salvage Miscellaneous Items	LS	1	75,000	75,000
7	Striping & Signage	LS	1	8,000	8,000
8	Verify location and disposition of various existing utilities	LS	1	35,000	35,000
9	Fill voids under demolished sidewalk	LS	4	DELETED	DELETED
Demolition					
10	Remove & Salvage Streetlights & equipment	LS	1	45,000	45,000
11	Sawcut & Remove AC Paving	SF	21,138	15	317,070
12	Remove Concrete Curb & Gutter	LF	858	5.75	4,913.50
13	Remove Concrete Sidewalk	SF	8,897	1.25	11,121.25
14	Remove Concrete Mow Curb @ Rotary Park	LF	70	9	630
15	Remove Storm Drain Inlet and plug & abandon SD in place	EA	3	5,000	15,000
16	Remove Trees	EA	12	450	5,400
17	Remove Tree Wells	EA	10	7,000	70,000
Utilities					
18	Install 12" RCP Storm Pipe	LF	114	50	5,700
19	Pre-cast Inlet	EA	1	25,000	25,000
20	Curb Drain Inlet	EA	3	3,250	9,750
21	Storm Drain Manhole	EA	1	9,000	9,000
22	Connect to existing storm drain inlet	EA	1	350	350
23	Bleed-off Drains	LS	1	3,750	3,750
24	2" Irrigation Service and Meter	EA	1	2,500	2,500
25	Relocate Fire Hydrant	EA	2	8,000	16,000
26	Remediate shallow water or other utility service lines	EA	1	9,500	9,500
27	Relocate Water Service	EA	1	10,000	10,000
28	Adjust water valve cover to grade	EA	9	600	5,400
29	Adjust water meter box to grade	EA	2	500	1,000
30	Adjust telephone vault/box to grade	EA	2	1,500	3,000
31	Adjust electric vault/box to grade	EA	4	1,500	6,000

Project No. 06-07
Downtown Streetscape Improvements

00400-2

Bid Proposal Form-Addendum No. 1
Construction Specifications
Page A1-3

Paving					
32	AC Pavement (6" AC over 15" Class 2 Base)	SF	13,043	10.35	133,690.75
	Add/Deduct per 1" Class 2 Base	SF	0		Not in Total Bid
	Add/Deduct per 1" AC	SF	0		Not in Total Bid
33	Intersection Pavement (clay brick pavers)	SF	2,597	12	31,164
34	Decorative Crosswalk (clay brick pavers)	SF	1,684	15	25,260
36	4' Concrete Valley Gutter	LF	207	30	6,210
38	Asphalt Seal Coat	SF	29,297	15	439,455
37	6" Vertical Curb	LF	233	2.0	4,660
38	18" Curb & Gutter	LF	574	3.0	1,722
39	32" Curb & Gutter	LF	175	3.5	612.5
40	Decorative Sidewalk (clay brick pavers)	SF	6,781	10	67,810
41	Pedestrian ramps with ADA Detectable Pavers	EA	4	5,000	20,000
42	ADA Detectable Pavers at flush curbs	SF	331	17.50	5,792.50
43	6" Concrete Band	LF	783	1.20	939.60
44	12" Concrete Band	LF	217	2.5	5,425
45	PCC Sidewalk, 5x5 Score Pattern	SF	3,081	8.3	25,572.3
46	Sandblasting	LF	780	10.5	8,190
47	Wheel Stops	EA	3	100	300
Landscaping					
48	New Trees Planted	EA	13	400	5,200
49	Tree Walls	EA	10	400	4,000
50	Tree Grates	EA	9	1,500	13,500
51	Landscaped Shrubs & Groundcover	SF	1,203	4.5	5,413.5
52	Irrigation	SF	1,203	2.5	3,007.5
53	Irrigation - Point of Connection, backflow, wiring, etc.	EA	1	3,000	3,000
Lighting					
54	Install Street Lighting	EA	11	3,250	35,750
55	Furnish and Install Pullbox	EA	11	350	3,850
56	Furnish and Install Conduit & Wiring	LF	855	20	17,100
57	Furnish and Install Electrical Service	LS	1	4,000	4,000
Site Furnishings					
58	Relocate Existing Clock	EA	1	1,500	1,500
59	Ballard	EA	13	1,500	19,500
60	Bench (8' Wood slat)	EA	12	1,350	16,200
61	Iron Waste Receptacles	EA	5	1,000	5,000
62	Bike Rack	EA	4	500	2,000
63	Precast Concrete Wall	LS	1	7,500	7,500
64	OPTIONAL: Metal Tree Guards	EA	9	500	4,500

TOTAL BID (All Items Nos. 1-64) = 226,376.75

TOTAL BID IN WRITTEN WORDS: Eight hundred sixty three thousand seven hundred sixty two dollars and eighty cents

CONTRACTOR COMPANY NAME Maxicrete Inc. aka Maxicrete Inc

Elaine Brown

From: "Asa Utterback" <asa.utterback@ponticelloinc.com>
To: "Elaine Brown, C&C" <ebrown.coconst@surewest.net>
Cc: "Nick Ponticello" <nick.ponticello@ponticelloinc.com>; "Alan Mitchell" <alan.mitchell@ponticelloinc.com>
Sent: Friday, August 22, 2008 11:44 AM
Attach: Winters_Downtown_Streetscape-Maxicrete Bid.pdf
Subject: RE: Winters Streetscape - Bid submitted by Maxicrete, Inc.

Hello Elaine,

I have had the bid forms submitted by Maxicrete, Inc. (the awarded low bidder) for the subject project scanned into a PDF format and attached the PDF file to this email per your request.

Please do not hesitate to let me know if you have any questions. Thanks!

Asa Utterback
Ponticello Enterprises
Ph : (530)668-5883 x204
email: asa.utterback@ponticelloinc.com

From: Alan Mitchell
Sent: Friday, August 22, 2008 8:44 AM
To: Asa Utterback
Cc: Nick Ponticello
Subject: Winters Streetscape

I had a message from Elaine Brown with C&C Construction, at 916-434-5280, asking for a copy of Maxicrete's bid. Please follow-up with her.

Alan L. Mitchell, P.E.
Senior Project Manager
Business Development
Ponticello Enterprises Consulting Engineers, Inc.
1216 Fortna Avenue
Woodland, CA 95776
(530) 668-5883

8/25/2008

8-15-08 - SECOND REQUEST

C & C CONSTRUCTION, INC.

TO: City of Winters ATTN: Alan Mitchell

FROM: Elaine Brown FAX: 530 795-4935

DATE: 8-13-08 RE: Downtown Streetscape Project

Number of sheets (including cover sheet): 1



Message:

We are requesting a copy of the bid form submitted by Marcicrete, for the Downtown Streetscape Project, from yesterday's bid. Please fax a copy to the number noted below. Thank you - Elaine

If you do not receive all sheets or have any questions, please call.

4220-A Duluth Ave - Rocklin CA 95765

Phone: (916) 434-5280 Fax: (916) 4345288

CA License No. 717740 - NV No. 0063483 - General & Engineering Contractor

8-18-08 3PM last message
out of office for the PM.

FAX JOURNAL REPORT

TIME : 08/13/2008 11:37
 NAME : C C CONSTRUCTION
 FAX : 916445288
 TEL : 916445288
 SER.# : 0000CJ300385

NO.	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
	08/12	13:05		21	01	OK	OK
	08/12	13:05	916 4435528	29	01	OK	OK
	08/12	13:07	787 554 6347	27	01	OK	OK
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	08/12	15:35	1 888 4795	22	01	OK	OK
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H236	08/13	11:37	15387964936	22	01	OK	OK

BUSY: BUSY/NO RESPONSE
 NG : POOR LINE CONDITION OUT OF MEMORY
 CV : COVERAGE
 POL : POLLING
 RET : RETRIEVAL
 PC : PC-FAX

FA JOURNAL REPORT

TIME : 08/18/2008 14:45
 NAME : C C CONSTRUCTION
 FAX : 9164345288
 TEL : 9164345288
 SER.# : 880C1388385

NO.	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
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BUSY : BUSY/NO RESPONSE
 NG : POOR LINE CONDITION / OUT OF MEMORY
 CV : COVERAGE
 PD : POLLING
 RET : RETRIEVAL
 PC : PC-FAX

C & C CONSTRUCTION, INC.

TO: CITY OF WATERS ATTN: ALLEN MITCHELL / ASA VTERDAK
NICK PORTICELLO / CITY CLERK
 FROM: PAUL CAUGHAN FAX: (530) 795-4985
 DATE: 8/25/08 RE: DOWNTOWN Streetscape bid BID '06-07
 Number of sheets (including cover sheet): 11

Message:

PROTEST OF ANY AWARD TO MAXICrete FOR THIS BID.

If you do not receive all sheets or have any questions, please call.
 4220-A Duluth Ave - Rocklin CA 95765
 Phone: (916) 434-5280 Fax: (916) 4345288
 CA License No. 717740 - NV No. 0063483 - General & Engineering Contractor



**COMMUNITY DEVELOPMENT AGENCY
STAFF REPORT**

TO: City of Winters Community Development Agency
DATE: August 19, 2008
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Asa Utterback, Project Engineer, Ponticello Enterprises
Cas Ellena, Project Manager, Redevelopment
& Economic Development Manager
SUBJECT: Award of construction and inspection services contracts for
Downtown Streetscape Improvement Project Phase I (Project 06-07)

RECOMMENDATION: Staff recommends that the Community Development Agency (1) waive the irregularity in the bid submitted by Maxicrete, Inc. for construction of the subject project as a minor irregularity and accept Maxicrete's bid; (2) award the construction contract for the Downtown Streetscape Improvement Project Phase I (Project 06-07) to Maxistone, Inc. dba Maxicrete, Inc. of Fairfield in the amount of Eight Hundred Sixty Three Thousand Seven Hundred Sixty Two Dollars and Eighty Cents (\$863,762.80), (3) authorize expenditures in the amount of Nine Hundred Twenty One Thousand Dollars (\$921,000.00), (4) authorize the City Manager to execute the construction contract on the City's behalf; and (5) authorize the City Manager to execute a consultant contract for inspection services up to the amount of Seventy Thousand Dollars (\$70,000.00) on the City's behalf.

BACKGROUND: In April 2008, the City Council approved the expanded scope of work, project cost and phasing for the Downtown Streetscape Improvement Project, Phases 1 and 2. Phase I, preferred option A, includes pedestrian and aesthetic improvements on 3 corners of the intersection at Railroad Avenue and Abbey Street, the east side of Railroad Avenue from Abbey to Main Street, and the entire intersection of Main Street and Railroad Avenue. Also, the project includes expanded sidewalks with aesthetic barriers along roadway edges, landscaping, irrigation in new planters, and new street furniture. In addition, the project includes storm drainage facilities as needed and minimal upgrading and infill of lighting systems where needed.

The expanded scope of work included a choice of higher quality materials including clay brick pavers instead of concrete brick to create a distinctive look that is consistent with the historic buildings and structures, such as the Railroad Trestle Bridge, on Main

Street.

This project was the culmination of several stakeholders meetings facilitated by the project designer, Rick Engineering. Construction is expected to begin in early September and the majority of the work should be completed by late November with the final completion slated for late December.

A notice to contractors for construction of Phase I was advertised on July 24, and sealed bids were opened at City Hall on Tuesday, Aug. 12. The bid tabulation is attached, as Exhibit A. Maxistone, Inc., dba Maxicrete, Inc. of Fairfield, California submitted the lowest bid for the project, but their bid has an irregularity that must be considered. The second lowest bid was submitted by C&C Construction, Inc. of Rocklin, California. In all other aspects Maxicrete was found to be responsible and responsive. The bid schedule has two sub-line items, which are intended to provide a contractual cost basis for adjustment of the road structure, if required by the field conditions. Those two line items do not affect the base bid amount, because they have zero initial quantity and are intended for field changes only. The irregularity in Maxicrete's bid is that they left those adjustment values blank. Four of the other five bidders did provide bid prices for those two adjustment items. Only one other bidder did not provide bid prices for those two items. In the absence of having the contract adjustment values, the City would negotiate with the Contractor to determine a fair price for any such changes should they be needed.

Staff performed an analysis of the potential effect of the Add/Deduct contract adjustment values that are defined in the bid documents for adjustment of the bid/contract price for Line Item No. 32 "AC Pavement (5" AC over 15" Class 2 Base) toward the end of determining whether the bid irregularity is significant or minor and therefore waivable. The analysis demonstrates that the adjustment values cannot in themselves affect the low bidder's contract value to the extent that it would become higher than the next lowest bidder's contract value.

The low bid submitted by Maxicrete, Inc. (\$863,762.80) was lower than the second lowest bid (C&C Construction, Inc. at \$956,170.82) by \$92,408.02. The analysis shows that a reasonable worst case application of the adjustment values would at most increase the contract value by approximately \$33,400. The data behind the analysis is as follows:

Total Area of work involved in Item # 32 = 13,043 square feet

Unit of price adjustment values is in dollars per square foot-inch (SF-inch). That unit is the sum of the inches of thickness of AC or Base across the total square foot area.

- Total Qty of AC involved @ 5" depth = 65,215 SF-inch
- Total Qty of Base involved @ 15" depth = 195,645 SF-inch
- Highest bid adjustment value for AC = \$1.00 /SF-inch
- Highest bid adjustment value for Base = \$0.35 /SF-inch

Though it would be reasonable to compare the potential effect of the differential adjusted contract values based on a difference between the highest bid values and the

bid values of the second lowest bidder to show the relative effect of those values on the two subject bids, the analysis simply used the full value of the highest submitted bid values to show that even the absolute value of the greatest allowed contractual adjustment would not be sufficient to make the low bid contract exceed the value of the second lowest bid.

The City's standard (as well as industry standard) allowance for variance of contract quantities without requiring renegotiation is a change of up to 25% of the contract quantity for any given item. Assuming the City were to increase both the AC and the Base quantities by the full 25% allowed variance, the total value of the change would add \$33,422.85 to the contract. Though this value is the worst case of any potential allowable change under the bid prices, it is still only approximately one-third (1/3) of the difference between the two lowest bids. The tabular form of the above information is below.

Portion of the affected /related work	Area	Depth	Quantity (SF-inch)	25% Change Quantity @ 25%	Worst Case Unit Price	Total potential Change Value
Asphalt Concrete (AC)	13,043	5	65,215	16,304	\$ 1.00	\$ 16,304.00
Class 2 Base (AB)	13,043	15	195,645	48,911	\$ 0.35	\$ 17,118.85
Total = \$						33,422.85

Change required in order to be considered significant = \$ 92,408.02

If the bid from Maxicrete is rejected, the Agency would need to award the construction contract for the streetscape improvements to C & C Construction, Inc. of Rocklin as the second lowest bidder in order to move forward with the project. C&C Construction submitted a bid in the amount of Nine Hundred Fifty Six Thousand One Hundred Seventy Dollars and Eighty Two Cents (\$956,170.82), which exceeds the budgeted amount for construction of the project. With the normal inclusion of a ten percent contingency in the expenditure authorization, the Agency would need to increase the project budget by One Hundred Thirty Thousand dollars (\$130,000) to a total of One Million Four Hundred Eighty Thousand dollars (\$1,480,000.00).

The requested expenditure amount for construction includes a contingency of approximately Fifty-Seven Thousand Dollars (\$57,000), which is 6.6% of the contract amount.

The project will be managed by Ponticello Enterprises. The inspection services will be provided through an outside consultant selected based on pertinent qualifications for this type of work. Staff is requesting authority for the City Manager to execute the contract up to \$70,000, which is within the approved budget for the services, so that the project can move forward in a timely manner.

FISCAL IMPACT: The project is funded by the City of Winters Community Development Agency Redevelopment funds. The requested construction authorization amount is within the approved Project Budget Sheet amount.

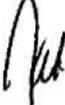
ATTACHMENTS: Exhibit A-Bid Tabulation

No.	ITEM DESCRIPTION	Unit	Quantity	Engineer's Estimate		Maxistone, Inc. dba Maxicrete, Inc		C&C Construction, Inc		JDS Builders Group	
				Extended		Extended		Extended		Extended	
				Unit Price	Price	Unit Price	Price	Unit Price	Price	Unit Price	Price
Lump Sum Items											
1	Mobilization	LS	1	\$20,000.00	\$ 20,000.00	\$ 25,000.00	\$ 25,000.00	\$ 4,400.00	\$ 4,400.00	\$ 26,781.00	\$ 26,781.00
2	Traffic Control	LS	1	\$25,000.00	\$ 25,000.00	\$ 30,000.00	\$ 30,000.00	\$ 77,797.00	\$ 77,797.00	\$ 27,939.25	\$ 27,939.25
3	Water Pollution Control Plan	LS	1	\$ 2,100.00	\$ 2,100.00	\$ 3,500.00	\$ 3,500.00	\$ 650.00	\$ 650.00	\$ 2,825.00	\$ 2,825.00
4	Temporary water pollution control work	LS	1	\$12,000.00	\$ 12,000.00	\$ 3,500.00	\$ 3,500.00	\$ 3,300.00	\$ 3,300.00	\$ 5,650.00	\$ 5,650.00
5	Business access requirements & public signage	LS	1	\$15,000.00	\$ 15,000.00	\$ 10,000.00	\$ 10,000.00	\$ 7,700.00	\$ 7,700.00	\$ 4,520.00	\$ 4,520.00
6	Remove & Salvage Miscellaneous Items	LS	1	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00	\$ 7,500.00	\$ 3,850.00	\$ 3,850.00	\$ 1,130.00	\$ 1,130.00
7	Striping & Signage	LS	1	\$ 4,000.00	\$ 4,000.00	\$ 8,000.00	\$ 8,000.00	\$ 10,818.00	\$ 10,818.00	\$ 12,156.54	\$ 12,156.54
8	Verify location and disposition of various existing utilities	LS	1	\$ 3,000.00	\$ 3,000.00	\$ 3,500.00	\$ 3,500.00	\$ 3,850.00	\$ 3,850.00	\$ 11,300.00	\$ 11,300.00
9	Fill-voids-under-demolished-sidewalk	LS	4	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
Demolition											
10	Remove & Salvage Streetlights & equipment	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 4,500.00	\$ 4,500.00	\$ 8,938.00	\$ 8,938.00	\$ 2,260.00	\$ 2,260.00
11	Sawcut & Remove AC Paving	SF	21,138	\$ 3.00	\$ 63,414.00	\$ 1.00	\$ 21,138.00	\$ 0.85	\$ 17,967.30	\$ 0.452	\$ 9,554.38
12	Remove Concrete Curb & Gutter	LF	859	\$ 10.00	\$ 8,590.00	\$ 5.75	\$ 4,939.25	\$ 2.75	\$ 2,362.25	\$ 1.130	\$ 9,706.70
13	Remove Concrete Sidewalk	SF	8,997	\$ 3.00	\$ 26,991.00	\$ 1.25	\$ 11,246.25	\$ 0.80	\$ 7,197.60	\$ 1.13	\$ 10,166.81
14	Remove Concrete Mow Curb @ Rotary Park	LF	70	\$ 5.00	\$ 350.00	\$ 4.00	\$ 280.00	\$ 3.00	\$ 210.00	\$ 11.30	\$ 791.00
15	Remove Storm Drain Inlet and plug & abandon SD in place	EA	3	\$ 4,000.00	\$ 12,000.00	\$ 6,000.00	\$ 18,000.00	\$ 955.00	\$ 2,865.00	\$ 2,280.00	\$ 6,780.00
16	Remove Trees	EA	12	\$ 800.00	\$ 9,600.00	\$ 450.00	\$ 5,400.00	\$ 275.00	\$ 3,300.00	\$ 678.00	\$ 8,136.00
17	Remove Tree Wells	EA	10	\$ 100.00	\$ 1,000.00	\$ 200.00	\$ 2,000.00	\$ 83.00	\$ 830.00	\$ 565.00	\$ 5,650.00
Utilities											
18	Install 12" RCP Storm Pipe	LF	114	\$ 80.00	\$ 9,120.00	\$ 50.00	\$ 5,700.00	\$ 65.00	\$ 7,410.00	\$ 56.50	\$ 6,441.00
19	Pre-cast Inlet	EA	1	\$ 3,200.00	\$ 3,200.00	\$ 2,500.00	\$ 2,500.00	\$ 2,750.00	\$ 2,750.00	\$ 3,390.00	\$ 3,390.00
20	Curb Drain Inlet	EA	3	\$ 3,200.00	\$ 9,600.00	\$ 3,250.00	\$ 9,750.00	\$ 2,640.00	\$ 7,920.00	\$ 3,390.00	\$ 10,170.00
21	Storm Drain Manhole	EA	1	\$ 5,000.00	\$ 5,000.00	\$ 9,000.00	\$ 9,000.00	\$ 6,600.00	\$ 6,600.00	\$ 5,650.00	\$ 5,650.00
22	Connect to existing storm drain inlet	EA	1	\$ 1,000.00	\$ 1,000.00	\$ 750.00	\$ 750.00	\$ 440.00	\$ 440.00	\$ 1,130.00	\$ 1,130.00
23	Bleed-off Drains	LS	1	\$ 8,100.00	\$ 8,100.00	\$ 3,750.00	\$ 3,750.00	\$ 6,347.00	\$ 6,347.00	\$ 1,130.00	\$ 1,130.00
24	2" Irrigation Service and Meter	EA	1	\$ 3,000.00	\$ 3,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,750.00	\$ 2,750.00	\$ 5,650.00	\$ 5,650.00
25	Relocate Fire Hydrant	EA	2	\$ 3,000.00	\$ 6,000.00	\$ 8,000.00	\$ 16,000.00	\$ 3,850.00	\$ 7,700.00	\$ 6,780.00	\$ 13,660.00
26	Remediate shallow water or other utility service lines	EA	1	\$ 2,500.00	\$ 2,500.00	\$ 9,500.00	\$ 9,500.00	\$ 3,300.00	\$ 3,300.00	\$ 3,390.00	\$ 3,390.00
27	Relocate Water Service	EA	1	\$ 2,500.00	\$ 2,500.00	\$ 1,000.00	\$ 1,000.00	\$ 3,080.00	\$ 3,080.00	\$ 3,390.00	\$ 3,390.00
28	Adjust water valve cover to grade	EA	9	\$ 600.00	\$ 5,400.00	\$ 600.00	\$ 5,400.00	\$ 110.00	\$ 990.00	\$ 678.00	\$ 6,102.00
29	Adjust water meter box to grade	EA	2	\$ 800.00	\$ 1,600.00	\$ 500.00	\$ 1,000.00	\$ 110.00	\$ 220.00	\$ 678.00	\$ 1,356.00
30	Adjust telephone vault/box to grade	EA	2	\$ 2,000.00	\$ 4,000.00	\$ 1,800.00	\$ 3,600.00	\$ 1,100.00	\$ 2,200.00	\$ 678.00	\$ 1,356.00
31	Adjust electric vault/box to grade	EA	4	\$ 2,000.00	\$ 8,000.00	\$ 1,500.00	\$ 6,000.00	\$ 550.00	\$ 2,200.00	\$ 678.00	\$ 2,712.00
Paving											
32	AC Pavement (6" AC over 15" Class 2 Base)	SF	13,043	\$ 5.00	\$ 65,215.00	\$ 10.25	\$ 133,890.75	\$ 8.50	\$ 110,865.50	\$ 9.266	\$ 120,856.44
	Add/Deduct per 1" Class 2 Base	SF	0	\$ 0.25	Not In Total Bid	Not In Total Bid	Not In Total Bid	\$ 0.20	Not In Total Bid	Not In Total Bid	Not In Total Bid
	Add/Deduct per 1" AC	SF	0	\$ 0.25	Not In Total Bid	Not In Total Bid	Not In Total Bid	\$ 0.66	Not In Total Bid	Not In Total Bid	Not In Total Bid
33	Intersection Pavement (clay brick pavers)	SF	2,597	\$ 20.00	\$ 51,940.00	\$ 15.00	\$ 38,955.00	\$ 22.75	\$ 59,081.75	\$ 32.092	\$ 83,342.92
34	Decorative Crosswalk (clay brick pavers)	SF	1,684	\$ 20.00	\$ 33,680.00	\$ 15.00	\$ 25,260.00	\$ 22.75	\$ 38,311.00	\$ 32.883	\$ 55,374.97
35	4" Concrete Valley Gutter	LF	207	\$ 80.00	\$ 16,560.00	\$ 35.00	\$ 7,245.00	\$ 48.00	\$ 9,936.00	\$ 32.431	\$ 6,713.22
36	Asphalt Seal Coat	SF	29,297	\$ 0.60	\$ 17,578.20	\$ 0.15	\$ 4,394.55	\$ 0.36	\$ 10,546.92	\$ 0.226	\$ 6,621.12
37	6" Vertical Curb	LF	233	\$ 25.00	\$ 5,825.00	\$ 20.00	\$ 4,660.00	\$ 28.00	\$ 6,524.00	\$ 17.063	\$ 3,975.68
38	18" Curb & Gutter	LF	574	\$ 30.00	\$ 17,220.00	\$ 30.00	\$ 17,220.00	\$ 29.00	\$ 16,548.00	\$ 19.438	\$ 11,156.28
39	32" Curb & Gutter	LF	175	\$ 35.00	\$ 6,125.00	\$ 35.00	\$ 6,125.00	\$ 36.00	\$ 6,300.00	\$ 23.504	\$ 4,113.20
40	Decorative Sidewalk (clay brick pavers)	SF	6,781	\$ 17.00	\$ 115,277.00	\$ 10.00	\$ 67,810.00	\$ 14.00	\$ 94,934.00	\$ 21.856	\$ 148,883.84
41	Pedestrian ramps with ADA Detectable Pavers	EA	4	\$ 1,400.00	\$ 5,600.00	\$ 5,000.00	\$ 20,000.00	\$ 2,750.00	\$ 11,000.00	\$ 2,111.97	\$ 8,447.88
42	ADA Detectable Pavers at flush curbs	SF	331	\$ 15.00	\$ 4,965.00	\$ 17.50	\$ 5,792.50	\$ 20.00	\$ 6,620.00	\$ 18.285	\$ 6,055.85
43	6" Concrete Band	LF	793	\$ 7.00	\$ 5,551.00	\$ 20.00	\$ 15,860.00	\$ 23.00	\$ 18,239.00	\$ 23.165	\$ 18,359.85
44	12" Concrete Band	LF	217	\$ 15.00	\$ 3,255.00	\$ 28.00	\$ 6,025.00	\$ 23.00	\$ 4,991.00	\$ 21.922	\$ 4,757.07
45	PCC Sidewalk, 5x5 Score Pattern	SF	3,061	\$ 8.00	\$ 24,488.00	\$ 8.75	\$ 26,783.75	\$ 8.00	\$ 24,488.00	\$ 4.972	\$ 15,219.29
46	Sandblasting	LF	760	\$ 5.00	\$ 3,800.00	\$ 10.00	\$ 7,600.00	\$ 2.20	\$ 1,672.00	\$ 9.04	\$ 6,870.40
47	Wheel Stops	EA	3	\$ 100.00	\$ 300.00	\$ 100.00	\$ 300.00	\$ 55.00	\$ 165.00	\$ 113.00	\$ 339.00
Landscaping											
48	New Trees Planted	EA	13	\$ 500.00	\$ 6,500.00	\$ 400.00	\$ 5,200.00	\$ 185.00	\$ 2,405.00	\$ 282.50	\$ 3,672.50
49	Tree Wells	EA	10	\$ 1,700.00	\$ 17,000.00	\$ 400.00	\$ 4,000.00	\$ 680.00	\$ 6,800.00	\$ 678.00	\$ 6,780.00
50	Tree Grates	EA	9	\$ 1,200.00	\$ 10,800.00	\$ 1,500.00	\$ 13,500.00	\$ 2,475.00	\$ 22,275.00	\$ 2,531.20	\$ 22,780.80
51	Landscaped Shrubs & Groundcover	SF	1,203	\$ 5.00	\$ 6,015.00	\$ 4.25	\$ 5,112.75	\$ 17.50	\$ 21,052.50	\$ 12.351	\$ 14,858.25
52	Irrigation	SF	1,203	\$ 5.00	\$ 6,015.00	\$ 25.00	\$ 30,075.00	\$ 24.00	\$ 28,872.00	\$ 20.60	\$ 24,781.80
53	Irrigation - Point of Connection, backflow, wiring, etc.	EA	1	\$ 5,000.00	\$ 5,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,850.00	\$ 3,850.00	\$ 2,034.00	\$ 2,034.00
Lighting											
54	Install Street Lighting	EA	11	\$ 6,500.00	\$ 71,500.00	\$ 3,250.00	\$ 35,750.00	\$ 4,345.00	\$ 47,795.00	\$ 3,384.35	\$ 37,227.85
55	Furnish and Install Pullbox	EA	11	\$ 600.00	\$ 6,600.00	\$ 350.00	\$ 3,850.00	\$ 495.00	\$ 5,445.00	\$ 197.75	\$ 2,175.25
56	Furnish and Install Conduit & Wiring	LF	855	\$ 30.00	\$ 25,650.00	\$ 20.00	\$ 17,100.00	\$ 17.00	\$ 14,635.00	\$ 19.888	\$ 17,004.24
57	Furnish and Install Electrical Service	LS	1	\$ 4,500.00	\$ 4,500.00	\$ 4,000.00	\$ 4,000.00	\$ 7,150.00	\$ 7,150.00	\$ 4,068.00	\$ 4,068.00
Site Furnishings											
58	Relocate Existing Clock	EA	1	\$ 2,500.00	\$ 2,500.00	\$ 1,500.00	\$ 1,500.00	\$ 4,550.00	\$ 4,550.00	\$ 1,695.00	\$ 1,695.00
59	Bollard	EA	13	\$ 750.00	\$ 9,750.00	\$ 1,500.00	\$ 19,500.00	\$ 1,578.00	\$ 21,814.00	\$ 1,748.11	\$ 22,726.43
60	Bench (6" Wood slat)	EA	12	\$ 1,300.00	\$ 15,600.00	\$ 1,380.00	\$ 16,200.00	\$ 1,825.00	\$ 23,100.00	\$ 1,418.15	\$ 17,017.80
61	Iron Waste Receptacle	EA	6	\$ 1,100.00	\$ 6,600.00	\$ 1,000.00	\$ 6,000.00	\$ 1,870.00	\$ 9,350.00	\$ 1,418.15	\$ 7,090.78
62	Bike Rack	EA	4	\$ 400.00	\$ 1,600.00	\$ 500.00	\$ 2,000.00	\$ 470.00	\$ 1,880.00	\$ 391.558	\$ 1,566.63
63	Precast Concrete Wall	LS	1	\$ 90,000.00	\$ 90,000.00	\$ 75,000.00	\$ 75,000.00	\$ 96,800.00	\$ 96,800.00	\$ 76,840.00	\$ 76,840.00
64	OPTIONAL: Metal Tree Guards	EA	9	\$ 700.00	\$ 6,300.00	\$ 500.00	\$ 4,500.00	\$ 685.00	\$ 6,255.00	\$ 575.972	\$ 5,183.75
TOTAL BID (All Items Nos. 1-64) =				\$ 946,664.20		\$ 863,762.80		\$ 956,170.82		\$ 979,372.12	

No.	ITEM DESCRIPTION	Unit	Quantity	Vintage Paving Co., Inc.		PBM Construction, Inc.		Lister Construction, Inc.	
				Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
Lump Sum Items									
1	Mobilization	LS	1	\$ 68,000.00	\$ 68,000.00	\$ 66,000.00	\$ 66,000.00	\$ 18,000.00	\$ 18,000.00
2	Traffic Control	LS	1	\$ 25,000.00	\$ 25,000.00	\$ 93,000.00	\$ 93,000.00	\$ 76,000.00	\$ 76,000.00
3	Water Pollution Control Plan	LS	1	\$ 1,000.00	\$ 1,000.00	\$ 1,700.00	\$ 1,700.00	\$ 1,000.00	\$ 1,000.00
4	Temporary water pollution control work	LS	1	\$ 600.00	\$ 600.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
5	Business access requirements & public signage	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 7,300.00	\$ 7,300.00	\$ 9,000.00	\$ 9,000.00
6	Remove & Salvage Miscellaneous Items	LS	1	\$ 1,500.00	\$ 1,500.00	\$ 2,200.00	\$ 2,200.00	\$ 9,000.00	\$ 9,000.00
7	Striping & Signage	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 11,200.00	\$ 11,200.00	\$ 11,000.00	\$ 11,000.00
8	Verify location and disposition of various existing utilities	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 7,500.00	\$ 7,500.00	\$ 9,000.00	\$ 9,000.00
9	Fill-walve-under-demolished-sidewalk	LS	4	DELETED	DELETED	DELETED	DELETED	DELETED	DELETED
Demolition									
10	Remove & Salvage Streetlights & equipment	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 1,600.00	\$ 1,600.00	\$ 3,000.00	\$ 3,000.00
11	Sawcut & Remove AC Paving	SF	21,138	\$ 1.20	\$ 25,365.60	\$ 1.00	\$ 21,138.00	\$ 0.40	\$ 8,455.20
12	Remove Concrete Curb & Gutter	EA	859	\$ 6.50	\$ 4,724.50	\$ 3.00	\$ 2,577.00	\$ 10.00	\$ 8,590.00
13	Remove Concrete Sidewalk	SF	8,997	\$ 1.10	\$ 9,896.70	\$ 1.00	\$ 8,997.00	\$ 1.00	\$ 8,997.00
14	Remove Concrete Mow Curb @ Rotary Park	LF	70	\$ 3.00	\$ 210.00	\$ 2.00	\$ 140.00	\$ 10.00	\$ 700.00
15	Remove Storm Drain Inlet and plug & abandon SD in place	EA	3	\$ 2,000.00	\$ 6,000.00	\$ 1,100.00	\$ 3,300.00	\$ 2,000.00	\$ 6,000.00
16	Remove Trees	EA	12	\$ 400.00	\$ 4,800.00	\$ 300.00	\$ 3,600.00	\$ 1,000.00	\$ 12,000.00
17	Remove Tree Wells	EA	10	\$ 150.00	\$ 1,500.00	\$ 85.00	\$ 850.00	\$ 500.00	\$ 5,000.00
Utilities									
18	Install 12" RCP Storm Pipe	LF	114	\$ 250.00	\$ 28,500.00	\$ 171.00	\$ 19,494.00	\$ 50.00	\$ 5,700.00
19	Pre-cast Inlet	EA	1	\$ 1,000.00	\$ 1,000.00	\$ 1,700.00	\$ 1,700.00	\$ 3,000.00	\$ 3,000.00
20	Curb Drain Inlet	EA	3	\$ 2,500.00	\$ 7,500.00	\$ 4,400.00	\$ 13,200.00	\$ 3,000.00	\$ 9,000.00
21	Storm Drain Manhole	EA	1	\$ 5,000.00	\$ 5,000.00	\$ 7,000.00	\$ 7,000.00	\$ 5,000.00	\$ 5,000.00
22	Connect to existing storm drain inlet	EA	1	\$ 1,600.00	\$ 1,600.00	\$ 985.00	\$ 985.00	\$ 1,000.00	\$ 1,000.00
23	Bleed-off Drains	LS	1	\$ 7,000.00	\$ 7,000.00	\$ 9,000.00	\$ 9,000.00	\$ 1,000.00	\$ 1,000.00
24	2" Irrigation Service and Meter	EA	1	\$ 3,600.00	\$ 3,600.00	\$ 6,400.00	\$ 6,400.00	\$ 5,000.00	\$ 5,000.00
25	Relocate Fire Hydrant	EA	2	\$ 4,000.00	\$ 8,000.00	\$ 5,700.00	\$ 11,400.00	\$ 8,000.00	\$ 12,000.00
26	Remediate shallow water or other utility service lines	EA	1	\$ 2,000.00	\$ 2,000.00	\$ 3,800.00	\$ 3,800.00	\$ 3,000.00	\$ 3,000.00
27	Relocate Water Service	EA	1	\$ 4,000.00	\$ 4,000.00	\$ 2,400.00	\$ 2,400.00	\$ 3,000.00	\$ 3,000.00
28	Adjust water valve cover to grade	EA	9	\$ 1,000.00	\$ 9,000.00	\$ 450.00	\$ 4,050.00	\$ 600.00	\$ 5,400.00
29	Adjust water meter box to grade	EA	2	\$ 600.00	\$ 1,200.00	\$ 1,700.00	\$ 3,400.00	\$ 600.00	\$ 1,200.00
30	Adjust telephone vault/box to grade	EA	2	\$ 1,000.00	\$ 2,000.00	\$ 1,100.00	\$ 2,200.00	\$ 600.00	\$ 1,200.00
31	Adjust electric vault/box to grade	EA	4	\$ 1,000.00	\$ 4,000.00	\$ 860.00	\$ 3,440.00	\$ 600.00	\$ 2,400.00
Paving									
32	AC Pavement (6" AC over 15" Class 2 Base)	SF	13,043	\$ 10.00	\$ 130,430.00	\$ 8.00	\$ 104,344.00	\$ 8.40	\$ 109,561.20
	Add/Deduct per 1" Class 2 Base	SF	0	\$ 0.30	Not In Total Bid	\$ 0.35	Not In Total Bid	\$ 0.20	Not In Total Bid
	Add/Deduct per 1" AC	SF	0	\$ 0.81	Not In Total Bid	\$ 0.70	Not In Total Bid	\$ 1.00	Not In Total Bid
33	Intersection Pavement (clay brick pavers)	SF	2,597	\$ 28.00	\$ 72,716.00	\$ 21.00	\$ 54,537.00	\$ 18.00	\$ 46,746.00
34	Decorative Crosswalk (clay brick pavers)	SF	1,684	\$ 28.00	\$ 47,152.00	\$ 23.00	\$ 38,732.00	\$ 18.00	\$ 30,312.00
35	4" Concrete Valley Gutter	LF	207	\$ 60.00	\$ 12,420.00	\$ 34.00	\$ 7,038.00	\$ 38.00	\$ 7,866.00
36	Asphalt Seal Coat	SF	29,287	\$ 0.15	\$ 4,394.55	\$ 0.17	\$ 4,980.49	\$ 0.30	\$ 8,789.10
37	6" Vertical Curb	LF	233	\$ 38.00	\$ 8,854.00	\$ 20.00	\$ 4,660.00	\$ 20.00	\$ 4,660.00
38	18" Curb & Gutter	LF	574	\$ 38.00	\$ 20,664.00	\$ 24.00	\$ 13,776.00	\$ 22.00	\$ 12,628.00
39	32" Curb & Gutter	LF	175	\$ 60.00	\$ 10,500.00	\$ 29.00	\$ 5,075.00	\$ 28.00	\$ 4,900.00
40	Decorative Sidewalk (clay brick pavers)	SF	6,781	\$ 10.00	\$ 67,810.00	\$ 15.00	\$ 101,715.00	\$ 18.00	\$ 122,058.00
41	Pedestrian ramps with ADA Detectable Pavers	EA	4	\$ 4,600.00	\$ 18,000.00	\$ 1,700.00	\$ 6,800.00	\$ 2,000.00	\$ 8,000.00
42	ADA Detectable Pavers at flush curbs	SF	331	\$ 10.00	\$ 3,310.00	\$ 14.00	\$ 4,634.00	\$ 28.00	\$ 9,296.00
43	6" Concrete Band	LF	793	\$ 21.00	\$ 16,653.00	\$ 25.00	\$ 19,825.00	\$ 23.00	\$ 18,239.00
44	12" Concrete Band	LF	217	\$ 20.00	\$ 4,340.00	\$ 36.00	\$ 7,812.00	\$ 23.00	\$ 4,991.00
45	PCC Sidewalk, 5x5 Score Pattern	SF	3,061	\$ 11.00	\$ 33,671.00	\$ 8.00	\$ 24,488.00	\$ 6.00	\$ 18,366.00
46	Sandblasting	LF	760	\$ 9.00	\$ 6,840.00	\$ 5.00	\$ 3,800.00	\$ 10.00	\$ 7,600.00
47	Wheel Stops	EA	3	\$ 50.00	\$ 150.00	\$ 57.00	\$ 171.00	\$ 40.00	\$ 120.00
Landscaping									
48	New Trees Planted	EA	13	\$ 500.00	\$ 6,500.00	\$ 260.00	\$ 3,250.00	\$ 330.00	\$ 4,290.00
49	Tree Wells	EA	10	\$ 150.00	\$ 1,500.00	\$ 1,386.00	\$ 13,860.00	\$ 330.00	\$ 3,300.00
50	Tree Grates	EA	9	\$ 700.00	\$ 6,300.00	\$ 1,700.00	\$ 15,300.00	\$ 2,200.00	\$ 19,800.00
51	Landscaped Shrubs & Groundcover	SF	1,203	\$ 19.00	\$ 22,857.00	\$ 7.00	\$ 8,421.00	\$ 12.50	\$ 15,037.50
52	Irrigation	SF	1,203	\$ 30.00	\$ 36,090.00	\$ 31.00	\$ 37,293.00	\$ 30.00	\$ 36,090.00
53	Irrigation - Point of Connection, backflow, wiring, etc.	EA	1	\$ 500.00	\$ 500.00	\$ 2,800.00	\$ 2,800.00	\$ 18,000.00	\$ 18,000.00
Lighting									
54	Install Street Lighting	EA	11	\$ 3,624.00	\$ 39,864.00	\$ 4,500.00	\$ 49,500.00	\$ 5,000.00	\$ 55,000.00
55	Furnish and Install Pullbox	EA	11	\$ 240.00	\$ 2,640.00	\$ 512.00	\$ 5,632.00	\$ 1,300.00	\$ 14,300.00
56	Furnish and Install Conduit & Wiring	LF	855	\$ 28.00	\$ 23,940.00	\$ 17.00	\$ 14,535.00	\$ 55.00	\$ 47,025.00
57	Furnish and Install Electrical Service	LS	1	\$ 4,700.00	\$ 4,700.00	\$ 1,610.51	\$ 1,610.51	\$ 5,000.00	\$ 5,000.00
Site Furnishings									
58	Relocate Existing Clock	EA	1	\$ 4,000.00	\$ 4,000.00	\$ 1,700.00	\$ 1,700.00	\$ 7,000.00	\$ 7,000.00
59	Boiard	EA	13	\$ 1,800.00	\$ 23,400.00	\$ 1,700.00	\$ 22,100.00	\$ 3,000.00	\$ 39,000.00
60	Bench (6" Wood slat)	EA	12	\$ 1,100.00	\$ 13,200.00	\$ 1,400.00	\$ 16,800.00	\$ 1,600.00	\$ 19,200.00
61	Iron Waste Receptacle	EA	5	\$ 1,100.00	\$ 5,500.00	\$ 1,400.00	\$ 7,000.00	\$ 900.00	\$ 4,500.00
62	Bike Rack	EA	4	\$ 300.00	\$ 1,200.00	\$ 350.00	\$ 1,400.00	\$ 600.00	\$ 2,400.00
63	Precast Concrete Wall	LS	1	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00
64	OPTIONAL: Metal Tree Guards	EA	9	\$ 1,500.00	\$ 13,500.00	\$ 450.00	\$ 4,050.00	\$ 800.00	\$ 5,400.00
TOTAL BID (All Items Nos. 1-64) =				\$ 998,026.35		\$ 1,010,010.00		\$ 1,035,420.00	



**COMMUNITY DEVELOPMENT AGENCY
STAFF REPORT**

TO: Honorable Chair and Agency Members
DATE : September 2, 2008
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Cas Ellena, Redevelopment & Economic Development Director
SUBJECT: Joint Public Hearing Between the City Council and the Community Development Agency ("CDA") to Consider Disposition and Development Agreement with Monticello Investors LLC for the Disposition and Development of CDA Property and certain Right-of-Way Property at Railroad Avenue Between Main and Abbey Streets

RECOMMENDATION: Staff recommends the CDA: 1) hold a joint public hearing with the City Council, receive testimony and following the public hearing; 2) approve Resolution No. 2008-40, approving and authorizing the execution of the Disposition and Development Agreement ("DDA") with Monticello Investor's LLC ("Developer").

BACKGROUND: The CDA purchased the property along the easterly side of Railroad Avenue between Main and Abbey Streets (Assessor's Parcel No. 003-224-01) (the "CDA Property") (see Map of Site attached) from the City in September, 2004 for a total acquisition price of \$120,000 based upon an appraisal provided by Mr. Lee Bartholomew, California Certified General Real Estate Appraiser (#AG004317), dated September 17, 2003. Based upon, and in conformance with, a subsequent appraisal by Mr. Bartholomew dated October 6, 2006 and updated as of June 10, 2008, the fair market value of the CDA Property is \$237,000.

In 2003, the City and the CDA began discussions with Main Street Village Partners ("MSVP") local developers for a comprehensive development of the "Main Street Village Block", the area bordered by Railroad Avenue on the west, East Abbey Street on the east, and East Main Street on the south. This Block was determined to have the greatest potential for in-fill development in downtown Winters.

In May 2005, the MSVP partnership dissolved and in November 2005, the CDA solicited proposals from adjacent property owners.

In 2006, the CDA began negotiations with the Developer for the disposition and development of the CDA Property for the Monticello Mixed-Use Project further described below (the "Project").

On March 4, 2008, the City approved Resolution No. 2008-06 approving a Notice of Intent

regarding the reconfiguration and partial vacation of East Abbey Street between Railroad Avenue and Elliot Street which would provide for a 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 (the "ROW Property") to allow additional building footprint on the CDA Property and the development of diagonal public parking along East Abbey. The CDA Property, together with the ROW Property, is referred to as the "Site". (See Abbey Street Reconfiguration Map attached).

On April 22, 2008, the Planning Commission approved the General Plan Consistency Review and authorized its submittal to the City Council on the proposed vacation. This Review determined the vacation to be in conformance with the General Plan.

On July 22, 2008, the Planning Commission approved a Categorical Exemption under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15, the proposed Site Plan and Design and the Conditional Use Permit for the Project. The CDA contracted with PMC, the consulting preparing the City's Form Based Code, to work with the Developer to ensure that the design was in conformance with the City's downtown form based code principles.

DISCUSSION: On September 2, 2008, the CDA and the City Council will be asked to consider the attached proposed Disposition and Development Agreement (DDA) with the Developer of the Project for the disposition and development of the Site.

The Developer proposes to develop the Site with an approximately forty-seven thousand two hundred seventy-two (47,272) square foot, four (4) story mixed-use building to include retail/commercial and office uses on the ground and second floors and residential uses on the third and fourth floors, together with approximately 7,352 square feet of terraces, 9,352 square feet of exterior walkway, and 11 on-site parking spaces (consisting of approximately 1,208 square feet total) (the "Project").

The intersection of Railroad Avenue and Main Street acts to "anchor" the eastern end of the traditional Winters' downtown area fronting Main Street from Railroad Avenue to the east to First Street to the west. As such, the Railroad Avenue/Main Street intersection is a major attribute in Winters. In addition to the Site, development of this intersection includes: at the southwest corner, an historic, two-story brick building housing the Buckhorn Restaurant, one of the major destination venues in Winters; at the southeast corner, is Rotary Park, the City's "downtown" park whose public space is an invaluable urban asset; and at the northwest corner, another two-story, historic building containing the Putah Creek Café (another key attraction for Winters). Parenthetically, the western end of the traditional downtown is anchored by City Hall on First Street and the Masonic Building on the northeast corner of First and Main Streets.

The CDA, recognizing the importance of the Railroad Avenue/Main Street intersection, has been actively working with local real property developers and builders for many years to implement a development plan which will complement the already existing quality development at the southwest and northwest corners. As described above, the current DDA is the culmination of years of City and CDA efforts to induce commercial development at this important intersection.

Developer and the CDA engaged in substantial negotiations to arrive at the most efficient use of public money to induce development of the Project. One factor which makes the Project unique is the fact that Developer intends to locate their upper-end retail establishment in the Project. This decision allows the Developer to demand a lower return on investment than would otherwise be required by a "merchant builder"; i.e., a developer who intended to develop the Site and then be able to sell it to a third party investor for a legitimate profit. Since Developer would, in essence, be an owner occupant, their return demands could be forecast over a longer term period; thereby, allowing for lower return rates in the early years. This factor, in turn, allowed the Developer to build at a higher per square foot cost and to accept a lower return. These factors together were instrumental in; in the first place, the CDA's decision to award the DDA to Developer; and, in the second place, allow the Developer to use higher quality materials than would otherwise be applicable.

The Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) ("CRL") provides in Section 33431 that any sale or lease of agency property may be made only after a public hearing of the agency after publication of notice as provided by law. Notice of a joint public hearing of the City Council and the CDA was published in the Winters Express on August 12, 2008 and August 20, 2008.

CRL also provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing with specific publication requirements and that the CDA shall make available for public inspection a copy of the proposed sale or lease and a report containing specified information and the financial aspects of the proposal. The CDA has prepared the report pursuant to Section 33433 (the "Report") describing the cost of the DDA to the CDA, the value of the property interest to be conveyed, the purchase price and other information required. The Report and the DDA were made available for public inspection and the noticing requirements were completed as specified by CRL.

Discussion of the DDA Deal Points

The DDA provides for the CDA and the City to provide the following to the Project.

1. The CDA will sell the CDA Property to the Developer for a cash downpayment and a loan to be evidenced by a promissory note and secured by a deed of trust. The CDA purchased the CDA Property from the City in September, 2004 for \$120,000. The CDA is selling this asset to Developer for \$237,000, which amount is the fair market value of the CDA Property subject to the following terms: i) downpayment to be \$53,000; ii) loan of \$184,000 to bear interest at four percent per year, compounded annually; iii) Developer to make interest only payments for 14 years; iv) loan to be all due and payable on the 15th anniversary of the promissory note.
2. The City will defer its development fees for fifteen years in the form of a loan to Developer, which loan shall be evidenced by a promissory note and secured by a deed of trust, subject to the following terms: i) loan to be equal to the amount of actual fees currently estimated at \$588,641.22 based on the estimated square

footage of the Project. ii) loan to bear interest at four percent per year, compounded annually; iii) Developer to make interest only payments for 14 years; iv) loan to be all due and payable on the 15th anniversary of the promissory note.

3. The City and CDA have the option to negotiate with the Developer to lease available space in the Project during the term that the loans identified above are outstanding.
4. In connection with the development of the Project on the Site by the Developer, by its consent and agreement to the DDA, the City will agree to complete the abandonment of the portion of Abbey Street described above.
5. In connection with the development of the Project on the Site by the Developer, the CDA and or City coordinate the construction of the street improvements to be constructed along the Abbey Street adjacent to the Site as detailed in the downtown streetscape improvement projects, Phase I and II.

Discussion of CDA Risk

As has been discussed in the past, the Project is a real property transaction which involves private party money and depends upon private individuals' interest in leasing and/or purchasing space in the Project. All real property transactions involve some amount of risk. The risk factors may be broken down as follows:

Risk During Construction: The construction process involves some amount of risk both relating to construction financing and to actual development of the Project. This risk is mitigated by the following factors: i) the DDA requires Developer to secure construction financing, which when added to its equity, will be sufficient to complete the Project; ii) the CDA Property will not be conveyed to Developer and abandonment of the ROW property will not be completed until Developer has obtained all approvals and is ready to commence construction of the Project; and iii) the DDA provides other protections to the CDA in the event the Project, for whatever reason, is not completed in a timely fashion. Relating to the last mitigation, note that the DDA includes a schedule of performance and scope of development which contractually binds Developer to complete the Project within an agreed to time (the schedule of performance) and to an agreed floor plan, set of elevations, and quality of material (the scope of development). Furthermore, Section 510 of the DDA allows the CDA to repurchase the CDA Property after commencement of construction if Developer has not complied with provisions of the DDA.

Risk During Term of CDA and City Loans: It is possible that the Project will not fill up with sufficient occupants to repay the Developer's construction loan and, subsequent to stabilization, its permanent financing. This risk is mitigated by the following factors: i) the CDA secured a market analysis which has been reviewed by CDA Board members which provides that there is a market for the types of uses projected for the Project and that the Project is situated to capture this market; ii) at least one third of the Project will be "pre-leased" or "pre-sold" prior to conveyance of the CDA Property to Developer and commencement of construction; therefore, Developer will only have to market two-thirds of the Project; iii) as discussed above, the Project's location is a primary intersection in

Winters; and iv) the Project is a multi-use structure, thereby providing flexibility to the Developer in its sales/lease program.

Discussion of CDA Reward

The CDA and the community could achieve dramatic success with the completion the Project. Such success would be as follows: i) land which is currently off the tax rolls would be returned to the tax rolls with a dramatic increase in assessed valuation, which increase would be reflected in increased tax increments flowing to the CDA for reinvestment elsewhere in the community; ii) the Project will spin off sales taxes which will go to the General Fund of the City; iii) the Project will further strengthen the competitive advantage of the Railroad Avenue/Main Street intersection in the Sacramento regional market, thereby increasing sales taxes and, ultimately, property taxes being generated on the northwest and southwest corners of the intersection; iv) the Project will help tie the commercial uses along the north side of Main Street east of Railroad Avenue into the greater Winters downtown development; and vi) the successful development of the Project will act as an impetus to other development along Main Street.

ALTERNATIVE ACTIONS: Staff recommends approval of the DDA however, other actions the CDA may consider include: 1) modify and approve the DDA; or 2) not approve the DDA

ATTACHMENTS:

- Map of Site
- Abbey Street Reconfiguration Map
- Resolution No. 2008-40
- Disposition and Development Agreement by and between the CDA and Monticello Investors
- 33433 Report
- Planning Commission General Plan Consistency Review

AGENCY RESOLUTION NO. 2008-40

RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS APPROVING AND AUTHORIZING THE EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS AND MONTICELLO INVESTORS, LLC

WHEREAS, the Community Development Agency of the City of Winters (the "Agency") is carrying out the City of Winters Community Development Project Area Plan (the "Development Plan") for the Winters Development Project Area (the "Development Project"); and

WHEREAS, in conformance with Health and Safety Code Section 33490, the Agency adopted a five-year Implementation Plan (the "Implementation Plan") for the Development Project, which Implementation Plan describes the Agency's goal, objectives and proposed programs and expenditures for the elimination of blight, including without limitation the implementation of an effective economic development strategy to attract and retain employers to the Development Project and pursue specific opportunities to attract development to the Development Project Area; and

WHEREAS, the Agency has received a proposed Disposition and Development Agreement (the "DDA") from Monticello Investors, LLC, a California limited liability company (the "Developer"), which provides for the disposition and development of certain real property (the "Site") located at the northeast corner of Main and Railroad Streets within the City of Winters and also within the boundaries covered by the Development Project and is an Economic Development Project as provided for in the projects and programs list in the Development Plan, as amended, for said Development Project; and

WHEREAS, the Site is comprised of (a) certain real property, totaling approximately 18,304 square feet (a portion of Assessor's Parcel No. 003-221-01) which is currently owned by the Agency (the "Agency Property"), and (2) a portion of the Abbey Street right-of-way, consisting of approximately 2,700 square feet currently owned by the City of Winters (the "City"), located adjacent to the Agency Property (the "ROW Property"); and

WHEREAS, the proposed DDA provides that the Developer will develop the Site with an approximately forty-seven thousand two hundred seventy-two (47,272) square foot, four (4) story mixed-use building to include retail/commercial and office uses on the ground and second floors and residential uses on the third and fourth floors, together with approximately 7,352 square feet of terraces, 9,352 square feet of exterior walkway, and 11 on-site parking spaces (consisting of approximately 1,208 square feet total) (the "Project"); and

WHEREAS, pursuant to and under the terms and conditions set forth in the DDA, the Agency is responsible for completion of the Lot Line Adjustment to create a legal parcel to constitute the Agency Property to be conveyed to the Developer; and

WHEREAS, in connection with the development of the Project on the Site by the Developer, by its consent and agreement to the DDA, the City has agreed to complete the abandonment of that portion of the Abbey Street right-of-way to be included as part of the Site and that fee title to the ROW Property shall be conveyed to the Developer to be included as part of the Site under the DDA; and

WHEREAS, in connection with the development of the Project on the Site by the Developer, the Agency and/or the City will construct the street improvements to be constructed along the Abby Street right-of-way, adjacent to the Site, and the completion of the downtown streetscape improvements provided for under the Downtown Master Plan (the "Downtown Streetscape Improvements"); and

WHEREAS, pursuant to and under the terms and conditions set forth in the DDA, in connection with the acquisition of the Agency Property by the Developer, the Agency is providing a loan to the Developer for a portion of the purchase price of the Agency Property in the amount of One Hundred Eighty-four Thousand Dollars (\$184,000.00) (the "Agency Loan"), which shall be funded by the Agency and repaid by the Developer in accordance with the terms and provisions set forth in the DDA; and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the Community Redevelopment Law further provides in Section 33433 that before any property acquired, in whole or in part, with tax increment monies, is sold or leased for development pursuant to a redevelopment plan, such sale or lease shall first be approved by the legislative body after a public hearing, that notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two (2) successive weeks prior to the hearing, and that the Agency shall make available for public inspection a copy of the proposed sale or lease and a report containing specified information and the financial aspects of the proposal; and

WHEREAS, notice of a joint public hearing of the City Council of the City of Winters (the "City Council") and the Agency was published in the Winters Express on August 13, 2008 and August 20, 2008; and

WHEREAS, the Agency prepared a report pursuant to Section 33433 of the Health and Safety Code (the "Report"), describing the cost of the DDA to the Agency, the value of the property interest to be conveyed, the purchase price and other information required by said

Section 33433, and the Report, together with the DDA, was made available to the public for inspection; and

WHEREAS, the City Council and the Agency held a joint public hearing on September 2, 2008, in the City Council Chambers to consider and act on the disposition and development of the Site pursuant to the DDA; and

WHEREAS, the Agency staff has previously determined that approval of the proposed DDA and development of the Project on the Site is categorically exempt under Section 15332 of the Guidelines for the California Environmental Quality Act; and

WHEREAS, pursuant to Section 33445 of the Community Redevelopment Law, an agency is authorized, with the consent of the legislative body to pay all or part of the value for and the cost of installation and construction of any building, facility, structure or other improvement which is publicly owned either within or without a project area if the legislative body determines that the buildings, facilities, structures or other improvements are of benefit to the project area or the immediate area in which the project is located, that no other reasonable means of financing the buildings, facilities, structures or other improvements are available to the community, and that such buildings, facilities, structures or other improvements will assist in the elimination of blighting conditions inside the project area and are consistent with the implementation plan adopted pursuant to Section 33490 of the Community Redevelopment Law; and

NOW, THEREFORE, THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Agency hereby finds and determines that the sale of the Agency Property to the Developer and development of the Project on the Site pursuant to the DDA will assist in the elimination of blight through the development of a modern, high-quality real estate mixed-use development, consisting of residential and commercial/retail uses and is consistent with the Five-Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490. This finding is based upon the facts and information contained in the Report prepared by the Agency pursuant to Health and Safety Code Section 33433.

Section 2. The Agency hereby finds and determines that the consideration for the Agency Property to be paid by the Developer is not less than the fair market value at its highest and best use in accordance with the Development Plan. This finding is based upon the facts and information contained in the Report prepared by the Agency pursuant to Health and Safety Code Sections 33433.

Section 3. The Agency hereby reaffirms its prior findings and determinations made at the time of adoption of the Downtown Master Plan, and further finds and determines that the Downtown Streetscape Improvements to be constructed by the Agency and/or the City in conjunction with the development of the Project on the Site are provided for and will be constructed pursuant to the Downtown Master Plan, are of primary benefit to the Development

Project or the immediate area in which the Project is located, that no other reasonable means of financing the Downtown Streetscape Improvements are available to the community, and that the Downtown Streetscape Improvements will assist in the elimination of blighting conditions within the Development Project Area and are consistent with the Implementation Plan adopted by the Agency pursuant to Section 33490 of the Community Redevelopment Law.

Section 4. The Agency hereby finds and determines that the approval of the proposed DDA and the development of the Project on the Site pursuant to the DDA is categorically exempt under Section 15332 of the Guidelines of the California Environmental Quality Act.

Section 5. The Agency hereby approves the DDA in substantially the form on file with the Secretary of the Agency. The Agency further approves and authorizes the sale of the Agency Property to the Developer, the funding of the Agency Loan to the Developer, the Agency's remediation of the Arsenic Contamination on the Agency Property, and the coordination of the construction by the Agency and/or City of the Downtown Streetscape Improvements with the construction of the Project on the Site, all as provided for under the DDA.

Section 6. The Executive Director and Secretary of the Agency are hereby authorized and directed to execute the DDA on behalf of the Agency, subject to any minor conforming, technical or clarifying changes approved by Agency Counsel. The Executive Director and Secretary are hereby further authorized and directed to undertake such further actions and execute such documents as are necessary to carry out and complete the obligations of Agency under the DDA on behalf of the Agency, including without limitation the execution of deeds and all other actions and documents necessary for the sale of the Agency Property, the completion of the Lot Line Adjustment, the remediation of the Arsenic Contamination on the Agency Property and the coordination of construction of the Downtown Street Improvements in accordance with the DDA.

PASSED AND ADOPTED by the Community Development Agency of the City of Winters this ____ day of September, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Chairman Woody Fridae

Nanci Mills, Agency Secretary



**COMMUNITY DEVELOPMENT AGENCY
STAFF REPORT**

TO: Honorable Chairman and Board of Directors
DATE : September 2, 2008
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: Cas Ellena, Redevelopment & Economic Development Director *CE*
SUBJECT: Public Hearing to Consider Adopting the Winters Community
Development Project Implementation Plan for Fiscal Years 2008/2009
through 2012/2013

RECOMMENDATION: Staff recommends that the Community Development Agency ("CDA") (1) conduct a public hearing to review and consider testimony concerning the proposed adoption of the Winters Community Development Agency Project Area Implementation Plan for fiscal years 2008/2009 through 2012/2013 ("Implementation Plan"); and (2) adopt the CDA Implementation Plan.

BACKGROUND: Pursuant to the California Community Redevelopment Law ("CRL"), located at California Health and Safety Code Section 33000 *et seq.*, the CDA is responsible for implementing the redevelopment plan adopted by the Winters City Council in 1992 through Ordinance No. 92-08 ("Redevelopment Plan") for the Winters Community Development Project Area ("Project Area"). The Project Area includes approximately 669 acres, or 41 percent of the total land area of the City of Winters.

Commencing in 1994, each community development agency was required to adopt a five-year Implementation Plan. Health and Safety Code section 33490 requires that the Implementation Plan be updated every five years. The last Implementation Plan was adopted in fiscal year 2003/2004.

Each updated five year Implementation Plan must contain specific goals and objectives of the community development agency for the project area, and include specific programs, potential projects for the project area, and the estimated expenditures proposed to be made during the five year period for both housing and non-housing programs. In addition, the Implementation Plan must demonstrate how the goals and objectives, programs, and expenditures will help to eliminate blight within the project area.

The proposed CDA Implementation Plan for fiscal years 2008/2009 through 2012/2013 is included as Attachment "A" to this report. It contains updates of the projects and programs the CDA has undertaken during the prior five-year Implementation Plan reporting cycle ending on June 30, 2008. It also contains the specific goals and

objectives of the CDA, and describes housing and non-housing programs and projects that the CDA plans to undertake over the next five years. In addition, the Implementation Plan contains information regarding the CDA's affordable housing program, and describes how the CDA will comply with housing production, replacement housing, and income targeting requirements under the CRL.

The purpose of the Implementation Plan is not to formally approve any specific program, expenditure or project, but rather to provide guidance and a vision for the CDA's anticipated activities within the next five years. The Implementation Plan also provides preliminary five-year estimates of expenditures.

FISCAL IMPACT: Funding for the projects and programs identified in the Implementation Plan will come from redevelopment revenues, including tax increment funds, and other non-CDA funding sources.

ATTACHMENTS: Winters Community Development Project Implementation Plan for Fiscal Years 2008/2009 through 2012/2013.

RESOLUTION NO. 38

**RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE
CITY OF WINTERS ADOPTING THE WINTERS COMMUNITY
DEVELOPMENT PROJECT IMPLEMENTATION PLAN FOR FISCAL YEARS
2008/2009 THROUGH 2012/2013**

WHEREAS, California Community Redevelopment Law, located at Health and Safety Code Section 33000 *et seq.*, requires each community development agency administering a redevelopment plan to prepare and adopt an implementation plan every five years; and

WHEREAS, the purpose of an implementation plan is to guide the community development agency in implementing its redevelopment programs in order to help eliminate blight and meet the affordable housing needs of the community; and

WHEREAS, the proposed Winters Community Development Project Implementation Plan ("Implementation Plan") sets forth specific Community Development Agency goals and objectives by outlining specific projects and expenditures for the coming five years, and explaining how the stated goals, objectives, projects and expenditures will help to eliminate blight and meet the affordable housing needs of the community; and

WHEREAS, the City of Winters Community Development Agency adopted its current implementation plan five years ago and desires to adopt a new and updated implementation plan; and

WHEREAS, Community Development Agency staff have prepared a proposed Implementation Plan for the Winters Redevelopment Project Area for fiscal years 2008/2009 through 2012/2013; and

WHEREAS, the Implementation Plan outlines the proposed programs of revitalization, economic development, and affordable housing activities of the Winters Community Development Agency for the next five years; and

WHEREAS, in accordance with Health and Safety Code Section 33490(b), the adoption of an implementation plan does not constitute a project under the California Environmental Quality Act, and therefore, no environmental analysis was required or prepared for the Implementation Plan; and

WHEREAS, following publication of notice as required by Health and Safety Code Section 33490(a), the Community Development Agency held a public hearing on September 2, 2008 to receive public comment on the proposed Implementation Plan.

NOW, THEREFORE, BE IT RESOLVED by the City of Winters Community Development Agency that the Winters Community Development Project Implementation Plan, a copy of which is attached here as Exhibit A and by this reference incorporated herein, is hereby accepted and adopted as the Implementation Plan for the Winters Community Development Agency for fiscal years 2008/2009 through 2012/2013.

PASSED AND ADOPTED this 2nd day of September, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Nanci G. Mills, CDA Secretary

John W. Donlevy, CDA Executive Director

APPROVED AS TO FORM:

John Wallace, Agency Counsel

1137389v1.

Winters Community Development Project Implementation Plan



**WINTERS COMMUNITY DEVELOPMENT AGENCY
2009 – 2013**

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2009 – 2013 Five Year Implementation Plan Executive Summary

The project area of the Winters Community Development Project Area Plan includes approximately 669 acres, or 41 percent of the total land area of the City of Winters. The Winters City Council adopted the Community Development Project Area Plan in 1992, and the Winters Community Development Agency (CDA) oversees the Plan.

The CDA has adopted the following mission statement as an overall framework for its redevelopment activities:

"To maximize the abundant potential of Winters's land, assets and people, with positive physical change that creates vibrant retail commerce, diverse and highly desirable residential neighborhoods and quality employment opportunities."

CDA Goals

The State Community Redevelopment Law enables a local government to form a Community Development (Redevelopment) CDA when it determines that physical, social or economic problems, identified as "blight" or "blighting influences" in the State Community Development Law, exist within a community. Blight and blighting influences encompass a broad spectrum of definitions in the State Law, ranging from inadequate public improvements, to economic conditions that inhibit sound use or development of property, to physically deteriorated and dilapidated structures and facilities.

The Community Development Agency (CDA) of the City of Winters proposes to use the authority provided to it by this Plan to eliminate or reduce blight and blighting influences presently existing with the City and the Project Area, as set forth in this Plan.

This action is necessary because within the Project Area there presently exists an inadequate circulation system; mixed and shifting land uses; inappropriate and fragmented parcelization; physical deterioration of property; and inadequate public improvements, including needed flood control and storm drainage facilities, recreation improvements, traffic signalization, street reconstruction, curb, gutter and sidewalk construction, parking facilities, street lighting, and municipal services facilities – all of which inhibit proper and desirable development of the Project Area.

The overall goal of the CDA is to maximize the potential benefits of the CDA to the community, while preserving the historical ambiance and quality of life in Winters.

CDA Objectives

In order to achieve these goals, the CDA has identified objectives that are designed to alleviate blighting conditions in the project area:

- To provide a stable, diversified and stronger economic base for the Project Area and Community.
- To provide safer, more efficient, and economical movement of persons and goods within the Project Area and community.
- To conserve and improve existing public facilities and to provide such new facilities as needed for the improvement of the Project Area.
- To enhance the physical environment of the Project Area and to emphasize its favorable environmental characteristics.
- To maximize opportunities for the revitalization, expansion and development of commercial and industrial uses within the Project Area.

- To improve and increase the community's supply of affordable housing in a manner consistent with the Housing Element of the General Plan and the policies of the Community Redevelopment Law.
- To accomplish these goals with minimum displacement of any property owner, resident or business person who may wish to remain within the Project Area.

CDA Programs

To achieve these goals and objectives, the CDA will continue to implement current redevelopment projects and activities in the project area during the five-year period of the 2009-2013 Implementation Plan. The programs and projects fall under the following categories:

- Public infrastructure;
- Public facilities;
- Economic development;
- Project area planning; and
- Property disposition and development.

CDA Accomplishments 2003-2008 (previous 5-year Plan)

The overall goal of the CDA is to maximize the potential benefits of the CDA to the community, while preserving the historical ambiance and quality of life in Winters. Since the adoption of the 2003 - 2008 Implementation Plan, the CDA has undertaken and participated in a number of projects and activities toward meeting the goals and objectives identified in the 2003-2008 Implementation Plan. Some of the notable accomplishments as they relate to the CDA Objectives identified in the 2003-2008 Implementation Plan include (a complete list of projects is provided in Section II.C):

- Attraction of Palms Playhouse and Lease Assistance Program;
- Preparation of Downtown Master Plan and beginning of implementation. The CDA authorized \$1.35 Million toward Phase I of the Downtown Pedestrian Improvement Project anticipated to be completed fall of 2008. The CDA also authorized \$185k toward Phase II of the Downtown Pedestrian Improvement Project anticipated to commence immediately following the completion of Phase I and completed during the fall of 2009;
- In 2006/07, the CDA expended \$725,000 toward the development of a City/School District swimming pool;
- In 2006/07, the CDA expended over \$600,000 toward the development of the Rotary Park parking lot and restrooms, the Community Center shade structure, downtown bike racks, and the Downtown Façade program;
- In September of 2004, the CDA approved the Downtown Façade Improvement Program and continues to provide funds for this program each year;
- In February of 2007, the CDA purchased 23 Main Street in downtown Winters which will provide a Main Street to alleyway walk-through to improve pedestrian path of travel in Winters;
- In October of 2004, the CDA purchased property at East Baker Street for the development of the Winters II Affordable Housing project. The CDA also provided over \$1.5m in grants and loans for this project which was leased up in early 2008;
- In 2004/05 and 2005/06, the CDA provided almost \$500k toward the successful rehabilitation of the 1906 dilapidated and abandoned Southern Pacific Railroad trestle bridge which is now in use for pedestrian and cyclist transit and experiencing Putah Creek;
- Other projects funded by the CDA over the life of the 2003-2008 Plan included: \$250k toward the Rominger Softball Field; almost \$350k toward the rehabilitation of the Winters Parent Nursery School; downtown streetlights; water tower logo; Little League lights; and holiday lights;
- In September 2004, the CDA purchased a 18,949 square foot property on Railroad Avenue between Main and Abbey Streets for future in-fill development of downtown Winters. The CDA is currently negotiating a Disposition and Development Agreement with Monticello Investors for the

- development of a 47,000 square foot mixed use development including commercial and residential uses;
- The CDA provided almost \$150,000 in grants and loans toward the Senior Rehabilitation Program and the First Time Home Buyer Program.

Estimated Cost of the Five Year Non-Housing Program

Over the next five years, the CDA plans to implement the following redevelopment projects and programs. The list below describes the projects proposed which would actualize the CDA's proposed goals and objectives. The CDA's estimated cost share of the five-year program of non-housing activities is \$11,328,900 for the period of FY 2009 to FY 2013. The CDA anticipates that sufficient funds (through the issuance of tax increment bonds and the use of non-CDA funding sources) will be available to accomplish the proposed five-year program of non-housing activities.

- Public Safety Building design and construction. This will include the development of a joint use facility for the Police and Fire Departments.
- Water and Sewer improvements to include major upgrades to mains, pumping stations and telemetry.
- City wide traffic circulation and safety improvements, including traffic lights and calming features.
- Completion of the downtown design and zoning code.
- The construction of a new joint use library to be co-located and operated at Winters High School.
- Downtown Signage Program
- Construction of Water Well #7 at the corner of West Main Street and Grant Avenue
- Revitalization of the Downtown
- Rehabilitation of existing public facilities including the Community Center
- Various Street and alleyway improvements including the Downtown Pedestrian Improvement Project
- Park facility improvements
- Development and Implementation of Economic Development strategy and programs including branding and marketing programs
- Property acquisition and site development
- Rehabilitation of possible downtown sites
- Feasibility study and rehabilitation assistance for downtown historic structures
- Downtown Master Plan implementation
- Incentive programs for new business and new job development
- Continuation of the Façade Improvement Program

Below is a table showing a financial summary of net non-housing funds available for programs during the Five Year Implementation Plan period. Additionally, remaining funds from the March 2004, CDA \$7.8 million Tax Allocation Bond issue and the June, 2007 \$11 million issue will go toward the construction of the Public Safety Facility, sewer expansion and other capital and housing projects.

**Table ES-1
Projected Tax Increment Funds Available for Projects**

Fiscal Year	Projected Non-Housing Tax Increment	Projected Admin	Projected Pass Throughs	Projected Debt Service	Net Available for Projects
2008-2009	\$ 1,654,956.00	\$ 351,055.00	\$ 356,666.78	\$ 785,723.50	\$ 161,510.72
2009-2010	1,737,703.80	359,831.38	374,469.97	941,986.00	\$ 61,416.45
2010-2011	1,824,588.99	368,827.16	393,163.32	939,338.50	\$ 123,260.01
2011-2012	2,043,818.44	378,047.84	606,431.66	936,058.50	\$ 123,280.44
2012-2013	2,146,009.36	387,499.03	636,723.09	936,838.50	\$ 184,948.73
Total	\$9,407,076.59	\$1,845,260.41	\$2,367,454.83	\$4,539,945.00	\$ 654,416.35

Statutory Affordable Housing Requirements

The major statutory affordable housing requirements imposed on redevelopment agencies by the California Redevelopment Law (CRL) may be categorized generally as:

- **Housing Production Requirement** – Specified minimum percentages of new or rehabilitated housing units in a project area are to be available at a specified affordable housing cost. This is sometimes referred to as an "Inclusionary" requirement.
- **Replacement Housing Requirement** – Agencies must replace housing units removed from the housing stock as a result of redevelopment activities.
- **Housing Fund Requirement** – Redevelopment agencies are required to expend specified percentages of tax increment revenue for the provision of affordable housing.

The Winters Community Development Agency has historically met its legal obligations under the CRL and Housing Element Law. The housing production and replacement housing numbers used in this report represent the best available information to date.

Housing Production Requirement

From the inception of the project area in July 1992 and up until July 2008, the CDA has met the CRL housing production requirement that 15 percent of the housing units newly developed or substantially rehabilitated in the project area must be affordable to very low, low and moderate income households, of which six percent of units developed or rehabilitated must be affordable to very low income households earning 50 percent of the median income or less. The CDA intends to meet its affordable housing production requirements in the next ten years and throughout the life of the project to 2033.

- Historically, since the inception of the project area in 1992, the CDA estimates that 473 dwelling units have been produced in the project area: 425 new units and 48 substantially rehabilitated units. Of these, 190 are affordable to very low, low and moderate income households. These 473 units "produced" generated an inclusionary housing obligation of 73 units, which was far exceeded through the provision of 190 affordable units, representing forty percent of total production.
- Between 2009 and 2013 the CDA projects that a total of 97 dwelling units will be constructed in the project area. Of these, 15 will be affordable to very low, low and moderate-income households.
- From 2009 until the end of the Project (2033), the CDA estimates that 392 new or substantially rehabilitated dwelling units will be developed within the project area. Of these, 60 will be affordable to very low, low and moderate-income households.

Replacement Housing Requirement

Historical

- To date, the CDA's activities have not resulted in the loss of any housing units from the housing stock. As a result, the CDA has yet to incur any replacement housing obligations.

Projected

- The CDA does not anticipate removing any housing units from the housing stock during the term of the Implementation Plan (2009 – 2013).

Housing Fund Requirement

Since 1992, the CDA has committed at least 20 percent of its tax increment revenues, which are deposited into the housing set-aside fund (housing fund) to support the production of very low, low and moderate-income housing and will continue to do so in the future.

- The CDA projects depositing tax increment bond proceeds in the housing fund, between 2009 and 2013 (Fiscal Years 2008/2009 through 2012/2013), meeting its 20 percent obligation. The CDA anticipates expending all of these funds on housing activities, leaving the housing fund with a zero balance at the end of Fiscal Year 2012/2013.

Annual Goals

Over the next ten years, the Community Development CDA will continue to dedicate its housing activities to assist in the achievement of the City's goals, policies and programs described in the City's *Draft 2008 Housing Element Update*.

During the five-year period covered by this Implementation Plan, it is possible that the CDA will undertake some but not all of the projects listed. All costs and time frames listed for the programs and projects are estimates only and may differ from the actual costs and time frames. Specific projects may also be modified or added depending on actual circumstances, including but not limited to changing needs of the CDA, actual costs of the projects and the availability of funding. The Implementation Plan will not be further amended as the result of any such addition or modification, so long as the projects are: 1) permitted by the Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.); 2) consistent with the Redevelopment Plan for the Winters Community Development Project Area; and 3) consistent with the goals and objectives set forth in the Implementation Plan.

I. INTRODUCTION

The California Community Redevelopment Law (CRL) requires each Community Development Agency administering a redevelopment plan to prepare and adopt a five-year implementation plan. The principal goal of the Implementation Plan is to guide an agency in implementing its redevelopment programs to help eliminate blighting influences. In addition, the affordable housing component of the Implementation Plan provides a mechanism for a Community Development Agency to monitor its progress in meeting both its affordable housing obligations under the CRL and the affordable housing needs of the community. In effect, the Implementation Plan is a guide, incorporating the goals, objectives and potential programs of an agency for the next five years, while providing flexibility so the agency may adjust to changing circumstances and new opportunities.

This document constitutes the Implementation Plan for the Winters Redevelopment Project Area. This Implementation Plan outlines the proposed program of revitalization, economic development, and affordable housing activities of the Winters Community Development Agency for the required five-year planning period that includes FY 2008/09 through FY 2012/13. In addition, information for later years is also provided where it is available or required.

A. ORGANIZATION

Generally, the Implementation Plan must contain the following information:

- Specific goals and objectives for the next five years for both the housing and non-housing activities.
- Specific programs and expenditures for the next five years for both housing and non-housing activities.
- An explanation of how the goals, objectives, programs and expenditures will assist in the elimination of blight and in meeting affordable housing obligations.
- Other information related to the provision of affordable housing.

These Implementation Plan requirements cover two broad categories of redevelopment activities. Consequently, this Implementation Plan is organized into two parts. Chapter II sets forth the requirements for non-housing activities and related expenditures. Chapter III addresses affordable housing activities and expenditures and charts agency progress in meeting its affordable housing obligations. Chapter III also includes the Affordable Housing Production Plan (also known as the AB 315 Plan).

B. INTERPRETATION

This Implementation Plan is intended to provide general guidance for the implementation of the agency's programs and activities. It is expected that particular constraints and opportunities, not fully predictable at this time, will arise in the course of undertaking the programs and activities described in this Implementation Plan over the next five years. Therefore, the CDA intends to use and interpret this Implementation Plan as a flexible guide. The CDA acknowledges that specific programs and activities as actually implemented over the next five years may vary in their precise timing, location, cost, expenditure, scope and content from that set forth in this document.

II. NON-HOUSING IMPLEMENTATION PLAN

A. DESCRIPTION OF REDEVELOPMENT PROJECT AREA

The redevelopment project area includes 669 acres, or 41.6 percent of the total land area of the City of Winters. Generally, the project area includes most of the City south of Grant Avenue and portions of the City north of Grant. (See Table II-1 for a summary of the project area and Figure I for a map of the project area.)

The Winters City Council adopted the project area in 1992 and established the Community Development Agency to oversee and have jurisdiction over the Redevelopment Project. The Winters City Council established the Redevelopment Plan for the project area through Ordinance No. 92-08.

On January 15, 2008, the Winters City Council passed and adopted Ordinance No. 2008-01 which did the following: 1) As allowed under SB 211, the Ordinance eliminated the existing time limit on incurring debt; 2) As allowed under SB 1045, the Ordinance amended the time limit on the effectiveness of the Redevelopment Plan, extending the effectiveness of the Redevelopment Plan to July 19, 2033; and 3) as allowed under SB 1045, the Ordinance amended the time limit which the CDA may pay indebtedness or receive property taxes, extending the date to July 20, 2043.

**Table II-1
Summary Description**

Acres	669
Adopted	July 20, 1992
Base Assessed Value	\$61,667,954
Time Limits under AB 1290	
Incurring Debt ¹	Eliminated as allowed under SB 211
Project Activities	July 19, 2033 (includes SB 1045 amendment)
Tax Increment Receipt	July 19, 2043 (includes SB 1045 amendment)
Time Limit for Use of Eminent Domain	
Eminent Domain Expiration	July 20, 2004
Financial Capacity (As of 7/01/08)	
Tax Increment Cap	\$121,000,000
Bonded Indebtedness Cap	\$25,000,000
Tax Increment Received FY 2008	\$1,746,952
Bonded Indebtedness Outstanding	\$18,060,000

Source: Winters Community Development Agency, 2008.

B. PROJECT AREA GOALS AND OBJECTIVES

1. Goals

The Implementation Plan provisions of the CRL require the CDA to establish goals and objectives for the project area for the five-year planning period.

The CDA has adopted the following mission statement as an overall framework for its redevelopment activities:

"To maximize the abundant potential of Winters' land, assets and people, with positive physical change that creates vibrant retail commerce, diverse and highly desirable residential neighborhoods and quality employment opportunities."

¹ Ten-year extension available if necessary to eliminate remaining blight.

This mission statement provides the basis for the following set of redevelopment goals:

- Alleviate and prevent the spread of blight and deterioration through redevelopment, rehabilitation and development.
- Construct needed capital improvements and facilities to benefit all segments of the project area.
- Attract additional retail and industrial development to serve the Winters community and the greater region.
- Support development of new housing and rehabilitation of existing housing for all income levels.
- Provide the necessary assistance to increase local employment opportunities, primarily through the development of vacant or underutilized land

2. General Objectives

To achieve these goals the CDA identified specific objectives designed to alleviate the blighting conditions in the project area that constrain development. These objectives include:

- Construct needed public facilities and improvements, including civic improvements for public safety, libraries, and the general community.
- Upgrade, expand, and rebuild non-existent and/or aging infrastructure systems to support new development, including improvements to storm water collection and drainage systems, street lights, pedestrian circulation improvements, passive and active open space, and similar public improvements.
- Provide mechanisms to upgrade existing private residential and commercial buildings to ensure their preservation and enhancement and to increase their economic life and value. Use redevelopment funds as leverage for grants such as Community Development Block Grant (CDBG) Housing Rehabilitation and Business Loan Programs.
- Pursue specific opportunities to attract development to the project area through market analysis, specific plans, and, marketing efforts.
- Implement an effective economic development strategy designed to attract and retain employers to the project area.
- Improve the traffic circulation system, which has constrained development and divided neighborhoods.

3. Redevelopment Activities

The CDA identified a number of programs and projects to achieve the goals and objectives of the Redevelopment Plan. The CDA will continue to implement these programs and projects during the five-year period of the 2009-2013 Implementation Plan. A number of these programs continue to be dependent upon the response of the private sector to CDA initiatives. Other program elements are dependent upon funding sources not under CDA control and other factors. Programs identified include the following:

- Public Infrastructure: Improve, construct and reconstruct major public systems, such as streets, roads, water, and wastewater and storm drainage systems.
- Public Facilities: Rehabilitate, develop and improve parks, recreational facilities and public buildings and facilities.
- Economic Development: Design and implement projects, activities, and programs to strengthen existing industrial and commercial enterprises and retailers, and attract new businesses which will provide quality jobs.
- Property Disposition and Development: Improve and arrange for development of property by private sector developers that will promote and support the City's redevelopment efforts.
- Project Area Planning: Implement planning projects that guide land use, transportation, public facilities, and recreation development. Maintain the City's balance between commercial, residential and industrial developments with thoughtful planning.

The program activities are described in Table II-2. Table II-3 correlates these project activities to the non-housing redevelopment goals listed above.

**Table II-2
Non-Housing Program Activities**

Program Activities	Summary Descriptions	Estimated Costs
Public Infrastructure		
Various Water Improvements	Install new water mains and complete other improvements at locations throughout the project area; see specific locations and detailed descriptions in Appendix A, Table 1-A.	\$350,000 - \$500,000
Various Wastewater Improvements	Install new sewer mains at locations throughout the project area; see specific locations and detailed descriptions in Appendix A, Table 2-A.	
Various Road and Sidewalk Improvements	Reconstruct failed streets (sections of McArthur Avenue and Mermod Place, and other failed streets in project area), rehabilitate or replace the two vehicle bridges on Railroad Avenue, and complete other roadway improvements at locations throughout the project area; see specific locations and detailed descriptions in Appendix A, Table 3-A. Various sidewalk improvements in the project area. Grant Avenue Improvements	\$165,600 - \$300,000
Public Facilities		
Construct New Facilities	Construct a civic center.	
	Construct a joint-use fire and police facility.	\$6,800,000
	Construct a joint-use library with Yolo County and the Winters Joint Unified School District.	\$457,418,67
	Construct joint-use facilities with the Winters Joint Unified School District.	
	Construct a senior citizen center.	
	Relocate the City's Public Works and the Winters Joint Unified School District's Corporation Yards to a joint facility.	
Revitalize Existing Facilities	Improve the Community Center and other community facilities as needed.	
Parks		
Construct New Parks	Construct a multi-sports field active park facility at the City's Landfill.	
	Acquire land and construct park facilities within the project area.	
Revitalize Existing Facilities	Complete improvements to City, Valley Oak, Blue Oak, Putah Creek park area, and Rotary Parks.	
	Continue efforts to improve the Putah Creek Nature Park with native plantings, trails, access points, interpretive signage, and other amenities.	
Economic Development		
Downtown Revitalization	Provide economic incentives for infill development and historic rehabilitation projects, facilitate CDA property disposition for in-fill mixed use development, facilitate seismic retrofits in downtown business district, improve streetscapes (sidewalks, landscaping, furnishings, etc.), upgrade building facades, construct a parking facility in or adjacent to the central business district, facilitate and encourage other economic development initiatives such as downtown festivals and events, art programs, tourism incentives, etc.	\$1,070,000 - \$1,500,000

Project Area Marketing	Increase visibility and attractiveness of project area to prospective businesses and developers. Develop and implement economic development strategy including a branding and marketing strategy.	
Project Area Planning		
Master Plan	Continue to implement Downtown Master Plan projects, programs and activities including: Downtown Signage program, Downtown Improvement Projects, street and alley improvements, completion of Downtown Form Based Code, etc.	\$1,635,000
Property Disposition and Development		
Property Acquisition	Acquire available lands to advance goals of the CDA.	\$1,500,000

**Table II-3
Redevelopment Goals and Program Activities Matrix**

Program Activities					
Redevelopment Goal	Public Infrastructure	Public Facilities	Economic Development	Project Area Planning	Property Disposition/Development
Alleviate and prevent spread of blight and deterioration.	✓	✓	✓	✓	✓
Attract additional retail/industrial development.	✓	✓	✓	✓	✓
Eliminate obstacles to development of office space and retail uses.	✓	✓	✓	✓	✓
Support development of housing for all income levels.	✓		✓	✓	✓
Provide necessary assistance to increase local employment opportunities.			✓	✓	✓

Source: Winters Community Development Agency, 2003.

C. CDA ACCOMPLISHMENTS OVER LAST FIVE YEARS

Since the adoption of the 2003 - 2008 Implementation Plan, the CDA has undertaken and participated in a number of projects and activities to directly meet the objectives identified in the 2003-2008

Implementation Plan. Below are some of the notable accomplishments as they relate to the CDA Objectives identified in the 2003-2008 Implementation Plan:

- 1) Objective: To provide a stable, diversified and stronger economic base for the Project Area and Community.

Accomplishment: On August 16, 2005, the CDA authorized the lease and sublease of the second floor and a portion of the first floor of a property in downtown Winters, for a period of 10-years in order to retain the Palms Playhouse (the "Palms") in downtown Winters. The Palms acts as an anchor tenant for the downtown, attracting a significant number of visitors from the region, expanding the "open" hours of the downtown, and bringing vibrancy thereby benefiting other downtown businesses and promoting economic development. The lease savings realized by the Palms is required to be re-invested in the Palms production for marketing, on-going improvements and toward an improved sound system which enables the Palms to attract a higher level of musical talent.

- 2) Objective: To provide safer, more efficient, and economical movement of persons and goods within the Project Area and community.

Accomplishment: In March 2006, the City Council approved the Downtown Master Plan which provides a vision for the overall economic and capital development of the central business district of downtown Winters. This adopted document includes a variety of plans and policies which represent key steps in achieving the overall build-out of the area including pedestrian improvements, street improvements, parking improvements, alleyway improvements etc. On October 17, 2006 the CDA authorized a \$20,000 budget to begin the implementation of programs for the economic development projects as outlined in the Master Plan. In March of 2007, the CDA released a Request for Proposal for Engineering and Design Services for the Downtown Streetscape Improvement Project. Through an agreement approved on August of 2007, and amended October of 2007, the CDA authorized \$1.3 million for Rick Engineering to take the CDA through the construction document phase for the Downtown Streetscape Improvement Program. Improvements include pedestrian improvements and bulb-outs at Main Street and Railroad Avenue. It is anticipated that the project will be constructed by the fall of 2008.

Accomplishment: In 2004/05 and 2005/06, the CDA provided almost \$500k toward the successful rehabilitation of the 1906 dilapidated and abandoned Southern Pacific Railroad trestle bridge which is now in use for pedestrian and cyclist transit and experiencing Putah Creek.

- 3) Objective: To conserve and improve existing public facilities and to provide such new facilities as needed for the improvement of the Project Area.

Accomplishment: In 2005, the CDA provided almost \$125,000 toward the rehabilitation of the City tennis court.

Accomplishment: In 2006/07 the CDA expended \$725,000 toward the development of a City/School District swimming pool and over \$600,000 toward the development of the Rotary Park / City Parking Lot and restrooms, the Community Center Shade structure, downtown bike racks, and the Downtown Façade program. The Rotary Park /City Parking Lot project resulted in the creation of a Downtown Park at one of the City's main corners which acts as a gathering place for activities and events such as harvest markets, tree lighting ceremonies, etc. attracting visitors and patrons to the downtown and benefitting local businesses. The Project resulted in a net gain of 57 new parking spaces, from 65 on-site/off-site spaces to 122 on-site/off-site spaces (56 additional on-site spaces and 1 additional off-site space).

Accomplishment: Other projects funded by the CDA over the life of the 2003-2008 Plan included: \$250k toward the Rominger Softball Field and almost \$350k toward the rehabilitation of the Winters Parent Nursery School.

- 4) Objective: To enhance the physical environment of the Project Area and to emphasize its favorable environmental characteristics.

Accomplishment: On September 7, 2004, the CDA approved the Downtown Façade Improvement Program (DFIP), including the Guidelines, Agreement, Application, Rebate Claim Form, and Sample Façade Maintenance Easement needed to implement the program; and authorized CDA tax increment funds for its implementation. The CDA has continued to offer and provide funds for this program each year.

Accomplishment: In March 2006, the CDA completed the Downtown Master Plan providing a comprehensive plan to describe policy changes and capital improvement projects that will help downtown Winters to attract investment and grow while maintaining its historic, small-town character. The CDA is currently out to bid for Phase I of the Downtown Pedestrian Improvement project, identified in the Downtown Master Plan. This is a \$1.3M project. The CDA will also contribute \$185k toward Phase II which received a \$495k grant from SACOG. Phase II is anticipated to move forward immediately following completion of Phase I in the fall of 2008.

Accomplishment: Other projects funded by the CDA over the life of the 2003-2008 plan include funding for: downtown streetlights, water tower logo, little league lights, holiday lights.

- 5) Objective: To maximize opportunities for the revitalization, expansion and development of commercial and industrial uses within the Project Area.

Accomplishment: In February 2007, the CDA purchased 23 Main Street in downtown Winters from the Barbour/Whitworth Family for \$174,178.45. The CDA intends to provide for a permanent ten foot access easement through the property from the alley to Main Street for pedestrian purposes, as identified in the Downtown Master Plan. The Winters Center for the Arts has the option to lease back or purchase the property provided they have a bona fide development proposal for the construction of an Art Center building on the site which would be used by the Winters Center for the Arts and the public.

Accomplishment: In September 2004, the CDA purchased a 18,949 square foot property on Railroad Avenue between Main and Abbey Streets for future in-fill development of downtown Winters. The CDA is currently negotiating a Disposition and Development Agreement with Monticello Investors for the development of a 47,000 square foot mixed use development including commercial and residential uses.

- 6) Objective: To improve and increase the community's supply of affordable housing in a manner consistent with the Housing Element of the General Plan and California Community Redevelopment Law of the State of California, Health & Safety Code Sections 33000 et seq., policies to increase, improve, and expand the community's supply of affordable housing.

Accomplishment: On October 19, 2004, the CDA authorized the expenditure of funds, for the purchase a 1.71 acre vacant parcel at 110 East Baker (the Property"), at its \$460,000 appraised value, for the development of the Winters II Affordable Housing Project. The CDA became the owner on title on November 19, 2004. On March 1, 2005, the CDA entered into an Agreement to Negotiate Exclusively with the Community Housing Opportunities Corporation ("CHOC") to

prepare a Disposition and Development Agreement with respect to the Property. In August of 2006, the CDA approved a Ground Lease with Bruhn Orchards Housing Associates, L.P., a California Limited Partnership that was established by CHOC, which provides for a long term lease of the Property for \$1.00 per year and which provides for the development of the Property. The CDA provided a predevelopment loan in the amount \$50,000, a development loan in the amount \$150,000, and a grant of \$1,400,000 for the project. The two loans are on favorable terms. The CDA also picked up a portion of closing costs for the project. Additionally, the City of Winters was awarded a HOME grant in 2005 and the City is loaning \$2,850,280 of the HOME funds to CHOC for the Winters II project under favorable terms. The Winters II project was completed and leased up in January 2008.

Accomplishment: The CDA provided almost \$150,000 in grants and loans toward the Senior Rehabilitation Program and the First Time Home Buyer Program.

- 7) Objective: To accomplish these goals with minimum displacement of any property owner, resident or business person who may wish to remain within the Project Area.

Accomplishment: No property owners, residents or business owners were displaced due to CDA efforts.

D. FIVE YEAR PLANNING PERIOD REVENUES

Over the next five years, the CDA will undertake those activities that can be financially supported by its revenue stream. The CDA has three basic revenue sources:

- Tax Increment Revenues
- Bond issuance proceeds
- Non-CDA financial resources

1. Tax Increment Bond Issuance Proceeds

Bond proceeds will be the principal source of revenue to finance the proposed non-housing projects over the five year planning period. In March 2004, the CDA issued \$7.8 million in Tax Allocation Bonds to begin financing the development and housing programs in the project area. In its overall fiscal strategy, the CDA has determined that the use of tax allocation bonds to fund major improvements should occur to spur both economic development and produce needed public improvements. In June, 2007 the CDA issued an additional \$11 million, which will go toward the construction of the Public Safety Facility, sewer expansion and other capital and housing projects. It is anticipated that the majority of these bond proceeds will be encumbered during the 2008/09 fiscal year.

2. Co-Funding of Projects

Wherever possible, the CDA will leverage other funds in connection with its redevelopment efforts. The CDA has targeted local, state and federal funding sources to assist with the financing of eligible projects. As permitted by law, possible funding sources include government grants and assistance programs, as well as private sector sources. The CDA will pursue funds from a number of sources including the following:

- Federal/State CDBG (Community Development Block Grant) funds
- State CalHFA (California Housing Finance Agency) funds
- Federal/State HOME funds
- Federal TEA 21 (Transportation Equity Act for the 21st Century) funds
- Federal EDA (Economic Development Administration) funds
- Various State Parks and Recreational Facilities grants
- Sacramento Area Council of Government (SACOG) MTP grants

E. PROPOSED FIVE-YEAR NON-HOUSING PROGRAMS AND CDA EXPENDITURES

The CDA has developed programs to implement its goals and objectives during the five-year Implementation Plan period. Table II-4 presents estimated expenditures for each program. These programs and activities are the result of the process to create an effective overall development and redevelopment strategy for the Winters Redevelopment Project.

In March 2004, the CDA issued \$7.8 million in Tax Allocation Bonds and in June, 2007 the CDA issued an additional \$11 million. Of this amount, \$12,664,316.37 (or 68 percent) is allocated to non-housing programs and expenditures while \$4,528,472.61 (or 24 percent) is allocated to affordable housing programs. Table II-4 provides information on the estimated five-year expenditure levels for non-housing programs. The total expenditures are based on the availability of \$10,674,484 in funds from a bond issuance, \$654,416 in tax increment not reserved for bond debt service and in anticipation of an additional bond issue in 2012 or 2013. If remaining funds are available, the CDA will use its annual budget process to establish funding priorities for these funds.

Table II-4

PROPOSED FIVE-YEAR NON-HOUSING PROGRAMS AND EXPENDITURES	
Program Activities	Estimated Funding Level
Public Infrastructure	\$2,150,600
Public Facilities	\$7,257,419
Parks	\$
Economic Development	\$1,050,000
Project Area Planning	\$20,000
Property Acquisition/Disposition and Cleanup	\$1,500,000
Marketing	\$52,500
TOTAL	\$12,030,519

Source: Winters Community Development Agency, 2008.

F. LINKAGE BETWEEN PROGRAMS AND ELIMINATION OF BLIGHTING INFLUENCES

The Implementation Plan must provide an explanation of how the goals, objectives, programs and expenditures for the next five years will serve to eliminate blighting conditions in the project area. To provide this explanation, it is first useful to summarize the blighting influences that continue to affect the Winters Redevelopment Project.

1. Blighting Conditions in the Project Area

When the project area was adopted by the City of Winters in 1992, the project area suffered from a number of significant blighting influences. Despite the CDA's implementation of its program to date, many of these conditions remain and continue to impair the project area's development. This is largely a result of the size of the project area and the extent of blighting conditions present in it.

Specifically, the following conditions remain and continue to act as a detriment to development in the project area.

- Obsolete, aged, deteriorated, vacant, and under-utilized buildings as well as buildings with empty second floors (Buckhorn Restaurant, Putah Creek Café, Masonic Hall, and Greenwood buildings).
- Inadequate and deteriorated public improvements, including water delivery systems, storm drains, sewer collection systems, roadways, and sidewalks throughout the project area.
- Deteriorated housing conditions and a lack of quality housing opportunities for a wide range of income levels. A lack of neighborhood-serving retail uses and services for the residents of the project area and adjacent neighborhoods.

2. Linkage Between Programs and Elimination of Blighting Influences

The CDA's proposed goals, objectives, programs and expenditures, as outlined in Sections B and E above, will help eliminate blighting influences in the Winters Community Development Project Area in the following manner:

a. Public Infrastructure

Various Water Improvements

Within the project area are a number of water mains that are either under-sized, significantly old (with some mains in excess of 100-years-old), or a combination of the two. Replacement of these water mains will significantly improve the water distribution system, assist existing residential areas, and improve the commercial development potential of the project area.

Various Wastewater Improvements

Several of the wastewater mains in the project area are aged and inadequately sized. Replacement of these wastewater mains will increase the wastewater collection system capacity to assist existing residential areas and improve the commercial development potential of the project area.

Various Road Improvements

The project area contains a number of street sections that have deteriorated to the point of failure and will require reconstruction. In addition, two roadway bridges in the project area are in need of rehabilitation or reconstruction). Reconstruction of the street sections and rehabilitation or replacement of the bridges will improve the traffic circulation in the project area.

b. Public Facilities

Fire and Police Facility

Both current fire and police facilities are of inadequate size and lack areas to expand. An adequately sized joint-use fire and police facility will accommodate additional staff as the City grows, provide economies of scale for the office and other operations, increase the on-site training capabilities, and free up properties in the project area that can be better utilized for commercial and other uses.

Library Facility

The Winters Branch of the Yolo County Library is housed in a cinderblock building built 50 years ago originally as an office for the U.S. Bureau of Reclamation during its construction of the Monticello Dam. The population of the City has more than tripled since construction of the building. A new joint-use facility with participation by Yolo County, the Winters Joint Unified School District, and the City of Winters will provide a library with sufficient floor space to serve a population of approximately 2000 grade school children, the Winters Community in general, and allow for a dedicated parking area for the library's visitors. With the construction of a joint-use library facility, the existing building, which lies in the heart of the project area and on the edge of the central business district, can then be converted to another use.

c. Parks

Construction of New Parks

Both the City and project area suffer from the limited amount of park acreage – particularly athletic fields for youth and adult soccer, baseball, and softball. Construction of a multi-sports field active park facility at the City's Landfill will alleviate this problem.

d. Economic Development

Central Business District Improvements

Various improvements to the central business district (pedestrian improvements, streetscapes, building façade upgrades, etc.) will improve the appearance and functionality of this key commercial area and will attract additional business and result in the upgrade of existing structures. The provision of economic incentives for infill development and historic rehabilitation projects, disposition of CDA property for in-fill mixed use development, seismic retrofit improvements construction of additional parking in or adjacent to the central business district, facilitating and encouraging other economic development initiatives such as downtown festivals and events, art programs, tourism incentives, etc. will serve to increase the visibility and attractiveness of the project area to prospective businesses and developers. Development and

implementation of an economic development strategy, including a branding and marketing strategy, will greatly address the issue of obsolete, aged, deteriorated, vacant and under-utilized buildings and empty second floors which are the underlying factors of blight in the Project Area.

e. Project Area Planning

Downtown "DNA" – Form Based Code for Central Business District

The preparation of a Downtown "DNA" – a Form Based Code for a portion of the central business district will provide increased planning flexibility for the revitalization of this key commercial area.

f. CDA-Owned Property Disposition and Development

Disposition and development of a mixed use project on the CDA owned property on Railroad between Main Street and Abbey Street will bring new business to Winters, add new jobs, strengthen the existing commercial businesses and contribute to Winters ability to attract visitors.

Table II-5 provides a matrix linking the CDA's goals with specific blighting conditions each goal is designed to address. Table II-6 provides a similar linkage concerning the CDA's objectives. Table II-7 links each program activity with existing blighting conditions.

Table II-5

Redevelopment Goals and Blight Linkage					
<i>Blighting Conditions in the project area</i>	GOALS				
	<i>Alleviate/Prevent the spread of blight and deterioration</i>	<i>Attract add'l retail & industrial development</i>	<i>Eliminate obstacles to the development of office space and retail uses</i>	<i>Support development of housing for all income levels</i>	<i>Provide the necessary assistance to increase job opportunities</i>
Obsolete, aged and deteriorated buildings	✓	✓	✓		✓
Incompatible uses		✓	✓	✓	✓
Inadequate and deteriorated public improvements	✓		✓	✓	
Deteriorated hsg conditions, lack of qual. hsg opprtnties for range of income levels	✓			✓	
Lack of neighbrhd-srvng retail uses and services		✓	✓		✓

Source: Winters Community Development Agency, 2008.

Table II-6

Redevelopment Objectives and Blight Linkage					
<i>Blighting Conditions in the project area</i>	Objectives				
	<i>Improve traffic circulation system</i>	<i>Upgrade, expand and rebuild infrastructure systems</i>	<i>Provide mechanisms to upgrade private buildings</i>	<i>Pursue specific opportunities to attract development to the project area</i>	<i>Implement an effective economic development strategy</i>
Obsolete, aged and deteriorated buildings	✓	✓	✓	✓	✓
Incompatible uses			✓	✓	✓
Inadequate and deteriorated public improvements	✓	✓	✓	✓	
Deteriorated housing conditions and lack of quality housing opportunities for wide range of income levels	✓				
Lack of neighborhood-serving retail uses and services	✓			✓	✓
Inadequate public facilities, including public safety, civic center, and library facilities				✓	✓

Source: Winters Community Development Agency, 2008.

Table II-7

Redevelopment Activities and Blight Linkage						
<i>Blighting Conditions in the project area</i>	Programs and Activities					
	<i>Public Infrastructure</i>	<i>Public Facilities</i>	<i>Economic Development</i>	<i>Project Area Planning</i>	<i>Property Disposition and Development</i>	<i>Marketing</i>
Obsolete, aged and deteriorated buildings		✓	✓	✓	✓	
Incompatible uses		✓	✓	✓		✓
Inadequate and deteriorated public improvements	✓		✓	✓		
Deteriorated housing conditions and lack of quality housing opportunities for wide range of income levels	✓		✓	✓	✓	✓
Lack of neighborhood-serving retail uses and services		✓	✓	✓	✓	✓

Source: Winters Community Development Agency, 2008.

III. WINTERS HOUSING IMPLEMENTATION PLAN

The Community Redevelopment Law (CRL) requires the housing portion of the Implementation Plan to set forth specific goals and objectives for the five-year planning period, outline specific projects and expenditures planned for the five years and explain how the stated goals, objectives, projects and expenditures will produce affordable housing units to meet its obligations. In addition the CDA recognizes the important role of housing programs and activities in its redevelopment program. The proposed affordable housing programs, therefore, should be viewed not simply as the means of implementing the CDA's stated goals and objectives related to affordable housing, but as key elements in its overall revitalization efforts.

A. CDA Accomplishments

On October 19, 2004, the CDA authorized the expenditure of funds, for the purchase a 1.71 acre vacant parcel at 110 East Baker (the Property"), at its \$460,000 appraised value, for the development of the Winters II Affordable Housing Project. The CDA became the owner on title on November 19, 2004. On March 1, 2005, the CDA entered into an Agreement to Negotiate Exclusively with the Community Housing Opportunities Corporation ("CHOC") to prepare a Disposition and Development Agreement with respect to the Property. In August of 2006, the CDA approved a Ground Lease with Bruhn Orchards Housing Associates, L.P., a California Limited Partnership that was established by CHOC, which provides for a long term lease of the Property for \$1.00 per year and which provides for the development of the Property. The CDA provided a predevelopment loan in the amount \$50,000, a development loan in the amount \$150,000, and a grant of \$1,400,000 for the project. The two loans are on favorable terms. The CDA also picked up a portion of closing costs for the project. Additionally, the City of Winters was awarded a HOME grant in 2005 and the City is loaning \$2,850,280 of the HOME funds to CHOC for the Winters II project under favorable terms. The Winters II project was completed and occupied in January of 2008 and offers a total of 34 very-low income units: 7 at 35% of median income; 7 at 40% of median income; and 20 at 50% of median income.

Additionally, the CDA provided almost \$150,000 in grants and loans toward the Senior Rehabilitation Program and the First Time Home Buyer Program.

B. Overview of Legal Requirements

This section presents an overview of the legal obligations of the Winters Community Development Agency related to the provision of affordable housing in the Winters Redevelopment Project Area (project area). Appendix B presents a more detailed description of these requirements.

1. Implementation Plan Requirements: Housing Activities

The affordable housing planning components required by the CRL to be contained in the Implementation Plan include:

- The number of housing units projected to be rehabilitated, price-restricted, assisted or destroyed.
- The amount available in the Low and Moderate Income Housing Set-Aside Fund, estimates of deposits into the Housing Set-Aside Fund during the next five years and a plan for using annual deposits to the low- and moderate-income housing set-aside fund.
- An identification of proposed locations for replacement housing, if units are projected to be removed.
- The project area's Affordable Housing Production Plan, as described below.
- An explanation of how the goals, objectives, projects and expenditures set forth in the Implementation Plan will implement the affordable housing requirements of the CRL, including a housing program for each of the five years of the Implementation Plan.

2. Major Statutory Provisions of CRL for Affordable Housing

The major statutory affordable housing requirements imposed on redevelopment agencies by CRL may be categorized generally as:

- Housing Production Requirement – Specified minimum percentages of new or rehabilitated housing units in a project area are to be made available at a specified affordable housing cost and income levels.
- Replacement Housing Requirement – Agencies must replace housing units (or bedrooms) removed from the housing stock as a result of redevelopment activities.
- Housing Fund Requirement- Redevelopment agencies are required to expand specified percentages of tax increment revenue for provision of affordable housing.
- Programs Requirement – Agencies must explain how its housing program(s) will implement the affordable housing requirements of the CRL, including a program for each of the five years of the Implementation Plan.

Each of these legal requirements and how the CDA meets them is discussed in the following sections. More detail on legal requirements is found in Appendix B.

C. AFFORDABLE HOUSING PRODUCTION (INCLUSIONARY) OBLIGATIONS AND HOUSING PRODUCTION PLAN

This section constitutes the Housing Production Plan of the Implementation Plan. Housing developed or substantially rehabilitated in a project area by public or private entities other than the CDA, including entities receiving CDA assistance, 15 percent of the total number of units must be affordable to very low-, low- and moderate- income households. Of those units, 40 percent must be affordable to very low income households. This 40 percent requirement for very low, translates to 6% of the total units developed or substantially rehabilitated in the project area. (See Appendix B for more detail on inclusionary obligations.) The remaining 60 percent must be affordable to low and moderate income households. This 60 percent requirement for low and moderate, translates to 9% of the total units developed or substantially rehabilitated in the project area. The CRL requires that 30 percent of all housing developed or substantially rehabilitated by a CDA must be available at affordable housing cost to very low, low and moderate-income households. Of those units, 50 percent must be affordable to very low-income households. The 50 percent very low income requirement translates to 15 percent of the total units developed or rehabilitated by the agency (50 percent of 30 percent equals 15 percent). This 30% requirement applies only to units developed directly by the CDA. As the CDA has not developed or substantially rehabilitated any units, there are no projects subject to the 30 percent inclusionary requirement.

The City adopted Ordinance 94-10 in May of 2004 which requires that 15% of all new housing to be available to affordable households to encourage the provision of new affordable housing in order to meet the housing needs of citizens of Winters. Because this requirement has been onerous on smaller developments and has in effect prevented the implementation of General Plan and Master Plan policies encouraging smaller in-fill development, the City is currently researching a possible amendment to Ordinance 94-10 which would allow for an exemption to smaller in-fill projects.

The CRL requires agencies to report on historical production and adopt a plan for each project area showing how the agency intends to meet its Housing Production Requirement (the "Housing Production Plan") for the following time periods:

- Historical production from the adoption of the Plan through 2003 (first ten year period)
- Historical production from 2004 through 2013 (second ten year period)
- Annual production over the next five years (2009 – 2013)
- Production over the next ten years (2009 – 2018)
- Production through the life of the Plan (2018 to 2033, the end of the life of the Plan)

The Housing Production Plan must include estimates of the number of new or rehabilitated residential units to be developed within the project area and the number of units for very low income households and low and moderate income households which will be developed in order to met the requirements of Section 33413.

Additionally, the Housing Production Plan must include estimates of the number of units the agency itself will develop during the time period of the plan, including the number of very low, low and moderate income units. The Housing Production Plan is to be reviewed every five years in conjunction with updating the housing element.

The first part of this section describes the historical housing production within the project area from the adoption of the Plan in 1992 through 2008. The second section discusses future housing production and CDA obligations within the project area. The third section discusses affordable housing production in the project area and the CDA's strategy for meeting its inclusionary obligation.

1. Historical Housing Production in the Project Area

While 263 residential units were constructed in the project area during the period from 1992 (after the July 20, 1992 adoption of the project area) through 2008 (based on the issuance of certificates of completion or final inspection approvals in some instances), most of the future construction of residential units will occur outside of the project area. Although the project area is large, it includes only a small amount of the City's undeveloped residential parcels.

Table III-1 shows the historical annual housing production in the project area from July 21, 1992 through July, 2008 of all types of housing (affordable, market rate, new construction and substantial rehabilitation).

TABLE III-1
Housing Production Summary
Historical and Projected

Year	Total Units Produced ¹		
	New	Substantial Rehabilitation	Total
1992 ²	0	0	0
1993	8	0	8
1994	2	0	2
1995	12	0	12
1996	17	0	17
1997	3	0	3
1998	15	0	15
1999	50	1	51
2000	35	1	36
2001	39	0	39
2002	82	2	84
2003	80	44	124
2004	35	0	35
2005	1	0	1
2006	3	0	3
2007	42	0	42
2008 (as of July)	1	0	1
Subtotal	425	48	473

Source: Winters Community Development Agency, 2008.

¹ Total units produced are based on a certification of occupancy (or final inspection approval in some instances) for new or substantially rehabilitated units.

² For 1992, new and substantial rehabilitation units reported occurred after the July 20 adoption of the project area.

**Table III-2
Project Area Housing Production and Affordable Housing Obligation
Historical and Projected¹**

		Affordable Obligation		Affordable Production (Units developed and projected development)		Reserve Affordable Production ²	
		Very Low 6%	Low & Moderate 9%	Very Low	Low & Moderate	Very Low	Low & Moderate
Year	Total Units Developed						
Historical							
1992- 2008	473	29	42	87	103	58	60
Projected							
2009- 2013	97	6	9	6	9		
2014- 2033 ³	295	17	27	18	27		
Totals							
1992- 2033	865	52	78	111	139		

Source: Winters Community Development Agency, 2008.

2. New Construction – Multi-family

Since 1992, two multi-family affordable apartment developments were constructed in the project area. The mixed-use project entailed the substantial rehabilitation of the Cradwick Building and resulted in the construction of six units on the second floor of the building affordable to low-income households in 1998. In 2007, construction was completed on the Winters II Apartments, which resulted in 34 units affordable to very low-income households, including 7 units reserved for households at 35% of Area Median Income (AMI) and 7 units reserved for households at 40% of AMI.

3. New Construction– Single Family

Since 1992 (after the July 20, 1992 adoption of the project area), 385 single-family homes, 106 of which are affordable, have been completed in the project area.

4. Rehabilitation

Based on analysis of building department records, affordable housing covenants and loan programs since 1992, 48 units in the project area were substantially rehabilitated, four of these units have no long-term affordability restrictions.

In 2003, the City provided financial assistance to Community Housing Opportunity Corporation (CHOC) to aid the non-profit developer and manager of multifamily affordable housing projects, with the

¹ The CRL requires that at least 15% of total units are affordable to very low, low or moderate income households and that at least 40% of the 15% are affordable to very low-income households (equal to 6% of total units).

² The reserve includes 21 very low and 19 low units from the Rural California Housing Corporation (now part of Mercy Housing) sweat equity very low-income and low-income home ownership project.

³ The year 2032 is the time limit for project activities.

rehabilitation of the Winters Apartments. The Winters Apartments is a 44-unit multifamily complex that serves very low- and low-income households in Winters. The City's redevelopment agency also provided a grant toward the purchase of the Winters Apartments as the apartment complex was at risk of converting to a market-rate facility. Affordability restrictions are now in place on the 44 units for a 55-year period.

5. Projected Future Housing Production and CDA Obligations

Based on an analysis of the carrying capacity of sites in the project area, the potential for federal and state funding, and the anticipated timing of development, the CDA has developed a projection for the number of market rate units that are likely to be built in the project area over the next ten years, as well as those that are likely to be built thereafter. Appendix Tables B-2, B-3, and B-4 provide more detailed future housing production numbers over the next five years, the following five years and through the end of the Project. Since most available sites are privately owned, the actual number of new and substantially rehabilitated market rate and affordable housing could be much less.

New Units 2009 to 2013

Between 2009 and 2013, the CDA projects that a total of 260 new or rehabilitated dwelling units will be developed in the project area. During the first five years (2008-2013), the CDA projects that 163 new units will be developed in the project area. During the next five years (2014 through 2018), the CDA estimates that 97 units will be developed in the project area.

New Units 2014 to 2033 (End of the Plan)

Based on the inventory of remaining developable residential land, the CDA estimates that 198 new or substantially rehabilitated dwelling units will be developed within the project area from 2014 until the end of the life of the project in 2033.

6. Affordable (Inclusionary) Housing Production

Historically, the CDA has met its 15 percent affordable housing production (inclusionary) requirements and anticipates being in compliance through the end of the Project. Table III-2 shows the inclusionary obligation incurred by the CDA. Table III-4 shows affordable construction by development in the project area, including those units that meet inclusionary, settlement and replacement obligations.

One hundred-ninety (190) units constructed within the project area from 1992 to July 2008 count toward Inclusionary and 87 are affordable to very low-income households and the remaining 103 are affordable to low and moderate income households.

The CDA is confident that it will meet its affordable obligation over the 10-year compliance period through 2013. However, the actual number of affordable units will be less if private, market-rate units are less than projected.

**Table III-3
Residential Units Removed
Historical and Projected**

Historical Year(s)	Units Removed				Year Replaced
	V. Low	Low	Mod.	Total	
1992	0	0	0	0	
1993	0	0	0	0	
1994	0	0	0	0	
1995	0	0	0	0	
1996	0	0	0	0	
1997	0	0	0	0	
1998	0	0	0	0	
1999	0	0	0	0	
2000	0	0	0	0	
2001	0	0	0	0	
2002	0	0	0	0	
2003	0	0	0	0	
2004	0	0	0	0	
2005	0	0	0	0	
2006	0	0	0	0	
2007	0	0	0	0	
2008 (through July)	0	0	0	0	
Subtotal	0	0	0	0	
2003-2008	0	0	0	0	
Projected					
2009-2013	0	0	0	0	
Subtotal	0	0	0	0	
Total	0	0	0	0	

Source: Winters Community Development Agency and Winters Building Department Records, 2008.

D. Replacement Housing Obligation

When residential units housing very low, low and moderate income persons are destroyed or taken out of the low and moderate income market as part of a redevelopment project, the CDA must replace those units with new or newly rehabilitated very low, low and moderate-income units. This Replacement Housing Requirement applies to project areas established by the redevelopment plans adopted on or after January 1, 1976. (For more detail on the Replacement Housing Requirement, please refer to Appendix B). The CDA has two choices as to how to arrange for replacement of the units removed. The CDA can elect to replace units on a unit per unit basis, or the CDA can replace units removed on a bedroom per bedroom basis. For example, if the CDA removes three 2-bedroom units, those units can be replaced by two 3-bedroom units.

Table III-3 shows the total historical and projected number of dwelling units removed from the project area. To date, the CDA has not removed or assisted developments that have removed any very low, low and moderate income dwelling units.

**TABLE III-4
Historical Project Area Affordable Housing Construction
1992 - 2008**

Development Name	Construction Type			Affordability			Purpose	
	Total Affordable Units	New Construction	Rehab	Very Low	Low	Moderate	Inclusionary	Replacement
Cradwick¹	6	6	0	0	6	0	6	0
RCHC²	76	76	0	38	38	0	76	0
Winters I³	44	0	44	9	34	1	44	0
Winters II⁴	34	34	0	34	0	0	34	0
Cottages at Carter Ranch⁵	30	30	0	6	13	11	30	0
TOTAL 1992 - 2002	190	146	44	87	91	12	190	0

Winters Community Development Agency, 2008.

E. HOUSING SET-ASIDE FUND

The CRL requires the CDA to set aside, in a separate low and moderate income housing fund (the "housing fund"), at least 20% of all tax increment revenue generated from the project area for the purpose of increasing, improving and preserving the community's supply of low and moderate income housing. Table III-5 presents an estimate of the resources anticipated to be available to the CDA's housing set-aside fund.

The CDA has made deposits into the Housing Set-Aside Fund in an amount not less than 20 percent of the gross tax increment revenue allocated to the Agency during the previous planning period. On June 30, 2007, the CDA's Housing Set-Aside Fund did not have an excess surplus for FY 2007/2008. The unencumbered balance in the Housing Set-Aside Fund at the end of FY 2007/2008 is estimated at \$-0- See Table III-5.

¹ Six residential units affordable to low-income households were constructed on the second floor of the Cradwick Building in 1998.

² The Rural California Housing Corporation (which is now part of Mercy Housing) constructed 76 sweat equity single-family homes during the 1998 - 2001 time period. Half of the homes (38) are affordable to very low-income households and the remaining half (38) is affordable to low-income households.

³ The Community Housing Opportunity Corporation (CHOC) acquired and rehabilitated an at-risk multifamily project, the Winters Apartments. Nine (20%) of the 44 units are affordable to very low-income households, and the remaining 34 units affordable to low income households (exclusion for the manager's apartment - 1 unit).

⁴ CHOC completed the construction of the 34-unit Winters II Apartments multifamily project late 2007. All 34 units are affordable to very low-income households, with 7 units restricted to 35% of Area Median Income (AMI), 7 units restricted to 40% AMI, and the remaining 20 units restricted to 50% of AMI.

⁵ Assisted by the City of Winters, DUC Housing Partners Inc. constructed 30 single family dwellings for sale with affordability restrictions with 6 units restricted to very low-income households, 13 units restricted to low-income households and 11 units restricted to moderate-income households.

**Table III-5
Housing Set Aside Fund Excess Surplus**

Fiscal Year	Previous FY Ending Balance	Prev 4 YR Deposit Total	Excess Surplus
2000/2001	\$373,039	\$294,581	-0-
2001/2002	491,943	344,782	-0-
2002/2003	600,137	427,976	-0-
2003/2004	458,517	600,636	-0-
2004/2005	670,473	798,666	-0-
2005/2006	443,952	1,046,060	-0-
2006/2007	459,104	1,321,963	-0-
2007/2008	759,671	1,441,834	-0-

State law requires that funds be committed within three years of becoming "excess surplus", which is defined as an unencumbered balance that exceeds the greater of \$1,000,000 or the total of the previous four years' 20 percent deposits to the Fund. The law allows an agency to offset the "excess surplus" with the previous year's expenditures and encumbrances.

**Table III-6
Estimated Housing Resources
FY 2007/08-1012/13**

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Housing Set Aside Deposit	\$370,668	\$ 413,739	\$ 434,426	\$ 456,147	\$ 510,955	\$ 536,502
Proceeds From 2004 Tax Increment Bond Issuance	\$1,340,270	\$1,340,270	\$-0-	\$-0-	\$	\$-0-
Proceeds From 2007 Tax Increment Bond Issuance	\$1,486,546	\$1,486,546				
Total Resources	\$3,197,484	\$3,240,555	\$ 434,426	\$ 456,147	\$ 510,955	\$ 536,502

Prepared by the Winters Community Development Agency 2008.

**Table III-7
Estimated Financial Summary of Housing Funds
FY 2009-2013**

	Projected Housing Set Aside	Projected Debt Service	Projected Admin Costs	Net Available
08-09	\$ 413,739	\$ 285,525	\$ 133,931	\$ (5,717)
09-10	434,426	283,475	143,641	7,310
10-11	456,147	281,288	154,055	20,804
11-12	510,955	283,894	157,906	69,155
12-13	536,502	281,200	161,854	93,448
Total	\$ 2,351,769	\$ 1,415,382	\$ 751,387	\$ 185,000

The primary funding sources for the CDA's affordable housing activities during the Implementation Plan period will be proceeds from the March 2004 and the June 2007 tax increment bond issuance and the receipt of the annual affordable housing set-aside tax increment payments.

The CRL also requires that the CDA use housing set-aside funds to assist housing units reserved for households or persons earning less than 120% of area median income, which is very low, low and moderate and targeted to specific income groups based on the fair share of regional housing needs as determined by the Sacramento Area Council of Governments and reported in the City's *Draft* Housing Element. At least 44% of units assisted with housing fund moneys must be for very low income households and at least 29% for low income households. The remaining 27% of units assisted by means of the housing fund may be affordable to very low, low or moderate income categories. (Refer to Appendix B for more detail on Winters' housing fund requirement)

Status and estimated future level of deposits in the housing fund are described below.

1. History and Status

The CDA first deposited moneys into its affordable housing set-aside fund in 1993. In Fiscal Year 2007-2008, the CDA made a deposit of \$370,667 to the housing set-aside fund; the set-aside fund had a balance of \$672,748 at the end of Fiscal Year 2007-2008 (June 30, 2008). Affordable housing units constructed in the project area since the inception of the project and through 2008 are detailed in Table III-4.

2. Deposits During Next Five Years

In preparing this Implementation Plan, the CDA has updated its estimate of future tax increment revenue that will be generated from the project area, and the 20 percent portion of such tax increment revenue that will be deposited in the housing fund. The estimates of tax increment bond proceeds to be deposited in the housing fund during the Implementation Plan period are shown in the Table III-5.

The total five-year (2009-2013) deposit of tax increment bond proceeds into the housing fund is estimated to be approximately \$2,153,114. The CDA will expend its available funds in the next five years leaving a zero balance in the housing set-aside fund by the end of 2013.

The CDA will seek to combine its housing fund revenue with other funding sources devoted to the provision of affordable housing to maximize the number of affordable units that can be developed or rehabilitated with the limited amount of available housing funds. These other funding sources include CDBG funds and HOME Investment Partnership funds from the U.S. Department of Housing and Urban Development, CalHFA and Department of Housing and Community Development (HCD) program funds at the state level and low income housing tax credit equity funds.

2a. Targeting of the Housing Set-Aside Fund

a. Housing Set-Aside Fund Targeting

Under the CRL, Housing Set-Aside Fund money must be targeted to specific income levels. Agencies are specifically required to expend their Housing Set-Aside Funds to assist very low, low and moderate-income households, generally defined as: Very Low Income, incomes at or below 50 percent of area median income, adjusted for family size; Low Income, incomes between 51 percent and 80 percent of area median income, adjusted for family size; Moderate Income, incomes between 81 percent and 120 percent of area median income, adjusted for family size. The income limits that apply in Winters for 2008 are summarized in Table III-8.

**Table III-8
City of Winters/Yolo County
2008 Income Limits**

Household Size (Number of Persons in Household)	1	2	3	4	5	6	7	8
Very Low-Income 50% of AMI	\$24,850	\$28,400	\$31,950	\$35,500	\$38,350	\$41,200	\$44,000	\$46,850
Low-Income 80% of AMI	\$39,750	\$45,450	\$51,100	\$56,800	\$61,350	\$65,900	\$70,450	\$75,000
Median Income 100% of AMI	\$49,700	\$56,800	\$63,900	\$71,000	\$76,700	\$82,400	\$88,000	\$93,700
Moderate- Income 120% of AMI	\$59,600	\$68,200	\$76,700	\$85,200	\$92,000	\$98,800	\$105,600	\$112,500

Agencies are required to expend the monies in the Housing Set-Aside Fund to assist very low and lower income households. Expenditures must be made in at least the proportion as the total number of housing units needed in the community for those two income categories that are not being provided by other governmental programs.

For example, if the Housing Element of a community's General Plan identifies a need for 200 units of housing for very low income households, 200 units for low income households, and 200 units for moderate income households, and no other governmental programs are providing units for very low and lower income households, at least one-third of the Agency's expenditures from the Housing Set-Aside Fund must be used for very low income units and at least one-third must be used for low income units.

The remaining one-third of assisted units may be for very low, lower or moderate income households. If another government program provides very low or lower income units, then the redevelopment agency's very low or lower income obligation would be reduced accordingly. The "targeted assistance" requirement must be met every 10 years.

Winters Housing Element sets out the affordable housing need for the City as identified by the Sacramento Council of Governments (SACOG) in its regional "fair share" allocation. The City has begun updating the Housing Element, which is expected to be completed by March 1, 2009. Additional affordable housing programs and sites will be identified as part of the Housing Element update. The 5-year Implementation Plan can be amended to incorporate the updated Housing Element. The City, SACOG, and the State of California are working on new Regional Housing Needs Allocations for 2007-2014. The table immediately following shows the current draft "fair share" allocation and the targeting objective currently applicable to the Agency. This table also sets forth the number of housing units that have been developed in the City since the 2001-2006 Housing Element. The City has until June 30, 2013 to meet its remaining current requirements.

**Table III-9
Affordable Housing Need (Regional Fair Share by Income Category)**

Income Level	Current Need	Units Built
Very Low Income	96	34
Low Income	64	0
Moderate Income	68	0
Subtotal	228	0
Above Moderate	175	0
Total	403	34

As required by the CRL, the CDA plans to target its 20% Housing Set-Aside Fund to benefit specific income groups based on its fair share of regional housing needs as determined by SACOG. Consequently, over the life of the Plan, at least 20 percent of the 20% Housing Set-Aside Fund money must be expended on very low income households, and at least 43% for low income households to supply its regional fair share of housing as determined by SACOG. The remaining units assisted by means of the 20% Housing Set-Aside Fund may be affordable to any of the three income categories.

CRL Section 33334.4 specifies that the goals for compliance with this section must be taken from the 2000 United States Census Data regarding the percentage of the population over 65 years of age. Approximately 7% of the population is over the age of 65. See Table III-10. The CDA cannot spend more than 7% of funds from the 20% fund on age-restricted affordable housing units.

**Table III-10
Proportion of Senior Population**

Age	%
0-64 Years of Age	93.0 %
65 Years and over	7.0 %
Total	100.0 %

3. Proposed Housing Activities & Projected Expenditures

The CDA priority over the next 10 years is to stimulate the rehabilitation of existing single family and affordable multi-family units. Projected sales prices for new market rate housing, should meet moderate income housing needs without subsidies. The CDA can also continue to provide matching funds to obtain federal and state grants for the rehabilitation of existing housing. A portion of annual deposits to the housing set-aside fund will be used to retire debt on bond proceeds for affordable housing projects.

The CDA will allocate available housing set-aside funds to continue to assist affordable housing programs in the next five years.

In summary, annual deposits to the housing fund for the next five years will be used for the following purposes:

- Assist existing affordable housing programs
- Pay the CDA's share of other affordable housing where funds are available
- Match funds for grants for Housing Rehabilitation (HOME, CDBG and CalHFA's HELP Program)

- Administer housing activities
- Retire debt on bond proceeds

F. Projection for Annual Unit Production in the Project Area

The CDA estimates the following housing production:

- In 2010 the CDA anticipates the Orchard Village Apartments will be completed. This project will result in the construction of 74 rental units 100% restricted to very low-and low-income households;
- In 2011, the CDA anticipates the completion of the Monticello project, a mixed use downtown infill project with 10 luxury residential units;

The following projects are in varying stages of entitlement and could conceivably be developed during the five-year term of this Plan:

- Creekside Estates - 40 single-family residential development, required to provide 4 affordable units and pay an in-lieu fee for 2 units at \$100,000 per unit;
- Hudson-Ogando - 72 single-family residential units, required to provide 11 affordable units;
- Mary Rose Gardens - 26 Single-family homes and one duplex unit, required to provide 4 affordable units;
- Cottages at Carter Ranch, Phase 2 - 6 Single-family residential units, all are proposed to be affordable;
- Casitas at Winters, a 5 unit project, affordable units not yet determined;
- Winters Village West, 10 single family units, required to provide 2 affordable units;
- Anderson Place - 28 mostly attached single-family residences, required to provide 4 affordable units.

G. GOALS, POLICIES AND PROGRAMS

Table III-11 summarizes the housing goals and policies that relate to meeting the housing production and set aside requirements. The table outlines specific housing policies in the Winters *Draft* Housing Element (scheduled for adoption in 2008) that affect housing activities in the project area.

1. Housing Goals

The CDA is committed to assisting the City to achieve its goals, policies and programs presented in the City's *Draft* Housing Element scheduled for adoption in 2008. The City has six goals with respect to housing:

Goal A: To designate adequate land for a balanced range of housing types and densities for all economic segments of the community.

Goal B: To encourage the maintenance, improvement and rehabilitation of the City's existing housing stock and residential neighborhoods.

Goal C: To encourage energy efficiency in both new and existing housing.

Goal D: To ensure the provision of adequate services to support existing and future residential development.

Goal E: To promote equal opportunity to secure safe, sanitary, and affordable housing for all members of the community regardless of race, sex, martial status, national origin or color.

Goal F: Conserve existing affordable housing.

The Community Development Agency will continue to support its housing activities to achieve these goals. Over the next ten years, the CDA intends to facilitate housing rehabilitation activities that will

assist the City in achieving Goals B, C and E. As described earlier, the CDA is proposing to help stimulate other new housing units in the project area. These new housing production activities will particularly assist in achieving Goals A, C, and D. The CDA insists on promoting housing opportunities for all persons in its programs, meeting Goal E.

2. Housing Programs

The housing programs undertaken in the project area by CDA and non-CDA developers will address all of the goals and policies set forth in the housing element.

**Table III-11
Affordable Housing Policies
Housing Implementation Plan
Housing Element Policies Affecting the CDA¹**

Goal A: To designate adequate land for a balanced range of housing types and densities for all economic segments of the community.	
Key	Policy
P.19	The City shall continue to promote the development of a broad mix of housing types.
P.19	The City shall maintain an adequate supply of residential land in appropriate land use designations and zoning categories to accommodate Winters' fair share of projected regional growth and have as a goal a residential vacancy rate of at least 5 percent.
P.19	The City shall implement its 15-percent inclusionary housing ordinance for all new housing developments.
P.19	The City shall encourage development in the upper one-quarter of the density range in the Medium High Density Residential designation and require it in the upper one-quarter of the density range in the High Density Residential designation.
P.19	While promoting the provision of housing for all economic segments of the community, the City shall seek to ensure the highest quality in all new residential development.
P.19	To address the needs of low-income large families, the City shall promote the development of multi-family rental units with three or more bedrooms.
P.19	The City shall pursue available and appropriate State and federal funding assistance to achieve the new construction objectives of the Housing Element.
P.19	The Affordable Housing Steering Committee shall review all residential development proposals involving 50 housing units or more and encourage the applicant to include a higher percentage of affordable units than the minimum inclusionary requirement.
P.19	The City shall expedite processing and approval of residential projects that conform to General Plan policies and City regulatory requirements.
P.19	The City shall ensure that its policies, regulations, and procedures do not add unnecessary cost to housing production.
P.19	The City shall continue to provide for the development of secondary residential units, as required by State law, while protecting the single-family character of neighborhoods.
P.19	In accordance with the provisions of State law, the City shall grant density bonuses of at least 25 percent and at least one other specified incentive for qualifying projects to promote the inclusion of lower income and senior citizen housing.
P.20	Residential units that are required to sell or rent at below-market-rates (such as inclusionary or density bonus units) within a housing development that includes market-rate units, the affordable units shall be interspersed within the development and, to the extent reasonable, shall be visually indistinguishable from the market-rate units.
P.20	The City shall allow the installation of mobilehomes and factory-built housing on permanent foundations consistent with the requirements of State law and in accordance with the City's residential design standards.
P.20	The City shall continue to work with the Yolo County Housing Authority in the administration of affordable housing programs.
P.20	The City shall provide incentives to developers to construct ownership housing affordable to low- and moderate-income households.
P.20	The City shall provide incentives for the development of second-story residential uses over commercial and office uses in the Central Business
P.20	The City shall require that 10 percent of the lots in residential subdivisions of 20 or more lots be marketed to local builders or owner-builders.
P.20	The City shall provide incentives to non-profit housing developers to construct housing affordable to very low-, low-, and moderate-income households.

¹ These policies reference the City of Winters General Plan *Draft* Housing Element Update Policy Document that is expected to be adopted in 2008.

Goal B: To encourage the maintenance, improvement and rehabilitation of the City's existing housing stock and residential neighborhoods.

Key	Policy
P.21	The City shall encourage private reinvestment in older residential neighborhoods and private housing rehabilitation.
P.21	The City shall pursue available and appropriate State and federal funding to meet the rehabilitation objectives of the Housing Element.
P.21	The City shall support the revitalization of older neighborhoods by keeping streets and other municipal infrastructure in good repair.
P.21	The City shall promote the continued upkeep of existing mobilehome parks.
P.21	The City shall require abatement of unsafe structures, giving property owners ample opportunities to correct deficiencies.
P.21	The City shall promote the preservation of architecturally and historically significant residential structures.
P.21	The City shall require rental property owners to provide relocation assistance to tenants displaced by code violations not caused by the tenants.

Goal C: To encourage energy efficiency in both new and existing housing.

P.21	The City shall require the use of energy conservation features in the design of all new residential structures.
P.21	The City shall promote incorporation of energy conservation and weatherization features in existing homes.

Goal D: To ensure the provision of adequate services to support existing and future residential development.

Key	Policy
P.22	The City shall pursue appropriate State and federal funds, and use Redevelopment funds, for upgrading infrastructure and other public improvements in very low- and low-income neighborhoods.
P.22	The City shall require that new residential development pay for the cost of infrastructure and public services needed for that development.
P. 22	The City shall plan for necessary public facilities and services (including school facilities) in collaboration with other responsible local agencies, so that these facilities and services are available at the time of demand from new residential development.

Goal E: To promote equal opportunity to secure safe, sanitary, and affordable housing for all members of the community regardless of race, sex, marital status, national origin or color.

Key	Policy
P.22	The City shall provide incentives to developers to address special housing needs of low-income households including the physically and mentally disabled, large families, farm workers, the elderly, and female-headed households.
P.22	The City shall make information on the enforcement activities of the State Department of Fair Employment and Housing available to the public.
P.22	The City shall work with Yolo County and surrounding jurisdictions to address the needs of the homeless on a regional basis.
P.22	The City shall cooperate with community-based organizations that provide services or information regarding the availability of services to the homeless.

Goal F: Conserve existing affordable housing.

Key	Policy
P.22	The City shall support the continued use of Section 8 housing vouchers for Winters' residents.
P.22	The City shall seek to maintain the affordability of existing subsidized multi-family rental housing.

Source: Winters Community Development Agency, 2008.

APPENDIX A

**TABLE 1-A
WATER IMPROVEMENTS¹**

Description	Location	Quantity
Install Water Mains	Fourth Street	1600' of 12"
	Russell Street ²	1700' of 8"
	Third Street	850' of 8"
	Main Street	5600' of 14"
	Grant Avenue (east of Dutton)	800' of 12"
	Railroad Avenue (north of Grant)	850' of 12"
	McArthur Avenue ³	1200' of 8"
	Washington Avenue ⁴	1050' of 8"
	Edwards Street	3800' of 12"
	Abbey Street	2600' of 8"
	Well #2 to East Street	12"
	Lincoln Street	450' of 8"
	Jefferson Street	550' of 8"
	Jackson Street	650' of 8"

¹ The June 1992 Community Development Project Area Plan proposed the water system activities listed in Table 1-A with the CDA generally paying ten-percent of the total costs (of contracting, engineering, legal, and administrative) for the water main work.

² A portion of the Russell Street water main work was completed in 2001 when an 8" main line was installed from the far westerly end of Russell to Emery Street. The remaining portion will be completed during the fall of 2008.

³ McArthur and Jackson Street water main work was completed in 2007 when an 8" main line was installed in all of Jackson and in McArthur from Taylor to Jackson.

⁴ A portion of East Edwards Street from Railroad Avenue to East Street will be completed during the fall of 2008.

TABLE 2-A¹
WASTEWATER IMPROVEMENTS

Description	Location	Quantity
Install Sewer Mains	Grant Avenue (Railroad to East)	24" (100% funding)
	East Street	30"
	Taylor Street	10" (100% funding)
	Washington Avenue	8"
	Washington Avenue	10"
	First Street	8"
	First Street	10"
	First Street	12"
	Railroad Avenue (Anderson Avenue to Moody Slough Road)	8"
	Railroad Avenue	24"
	Railroad Avenue (Anderson to Grant)	12"
	Baker Street	8"
	East Baker Street	8"
	Edwards Street	8"
	Abbey Street	8"
	Alley (Between Abbey & Main)	8"
	Alley (Between Main & Russell)	8"

¹ The June 1992 Community Development Project Area Plan proposed the wastewater system activities listed in Table 2-A with the CDA generally paying 25-percent of the total costs (of contracting, engineering, legal, and administrative) for the sewer main work. In many instances, the work detailed in Table 2-A is not reflected in the Future Wastewater Collection System proposed as part of the 1992 Sewer System Master Plan.

**TABLE 3-A
ROAD IMPROVEMENTS¹**

Description	Location	Quantity
Widen, Acquire ROW, and Striping & Landscaping	Grant Avenue (Dry Creek to West of Timber Crest Rd)	N/A (100% funding)
Signalize Intersection	Grant/East Main Street	N/A (100% funding)
	Grant/Railroad Avenue ²	
Rebuild (Reconstruct)	Railroad (south of Grant)	1300' (100% funding)
Acquire ROW	Railroad (south of Grant)	1300' (100% funding)
Rebuild (Reconstruct)	Railroad (Grant to Anderson Avenue)	800' (partial funding)
	Railroad (Anderson to NASP)	4000' (partial funding)
	Putah Creek Bridge including pedestrian walk	N/A (10% funding)
Construct	New Putah Creek Bridge	N/A (10% funding)
Rebuild (Reconstruct)	Mermod Place (south of Anderson)	N/A (100% funding)
Extend Road	Elliot Street (East Abbey Street to Grant)	3000' (10% funding)
	Jackson Street ³	681'
Other	Assist Grant/Railroad Assessment District ⁴	N/A (partial funding)
Abbey Street Improvements	Abbey Street between RR and Elliot Streets - Parking Imprvmnt	N/A (100% funding)
Streetscape Improvements	Railroad (Grant to Russell)	N/A (100% funding)
	Main Street (First to East)	N/A (100% funding)
Utility Under-grounding	Location(s) not designated ⁵	N/A (25% funding)

¹ The June 1992 Community Development Project Area Plan proposed the road improvements listed in Table 3-A except for the reconstruct work on Jackson Street and McArthur Avenue.

² Grant/Railroad signal was completed in 2006

³ Jackson and McArthur Street were reconstructed in 2007

⁴ The Grant/Railroad Assessment District has not been established.

⁵ The overhead utility lines (street lighting) on Main Street between Second and Railroad was under-grounded in 2002.

APPENDIX B OVERVIEW OF REDEVELOPMENT HOUSING REQUIREMENTS

Community Redevelopment Law (the "CRL") requires redevelopment agencies to assist in the provision of affordable housing as part of their overall redevelopment programs. The discussion below presents the major general statutory requirements governing the Winters Community Development CDA's participation in the production of affordable housing.

Major Statutory Provisions of the CRL for Affordable Housing

The major statutory affordable housing requirements imposed on redevelopment agencies by the CRL may be categorized generally as:

- **Housing Fund Requirement.** Redevelopment agencies are required to expend specified percentages of tax increment revenue for provision of affordable housing.
- **Housing Production Requirement.** Specified minimum percentages of new or rehabilitated housing units in a project area are to be available at a specified affordable housing cost.
- **Replacement Housing Requirement.** Agencies must replace housing units removed from the housing stock as a result of redevelopment activities.

1. Housing Fund Requirement

The CRL requires the CDA to set aside in a separate segregated low and moderate income housing fund (the "housing fund") at least 20 percent of all tax increment revenue generated from its project areas for the purpose of increasing, improving and preserving the community's supply of low and moderate income housing (CRL Section 33334.2). Under the CRL, the preservation of affordable housing includes preserving low and moderate income housing units which previously have received assistance from federal, state or local government and are currently threatened with conversion to market rate.

The CRL authorizes a broad range of uses for the housing fund, including but not limited to: acquisition of land or buildings; construction of buildings, onsite improvements or offsite improvements; rehabilitation of buildings; paying a portion of the principal and interest on bonds issued to finance affordable housing; the maintenance of the community's supply of mobile homes; and provision of subsidies for financing housing affordability (CRL §33334.2 and §33334.3).

Under CRL, housing fund moneys must be targeted to specific income levels. Agencies are specifically required to expend their housing funds to assist very low, low and moderate income households, generally defined as:

Very Low Income: Incomes at or below 50% of area median income, adjusted for family size

Low Income: Incomes between 51% and 80% of area median income, adjusted for family size

Moderate Income: Incomes between 81% and 120% of area median income, adjusted for family size

The assistance must be provided in at least the same proportion that the total number of housing units needed in the community for the very low and low income categories which are not being provided by other governmental programs bears to the total number of units needed in the community for very low, low and moderate income households. The targeted assistance requirement is applicable over the duration of the redevelopment plan. (H&S Code §33334.4)

Housing assisted with housing fund moneys must be "available at an affordable housing cost". (CRL §33334.3) For housing assisted by housing funds after January 1, 1991, the following affordable housing cost definitions apply:

**TABLE 1-B
AFFORDABLE HOUSING COST¹**

Income Level	Housing receiving assistance after January 1, 1991	
	Rental Housing	Ownership Housing
Very Low Income	30% of 50%	30% of 50%
Lower Income	30% of 60%	30% of 70%
Moderate Income	30% of 110%	35% of 110% but no less than 28% of actual income

For housing assisted by housing funds prior to January 1, 1991, affordable housing cost is defined as rent or cost for rental or ownership housing that does not exceed 25% of gross income of the upper income limit for the target income category.

The CRL also requires that recorded affordability controls be placed on any new or substantially rehabilitated housing assisted with housing fund moneys. In the case of rental housing, controls must be placed on the assisted housing units requiring them to remain affordable for the longest feasible time but no less than 15 years (H&S Code §33334.3[f][1]). For owner-occupied housing, the units must remain affordable for the longest feasible time, but not less than ten years (H&S Code §33334.3[f][2]). According to statutory definition, the "longest feasible time" requirement includes, but is not limited to, a period of unlimited duration (H&S Code §33334.3[g]). If the units meet an inclusionary or replacement requirement the restriction must be for the life of the CDA.

New or substantially rehabilitated owner-occupied units, however, may be sold without the affordability restrictions if the CDA has a program such as equity sharing or deferred loans, which ensures that the CDA will receive a share of sales proceeds to protect its investment. Those funds must be returned to the CDA's housing fund. Finally, if a CDA utilizes its housing fund to preserve assisted units, the units are required to remain affordable for the longest feasible time and, in any event, beyond the date the subsidies or use restrictions could be terminated and the assisted units converted to market rate rental (H&S Code §33334.3[h]).

The 2008 *Draft* Housing Element Background Report for the City of Winters sets out the affordable housing need as identified by the Sacramento Council of Governments in its regional "fair share" allocation. The Table immediately following shows that "fair share" allocation and the targeting objective currently applicable to the CDA.

**TABLE 2-B
Affordable Housing Need (Regional Fair Share)
Identified in 2008 Winters *Draft* Housing Element By Income Category**

Income Category	Units Needed (Fair Share)	Proportion Required
Very Low Income	188	44%
Low Income	125	29%
Moderate Income	118	27%
Total	431 ²	100%

Source: Winters Community Development Agency, 2003.

¹ The first percentage means the percent of income that can be spent on housing costs. Housing costs for rental housing include rent, utilities, separately charged fees or service charges, possessory interest, taxes or other fees or charges assessed for use of land and facilities. Housing costs for ownership housing include mortgage principal and interest, utilities, property taxes, property and fire insurance, homeowner association dues and space rent, if land is rented. The second percentage means the percent of area median income.

² This is a citywide number.

**TABLE 3-B
Units Constructed to Date with Housing Funds
& Proportion by Income Category**

<u>Income Category</u>	<u>Units Produced</u>	<u>Actual Percent</u>
Very Low Income	0	0%
Low Income	0	0%
Moderate Income	0	0%
Total	0	0%

Source: Winters Community Development Agency, 2008.

2. Housing Production Requirement

A. INCLUSIONARY REQUIREMENT

Project areas created by redevelopment plans adopted on or after January 1, 1976 and territory newly added to project areas by amendments adopted on or after January 1, 1976 must meet an affordable housing production or inclusionary obligation (the "Housing Production Requirement"). The Housing Production Requirement begins on the date of adoption of a new or amended redevelopment plan.

The CRL requires that 30 percent of all housing developed or substantially rehabilitated by a CDA must be available at affordable housing cost to low and moderate income households (CRL §33413[b][1]). Of those units, 50 percent must be affordable to very low income households. The 50 percent very low income requirement translates to 15 percent of the total units developed or rehabilitated by the CDA (50% of 30% equals 15%). This requirement applies only to units developed directly by the CDA and does not apply to units developed by housing developers pursuant to agreements with a CDA.

When housing is developed or substantially rehabilitated in a project area by public or private entities other than the CDA, including entities receiving CDA assistance, 15 percent of the total number of units must be affordable to low and moderate income households (CRL §33413[b][2]). Of those units, 40 percent must be affordable to very low income households. The 40 percent very low income requirement translates to 6 percent of the units developed and substantially rehabilitated in the project area (40% of 15% equals 6%).

The definition of substantial rehabilitation triggering the Housing Production Requirement is rehabilitation which involves either three or more multi-family rental units, or, one or two rental or owner-occupied single family units which have received CDA assistance and which constitute at least 25 percent of the after-rehabilitation value of the dwelling, inclusive of land value.

Units produced under the CRL's inclusionary provisions must remain affordable to the target households for the longest feasible time, but not less than the period of time the land use controls on the redevelopment plan remain in effect.

The CRL currently permits an agency to count units that are made available at affordable housing cost outside a project area toward the agency's Housing Production Requirements, on a two-for-one basis; that means that two affordable units created outside a project area can be counted the same towards the Housing Production Requirement as one unit created inside the project area.

In addition, the CRL also currently permits an agency to fulfill a portion of the Housing Production Requirement through the use of existing multi-family housing. An agency may meet up to 50 percent of its Production Requirement by acquiring or causing the imposition of long-term price restrictions on existing multi-family units that are either unavailable at affordable housing cost to low and very low income households or that are affordable to these households but that the agency finds cannot reasonably be expected to remain affordable (CRL §33413[b][2][B]). At least 50 percent of these units

must be made available at an affordable housing cost to very low income households and not more than 50 percent of the total units may be counted towards the Housing Production Requirement.

The affordability covenants on these units must be recorded and remain in effect for the longest feasible time, but in no event for less than 55 years for rental units and 45 years for owner-occupied units.

B. Production Plan

The CRL requires agencies to adopt a plan for each project area over each successive ten-year period of the redevelopment program showing how the agency intends to meet its affordable Housing Production Requirement (the "Housing Production Plan") (H&S Code §33413[b][4]). This production plan can be part of the agency's Five Year Implementation Plan. The Housing Production Plan must be consistent with, and may (but need not) be included in the community's housing element, and is to be reviewed and updated as necessary at least every five years in conjunction with the housing element cycle. The CRL also specifies that the Housing Production Plan will be a part of the Implementation Plan.

The Housing Production Plan in general must include the following:

1. Estimates of the number of new, substantially rehabilitated or price-restricted units to be developed or purchased within the project area, both over the life of the redevelopment plan and during the next ten years;
2. Estimates of the number of units of very low, low and moderate income housing required to be developed within the project area to meet the agency's project area housing production obligation, both over the life of the redevelopment plan and during the next ten years;
3. The number of units of very low, low, and moderate income housing that have previously been developed within the project area and meet the agency's project area housing production obligation; and
4. Estimates of the total number of agency-developed units during the next five years and the number of units for very low, low, and moderate income households which will be developed to meet the percentage requirements for affordable agency-developed housing.

If the housing production requirements have not been met at the end of the ten-year period, the agency must meet its production goals on an annual basis until the requirements for the applicable ten-year planning period are met.

3. Replacement Housing Requirement

When residential units housing low and moderate income persons are destroyed or taken out of the low and moderate income market as part of a redevelopment project which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency must replace those units with new or newly rehabilitated low and moderate income units (H&S Code §33413[a]). The units subject to the Replacement Housing Requirement must be replaced within four years after they are destroyed or removed from the market. The agency may replace destroyed or removed units with a fewer number of replacement units if the total number of bedrooms in the replacement units equal or exceed the number of bedrooms in the destroyed or removed units. Also, the replacement units must be affordable in the same income level of households as the destroyed or removed units.

The CRL requires that, at least thirty days prior to acquiring property or adopting a disposition and development or owner participation agreement that will lead to the destruction or removal of low and moderate income housing units, an agency must adopt by resolution a replacement housing plan (H&S Code §33413.5). A draft of the replacement housing plan must be made available for public review.

The replacement housing plan must include: (a) the general location of the replacement housing; (b) an adequate means of financing the replacement housing; (c) a finding that the replacement housing does not require the approval of the voters pursuant to Article XXXIV of the California Constitution, or that

such approval has been obtained; (d) the number of replacement housing units which will house persons and families of low or moderate income; and the timetable for meeting the plan's objectives.

Currently, the Replacement Housing Requirement applies to project areas established by redevelopment plans (or areas added by amendments) adopted on or after January 1, 1976 and merged project areas regardless of the date of establishment of the individual project areas subsequently merged. Replacement units may be located anywhere within the territorial jurisdiction of the agency (H&S Code §33413[a]). An agency may construct replacement housing itself or cause that housing to be developed through agreements with housing developers.

The basic income and affordability standards for replacement housing are the same as those described for use of housing fund moneys. The units must be available at affordable housing cost to households of low and moderate income. In addition, for dwelling units destroyed or removed after September 1, 1989, the CRL requires that 75% of the replacement units be available at an affordable housing cost to the same income level of households (very low, low or moderate income) as the households displaced from the units removed or destroyed (H&S Code §33413[a]).

For example, if 100 units were destroyed and 50 were very low income units, 30 were lower income units, and 20 were moderate income units, then, of the 100 replacement units, at least 38 (75% of 50) must be affordable to very low income households, at least 23 (75% of 30) to lower income households, and at least 15 (75% of 20) to moderate income households. The remaining 24 replacement units need only be affordable to households with incomes not exceeding 120% of area median income.

Replacement housing must remain affordable the longest feasible time, but not less than the period of time that the land use controls of the redevelopment plan remain in effect (H&S Code §33413[c]). The affordability controls on such units must be made enforceable by recorded covenants or restrictions.

**Appendix Table 4-B
Production from Major New Developments
Projection 2008-2013**

II. DEVELOPMENT ¹	Total Units ²	Affordable Obligation ³	
		Very Low (6%)	Low & Moderate (9%)
--	--	--	--
TOTAL	--	--	--

Source: Winters Community Development Agency, 2008.

¹ As of February 2003, the City has not received any applications for residential projects of more than 15 units located in the project area.

² Total new and substantially rehabilitated units in project area (both affordable and market rate).

³ The overall affordable housing requirement is 15% of total units: for very low income housing is 6% of total units and low and moderate is 9%. This obligation will be met by the mandatory inclusionary ordinance.

APPENDIX C SETTLEMENT TERMS

In 1994, the Winters Community Development Agency and the City of Winters entered into a settlement agreement to resolve a lawsuit filed in connection with the City's Housing Element. The principal terms of the settlement agreement include the following:

1. The City was required to adopt an inclusionary housing ordinance requiring that at least 15 percent of all new housing units will be affordable to very low-, low- or moderate-income households, with six percent of new housing units being affordable to very low-income households, and nine percent of new housing units being affordable to low- and moderate-income households in proportion to the unmet affordable housing needs for each as identified in the current Housing Element in effect during each four year period.
2. The City is required to ensure that affordable rental and ownership units for very low- and low-income households shall remain affordable for a period of not less than 55 years.
3. The City shall deposit 20-percent of the gross Community Development Agency tax increment allocated to the CDA pursuant to Health & Safety Code § 33670 into the CDA's Low and Moderate Income Housing Fund as required by Health and Safety Code § 33334.2. The "20-percent set aside" from the gross tax increment shall be calculated before the "pass through" of funds to Yolo County and other entities.
4. The City shall provide Legal Services of Northern California annual written reports on its progress towards meeting the 15-percent requirement, in the form of expanded Annual Reports, as currently required by the Community Redevelopment Law at Health & Safety Code § § 33080.1 and 33080.4.



**COMMUNITY DEVELOPMENT AGENCY
STAFF REPORT**

TO: Honorable Chairman and Board of Directors
DATE: September 2, 2008
FROM: John W. Donlevy, Jr., Executive Director *[Signature]*
SUBJECT: Major Projects Review- CDA

RECOMMENDATION:

That the Board of Directors receive a staff presentation on major projects scheduled to occur between 2008 and 2011.

BACKGROUND:

The Agency currently has a number of key projects in the areas of capital improvements and planning which are scheduled over the next two (2) fiscal years. Attached as Exhibit A is a table listing all projects and the current status and budgets for each.

Staff will be presenting an overview of each project and will ask input and/or questions regarding each.

ATTACHMENT:

CDA Major Projects List- 2008-09

**Winters Community Development Agency
Major Projects- 2008-09**

Update

<i>Project</i>	<i>Description</i>	<i>Date</i>	<i>Status</i>	<i>Budget</i>	<i>Project Manager</i>
<i>Downtown Improvement Program/Master Plan</i>					
Phase I Improvement Project	Streetscape and intersection improvements for Main St., Railroad and Abbey St. Intersections.	September, 2008	Bid approved in August, 2008 and construction is under way.	\$1.35 million	Asa Utterback
Phase II Improvement Project	Streetscape and intersection improvements for central Main St and First Street.	March, 2009	Construction design is in process and the project will be bid in January, 2009.	\$680,000	Asa Utterback
Downtown Code	Development of a downtown zoning and design code.	Currently under way.	Scheduled for final adoption with the Planning Commission and City Council.	\$72,000	Kate Kelly
Monticello	45,000 square foot mixed use project to be located in Downtown.	March, 2009	Development agreement before the City Council on August 2, 2008.	\$10 million	Cas Ellena



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE : September 2, 2008
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Hispanic Advisory Committee
SUBJECT: Update of activities of the Hispanic Advisory Committee

RECOMMENDATION:

The City Council accept the informational report on the activities of the Hispanic Advisory Committee.

BACKGROUND:

The City of Winters Hispanic Advisory Committee was established in June 2006 by Resolution of the City Council of the City of Winters and reestablished on April 15, 2008 with new members. Members of the current Hispanic Advisory Committee are: Hector Carrillo, Co-chair; Laura Salas, Co-chair; Karla Knabke, Crescencio Mejia; Leticia Quirarte; Alfonso Salas and Miguel Vazquez. Mayor Pro Tem Fridae and Council Member Curry continue to serve as liaisons to the committee.

The Hispanic Advisory Committee meets a minimum of once per month to focus on the following:

- Monitor the recommendations and programs addressed in the February 19, 2008 report,
- Host a town hall/community forum meeting once per year for the purpose of gathering information from the Latino community regarding their needs,
- Host an informational workshop once a year on a topic of importance to the Latino community,
- Coordinate an annual community festival,
- Continue to survey healthcare and social services available to citizens; look at ways to streamline accessibility of resources.

ACTIVITY UPDATE:

The Hispanic Advisory Committee meets monthly at 6:00 p.m. on the first Tuesday of

every month. Recently the committee has been meeting more frequently to finalize plans for the Festival de la Comunidad/Community Festival.

The initial meetings of the committee focused selecting a chairperson, reviewing the report from the past Hispanic Advisory Committee, setting direction for the current committee and selecting a date for the festival. It was agreed that Hector Carrillo and Laura Salas would co-chair the committee.

In discussing priorities for the group the consensus was to work towards increasing activities for Winters teenagers both after school and during the summer. The committee would like to see offerings of activities beyond sports. Community for Youth, Summer Youth Police Academy, Law Enforcement Explorer and Fire Department Explorer programs were all seen as desirable as were programs that would teach skills such as car maintenance, internet usage and music lessons. Dancing and Wii, ping pong and foosball tournaments were also suggested. A thorough presentation by the City's recreation department outlined the current offerings by the City. The committee would like to survey middle school students to learn what activities are of interest to them. There was not enough time prior to the end of the 2007/2008 school year for the survey to be conducted.

The committee contacted St. Anthony's Parish to ask for permission to use the hall for teen recreation activities and was informed that so long as scheduling permitted the hall would be available to use by the City recreation program with the provision that the City would accept liability and would take care of set up and clean up for the program. The committee also learned of a citizen who would give guitar lessons in Spanish to community members. This information was shared with the City's recreation department which, with additional staffing, is focusing on how to increase teen recreation offerings.

In June planning began for this year's festival. A new name was chosen for the festival, Festival de la Comunidad/Community Festival. The name of last year's festival, Festival de la Cosecha, or Harvest Festival, was found to be too confusing with the Chamber of Commerce hosting a Harvest Festival the following month. Additionally, the committee wanted a name that was more representative of the purpose of the festival, i.e. bringing all of the citizens of Winters together for a day of family fun and creating a sense of unity and community spirit. The committee believes the new name to be more encompassing of those ideals. Sunday, September 28, 2008 was selected for the festival date to promote families coming together for a late afternoon/early evening event.

It was determined that in addition to expanding upon the activities of last year's very successful festival, that this year a carnitas cook-off would also be held. The cook-off will consist of up to six teams cooking one hundred pounds of pork each. Tortillas, rice, beans and salsa will also be available. For a five dollar per person tasting fee festival attendees will be able to sample all the carnitas entries and vote for their favorite. Committee members have all agreed to take on tasks for the festival relating to vendor and information booths, entertainment, children activities, carnitas cook-off and set-up and take down. Fundraising and booth application letters have been sent out and

responses have been forthcoming.

Upon the completion of the festival the committee will turn towards the other areas of focus, i.e. hosting a community information gathering forum regarding the needs of the Latino community, hosting a workshop on a topic of importance to the Latino community and a review of healthcare and social services available and how to streamline access to those services.

FISCAL IMPACT:

None at this time.