



Joint Workshop of the Winters City Council and Planning Commission
Public Safety Facility - Training Room
702 Main Street, Winters, CA 95694
Tuesday, May 13, 2014
6:30 p.m.
AGENDA

Members of the City Council

*Cecilia Aguiar-Curry, Mayor
Woody Fridae, Mayor Pro Tempore
Harold Anderson
Wade Cowan
Bruce Guelden*

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

Members of the Planning Commission

*Bill Biasi, Chairman
Pierre Neu, Vice Chairman
Dave Adams
Lisa Baker
Kate Frazier
Luis Reyes
Patrick Riley*

*David Dowswell, Contract Planner
Jenna Moser, Management Analyst*

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

COUNCIL/STAFF COMMENTS

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.

PRESENTATIONS

DISCUSSION ITEMS

1. Downtown Hotel Site Plan and Design Plan Workshop (p. 1)
2. Highlands Development Agreement Workshop (pp. 2-61)

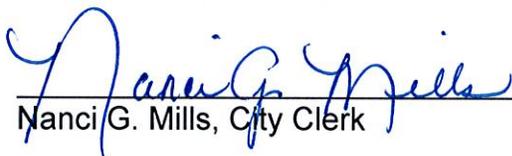
CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the May 13, 2014 joint meeting of the Winters City Council and Winters Planning Commission was electronically transmitted to each Councilmember and Planning Commissioner and posted on the outside public bulletin board at City Hall, 318 First Street on May 8, 2014, and made available to the public during normal business hours.



Nanci G. Mills, City Clerk

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Wednesday at 10:00 a.m.

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**CITY COUNCIL AND PLANNING COMMISSION
JOINT WORKSHOP STAFF REPORT**

TO: Honorable Mayor and Councilmembers
Planning Commission Chairperson and Commission Members

DATE: May 13, 2014

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

FROM: Dan Maguire, Economic Development and Housing Manager *DM*

SUBJECT: Downtown Hotel Site Plan and Design Plan Workshop

OBJECTIVE:

The purpose of this report is to facilitate discussion and receive input from the public, City Council, and Planning Commission regarding the planning of the Downtown Hotel site.

RECOMMENDATION:

It is recommended that the City Council and Planning Commission receive a project briefing and presentation on the Downtown Hotel project and site plan and provide comments, questions, and direction to staff.

BACKGROUND:

In January, 2014 Staff re-issued a Request for Proposals ("RFP") for interested parties to submit proposals to develop a Downtown Winters Hotel, to be located on the approximately 1 acre bounded by Newt's Expressway, Railroad Avenue, Abbey Street and First Street. The City received two (2) proposals in response to the RFP. This property has long been programmed for a downtown hotel site and is appropriately zoned D-A.

At the May 6, 2014 City Council meeting, Council received the staff report on the proposals and unanimously approved staff recommendation to authorize the City to enter into an Exclusive Negotiation Agreement ("ENA") with Royal Guest for the development of a downtown hotel.

In conjunction with assisting the developer and staff in the refinement of the proposal, staff recommends the City Council and Planning Commission receives the developer's preliminary site plan and renderings and provide input.



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council/Chairman and Planning Commission
DATE: May 13, 2014
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: Winters Highlands Development Agreement Workshop

RECOMMENDATION:

That the City Council and Planning Commission hold a workshop on the Winters Highland Subdivision Development Agreement amendment process; and provide input to staff and the developer on the elements discussed.

BACKGROUND:

Since 2006, the City has entered into five (5) development agreements with various developers for the subdivision and development of residential projects. In 2007, the real estate market essentially “crashed” and none of the proposed projects proceeded. Because of this, amendments have been initiated and adopted over the past six years to keep the agreements current and viable for when the real estate market returns.

In December, 2011, the City Council approved an amendment to the Creekside Estates Subdivision Development Agreement. This amendment was the first comprehensive revision to essentially “modernize” the agreements to recognize capital improvements made during the interim, needs of the City and the developer, and also to acknowledge the new fiscal realities of residential development.

Subsequent to this action, Staff began working with the developers for the Hudson Ogando, Callahan Estates and Winters Highlands subdivisions for similar modifications to bring them current.

DISCUSSION:

In the Creekside Estates and Callahan/Ogando Hudson updates, Staff focused on a number of key elements to modernize, which included the following:

1. Acknowledgement of the development of key infrastructure which has been constructed (Library, Well 7, Pool, Public Safety Facility) and removed advanced funding or financing

Project Description and Amendment:

The project is a proposed residential subdivision of 102.6 acres to create 413 single-family lots (including 36 “duplex” lots) on 49.49 acres, a 2.01 acre multifamily lot on which 30 apartments will be developed, a 10.63 acre park site (plus a proposed 10,000 square foot well site), and a 7.43 acre wetlands/open space area, an exchange parcel of 0.04 acres to the Callahan property to the south, and 32.81 acres in public roads (see Exhibit A, Tentative Subdivision Map).

The project as proposed includes the following key features:

- 1) 395 SF lots (including 153 small alley-loaded lots) and 30 MF lots; 443 total lots.
- 2) Neo-traditional neighborhood design.
- 3) Smart growth principles.
- 4) Grid street pattern.
- 5) Traffic calming features.
- 6) Pedestrian and bicycle connections.
- 7) Wetlands protection for 4.33 acres in northeast area.
- 8) 10.86-acre neighborhood park and well-site.
- 9) Density of 5.34 du/ac within single family areas (413 ÷ 77.3).
- 10) Lot size range of 3,040 to 11,550 square feet
- 11) 14.9% of the lots ≥7,000 square feet (66 ÷ 443).
- 12) Two-acre site for 30 apartments.

LOCATION

The project site is located north of Grant Avenue along Moody Slough Road (County Road 33) in the northwestern portion of the City of Winters. The project site totals 102.6 acres comprised of APNs 030-220-17 (48.1 acres), 030-220-19 (21.0 acres), and 030-220-33 (33.5 acres) located south of Moody Slough Road, east of the westerly City limits, and north of the existing Dry Creek subdivision.

Workshop:

The joint workshop is being held to provide an overview of some of the main issues related to the project and development agreement which are under consideration.

The following is an overview of the requests made by HBT regarding the development agreement and the conditions of approval.

Attachment B provides a general description of the overall requests with associated letters between the City and HBT.

DEVELOPMENT AGREEMENT MODIFICATIONS:

The modifications to the Winters Highlands Subdivision generally include the following by category:

Permitting and Construction:

- **Phasing:** Elimination of the phasing of building permits.
- **Permits and Fees:** The project will pay permits and impact fees in the same manner as the other subdivisions, with 50% due at permit and 50% at the certificate of occupancy.
- **School Fees:** The previous development agreement provided for the payment of both level II and level III school impact fees. HBT has reached agreement with the WJUSD and is requesting that these requirements be eliminated from the agreement. See Exhibit H.

Financial and Contributions:

The project has some quite onerous requirements for the actual development of the needed infrastructure and amenities. HBT is asking for the City to consider the following:

- **Community Financing District:** HBT is requesting the consideration of a Community Financing District (Mello Roos) for the installation of the needed improvements. This would be approximately \$3.5 million in infrastructure (\$4.4 m with the costs of issuance). The typical payments would be between \$680 and \$900 per year in assessments.
- **Annuity Elimination:** HBT hired Goodwin Consulting, a municipal economics firm to review the economic impact analysis done in 2005 for the fiscal impact analysis. The findings show and HBT is requesting that the annuity requirement be eliminated as a requirement from the project.

See Attachment C of this report is the analysis from Goodwin Consulting on financing for Winters Highlands.

Capital Projects:

HBT is requesting the elimination of one major requirement and a number of smaller amendments which are similar to those waived in other development agreements. These include as follows:

- **Wastewater Treatment Facility Expansion:** The original development agreement provided for the advancement of \$8 million toward the expansion of the City's wastewater treatment facility. This requirement would be eliminated.
- **Public Safety Facility and Library:** Both the Library and Public Safety Facility have been constructed and incorporated into the City's impact fee programs. Thus the requirement for the advancement of funds is not necessary and the fees will be collected at permit.
- **Miscellaneous Contributions:** The DA provides for contributions toward Nature Education (\$100k), Economic Development (\$100k) Putah Creek (\$100k) and the High School Cafeteria (\$50k). These will be eliminated.
- **Water Well :** Well #7 was constructed and is in operation. No advancement of funds is required.

Energy:

The development agreement provides for the installation of solar amenities on 50% of the homes and that the project meet the Energy Star standards for overall energy efficiency. Since the adoption of the

Development Agreement, the City has adopted the California Green Building Code which will exceed the overall standards previously set in both energy and water efficiency. HBT is requesting the elimination of the solar construction requirement.

Attached as Exhibit D is a memo outlining the request by HBT on energy.

Affordable Housing:

HBT has been before the Affordable Housing Steering Committee, Planning Commission and City Council regarding modifications to their overall affordable housing plan. The plan has been modified and the details are included in Exhibit E of this report.

Mitigation:

HBT has requested modifications to the previously approved mitigation requirements. Exhibit F outlines the requested modifications to the mitigation language. The overall request is to reduce the City listed requirements and vest requirements with the applicable State and Federal agencies for compliance the associated permitting.

Cooperation Agreement:

An important element in the development agreements for Winters Highlands and Callahan Estates is the provision for reciprocal access and a cooperation agreement for either developer to complete needed and common infrastructure for the projects. Exhibit G is a letter and map agreeing to the applicable reciprocity for Winters Highlands and Callahan Estates.

ATTACHMENTS:

- A. Project Map
- B. General Correspondence on DA Modifications
- C. Goodwin Consulting Report
- D. Energy Evaluation and Request Memo
- E. Affordable Housing Report and Information
- F. Mitigation Memo
- G. Reciprocal Access and Cooperation Agreement Map
- H. WJUSD/Winters Highlands School Fees Agreement

July 31, 2013

VIA E-MAIL and US MAIL

John Donlevy Jr, City Manager
City of Winters
318 First Street
Winters, CA 95694

RE: **Winters Highlands – Summary of July 17, 2013 meeting regarding the project Development Agreement and Conditions of Approval**

Dear John:

Thank you for taking the time to meet with us on July 17, 2013. The purpose of the letter is to summarize our discussion regarding the current/approved Winters Highlands Development Agreement, its subsequent amendments, and the Conditions of Approval. Below is an itemized list of the areas discussed during our meeting, as well as a brief summary of the modifications we understand the City is willing to consider in a Third Amendment to the Development Agreement, subject to approval by the City Council.

As we discussed, Towne Development of Sacramento (Towne) is part of the 64 year real estate and homebuilding legacy of Zilber LTD. Our culture and commitment is demonstrated in the quality communities we build throughout the United States, as a private homebuilder. We are hopeful that we can bring our quality spirit to the City Winters through the Highlands Project, provided that we are able to find the project feasible to build through our due diligence. The following items represent our first foray with the City into re-establishing the Highlands as a feasible development opportunity.

Second Amendment to the Development Agreement

- Section 5 – City staff will recommend that the current building permit allocation/cap, and the requirement to build all affordable housing units within a given phase, prior to approving the final map for subsequent phases, be removed from the Development Agreement.
- Section 5 – City staff will recommend the revising the current affordable housing requirement as follows: The project will be required to build fifteen (15) moderate income units on site, and set a deed restriction on the apartment site, which is to be developed by an affordable multifamily housing developer, or other appropriate entity. The construction of the moderate income units, and dedication of the apartment site will satisfy the project's affordable housing requirement. Should we proceed further with the project, Towne will submit a formal affordable housing proposal to the City.
- Section 7 – The City will acknowledge that the linear park design has been completed by removing this provision from the Development Agreement.
- Section 9 – The City will acknowledge that the police and fire joint use facility has been constructed, and that the project will be subject to the impact fee currently being collected by the City for police and fire facilities. The payment of this fee will occur at each individual building permit.



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- Section 10 – City staff will recommend that the requirement to pay \$75,000 for the community pool, and \$75,000 for the City library, will be removed from the Development Agreement.
- Section 11 – The requirement to advance fund WWTP Phase 2 shall be eliminated from the Development Agreement.
- Section 13 – The City will acknowledge that water Well No. 7 has been completed.

Development Agreement

- Section 3.9 – Right of Way to be obtained prior to the first Final Map will be limited to the easements and Irrevocable Offers of Dedication included in the “to be completed” Cooperative Agreement between Winters Highlands and the Callahan/Hudson-Ogando projects.
- Section 4.1 - The City acknowledges that Towne will be negotiating a new School Agreement with the Winters Joint Unified School District (School District) to eliminate the requirement to pay Level III school fees.
- Section 4.3 – Towne agrees to provide utility stubs to the offsite sports park, and City staff will recommend eliminating the requirement to pay an additional \$250,000 in park fees, beyond the project’s Quimby requirement.
- Section 4.15 – City staff will recommend removing the requirement to pay \$100,000 for City environmental education, \$100,000 for the Putah Creek Park Development Fund, and \$50,000 to the School District for cafeteria improvements, via a third amendment to the Development Agreement.

Outstanding Items

As we discussed, there are several items we discussed that remain in need of further consideration and/or refinement in order to render the project feasible (from Towne’s perspective). These include the following:

- Development Agreement Section 4.5 – As we indicated, Towne has not encountered the use of a fee-based annuity to fund City services. In our experience, local governments and Special Districts will use assessment district, Community Service Areas, Community Facility Districts (Mello-Roos), or User Fees to ensure that new development is paying its fair share for increased City services. Further, we understand that the City has a General Plan policy which prohibits the formation of assessment or Mello-Roos districts under any circumstance, and that all City residents should pay the same property tax regardless of when their home was constructed.

Both the annuity and above referenced policy are problematic on a myriad of levels in today’s homebuilding and development market. On one level, the requirement for the developer to fund City service shortfalls via an impact fee creates a significant financial burden on the project, as it represents an additional exaction to development impact fees, requiring an unexpected capital expenditure. On another level, the developer’s inability to bond for large and costly public infrastructure improvements renders the project all but infeasible, under any measure of institutional underwriting criteria.

While we respect and appreciate the City's policies, we reserve the right to continue dialogue on the annuity, and the use of assessment districts and bond financing to create a feasible project. At a minimum, we wish to have the City consider an update the project's Fiscal Impact Analysis to determine if the current shortfall fee of \$5,643 per home is valid. To that end, we would like to use Goodwin Consulting as a cross-reference to the earlier study.

- Development Agreement Section 4.13 – We respectfully request that the current requirements to build fifty (50) percent of the homes with photovoltaic solar, and pre-wire all remaining units to accommodate future solar systems, be removed from the Development Agreement. Towne, or any other homebuilder in California, is required to build homes to the latest Title 24 and Cal Green standards, which are some of the most advanced energy efficient construction techniques in the country. We contend that this requirement is out of date, and that the use of solar creates an unnecessary financial burden, given that the tax credits and rebates provided by the California Energy Commission no longer exist.
- Condition of Approval 4 – We expressed our concern over the City's General Plan policy to offer for sale 10% of the project (41 lots) to a local builder or owner-builder. To be clear we are not completely adverse to doing so provided the sale is offered at market rate. To clarify further, we understand that after making the offer through the local newspaper or other listing source; should there be no qualified buyers, the requirement is satisfied.
- Condition of Approval 61 and 64 – These Conditions, as they relate to design and home elevation restrictions, adversely affect our ability to housing market realities and home buyer requests. Towne prides itself in building quality neighborhoods and avoids the use of "cookie cutter" home design and streetscapes. We intend on presenting new architecture to the City should we decided to move forward with the Winters Highlands project, and therefore we request that any requirements relative to floor plans, elevations and home repetition be applied during subsequent home design review.
- Condition of Approval 136 – This Condition gives the City Engineer absolute discretion over WWTP capacity, as opposed to his or her reliance on actual wastewater flows as they relate to City approved and adopted wastewater studies. We request that more specific language be added to this Condition making the City Engineer's authority less arbitrary than it currently reads.

In addition, and since our meeting, we have continued our due diligence with a focus on the engineering costs for infrastructure and land development, as well as certain aspects of the environmental mitigation. Our engineer is updating the infrastructure and development costs, and we should have those by the first full week of August. However, we have gotten an initial summary of costs for the environmental/biological mitigation which we feel we should bring to your attention.

As outlined in the Conditions of Approval, there are several project mitigation measures which appear to be consistent with the requirements of the federal 404 and state 401 permits. Those mitigations include the following:

- 2.73 acres of vernal pool creation/preservation
- 1.68 acres of seasonal wetland creation/preservation

This equates to 4.41 acres of Resource Agency (US Fish and Wildlife Service, California Department of Fish and Wildlife, and California Regional Water Quality Control Board) required mitigation, at a cost of

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approximately \$555,000. These appear to be reasonable and consistent with other projects of similar size that we have worked on over the years.

However, and what appears to be severe and onerous, are the myriad of additional mitigation measures which appear to be over and above those required by the above noted resource agencies. These include the following, noted by their Condition of Approval (COA) number, with the associated costs as provided by our local biological consultant:

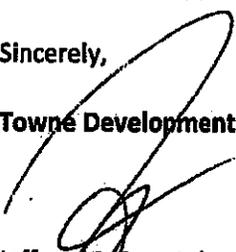
- COA #39 (\$1 million estimate)
- COA #40 (\$1 million estimate)
- COA #42 (\$200,000 estimate, and no fee program yet established)
- COA #43 (\$500,000 for wetlands restoration along Highland Canal or other/to be determined site north of Moody Slough Road).
- COA #45 (\$250,000 for restoration of 50-foot section along Dry Creek, including permitting and Agency coordination \$250,000)

As was pointed out by our consulting biologist, these additional mitigation requirements are expensive (\$3.2 million over what the Resources Agencies would require), time-consuming, labor-intensive and excessive. A number of these requirements appear to rely on the development of an HCP, which is far from adoption, a Memorandum of Understanding that either has expired or has not been ratified by the City, and a number of other questionable assumptions. We only wish to point these out, as they are material to our decision of whether this project can be successfully developed.

Thank you again for taking the time to meet with us, and for your continued assistance during our due diligence. It was clear from our meeting that both the City and Towne want the Winters Highlands project to move forward. We will be in contact with you in the coming weeks to discuss how we collectively address the issues outlined in this letter, as well as to discuss other matters necessary to complete our due diligence.

In the meantime, please feel free to contact me with any questions or concerns.

Sincerely,


Towne Development of Sacramento, Inc.

Jeffrey M. Pemstein
Division President

C: Jeremy Goulart, Towne Development of Sacramento, Inc.
Anton Garcia, Towne Development of Sacramento, Inc.
Dede Meyer, Meyer Crest LTD
Dara O'Farrell, Meyer Crest LTD
File

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August 12, 2013

Jeff Pemstein
Division President
Towne Development of Sacramento, Inc.
1640 Lead Hill Blvd, Suite 220
Roseville, CA 95661

RE: Clarification of Development Agreement Points- Letter of July 31, 2013

Dear Jeff:

Pursuant to your letter of July 31, 2013, I would like to clarify some points and statements in the letter based on our previous discussions.

Cooperation Agreement:

As discussed, in multiple previous meetings, the Winters Highlands, Callahan and Hudson Ogando subdivisions were discussed and considered as part of a comprehensive planning process which led to the approval of the projects. City Staff has met on various occasions with owner representatives to discuss the development of a cooperation agreement to ensure that utility costs, dedications and cooperative ventures are adequately addressed.

Prior to the initiation of any amendment for the Winters Highlands Project, the City is requiring that a cooperation agreement be developed and executed by all parties. The cooperation agreement was recently conditioned as part of the updates to the Hudson Ogando and Callahan Estates Subdivision Projects.

Your Letter of July 31, 2013

Per your letter, I would like to clarify the following:

Second Amendment Sections:

Section 5: Affordable Housing:

As part of the implementation of the development agreement, the applicant will be required to submit an inclusionary housing plan for the project which addresses the construction of the required low, very low and moderate units which are required for the project. City staff will not make any recommendations regarding affordable housing in regards to the Winters Highlands project other than what is currently included in the development agreement.

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COUNCIL MEMBERS
Harold Anderson
Wade Cowan
Bruce Guelden

MAYOR
Cecilia Aguilar-Curry
MAYOR PRO TEM
Woody Fridae

CITY CLERK
Nanci Mills
TREASURER
Michael Sebastian

CITY MANAGER
John W. Donlevy, Jr.

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In regards to the dedication of the apartments and the construction of the moderate units, this will NOT satisfy the affordable housing obligations for the project. The City will not assume the responsibilities for the production of the units and will rely on the developer to either develop the units or find an affordable developer to do this for the project.

Section 7: Park Design

While the linear park has been conceptually designed, the developer will be required to complete the construction drawings and construct the park in the applicable phases. At this point, the design is only half completed.

Section 9: Public Safety Facility: The Public Safety Facility is completed and the advance funding requirements will be deleted in the amendment.

Sections 10 and 11: Non Development Funding Requirements: Staff will recommend the elimination of the non-development funding requirements for the pool and library,

Section 11: Advance Funding for WWTF Expansion: Staff will recommend elimination of the advance funding requirement for the WWTF expansion.

Development Agreement

- **Section 3.9 Right of Way-** Developer will be required to obtain all required right of way as required for the project. City is requiring that Winters Highlands, Callahan and Hudson Ogando have a cooperation agreement executed prior to any amendments advancing for the Winters Highlands Project.
- **Section 4.1-** City acknowledges that the developer will be negotiating an updated agreement with the Winters Joint Unified School District and will amend the development agreement to reflect the changes in the deal.
- **Section 4.3:** Developer will be required to both provide utilities and the additional \$250,000 toward the sports park.
- **4.15:** City staff will recommend the elimination of the non-development related fees for environmental education, Putah Creek and the High School cafeteria.

Outstanding Items

- **Annuity:** The annuity is part of the general plan policy requirement that the project be "fiscally neutral". This provision is required and cannot be eliminated from the development agreement.
- **Solar:** The energy requirements in the project are required and were an important part of the overall project approval process. This requirement along with recent updates in the California "Green" Building Code should be evaluated to show the energy goals will be achieved.
- **Local Builder:** This is a General Plan Policy requirement.
- **Design:** You should make a proposal to modify these conditions.

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- **Wastewater Flow:** If you wish to modify condition 136, you should make a proposal on a flow monitoring system which is acceptable to the City Engineer.

Mitigation Issues:

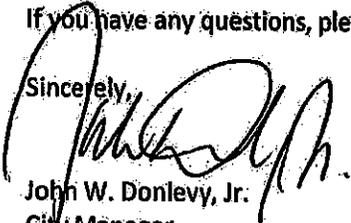
The biological mitigation measures are all based on research conducted during the development of the environmental impact report for the project. Both the wildland and wetland requirements are based on a significant amount of biological data, including multiple seasonal surveys.

Some comments on the conditions:

- **Condition's 39 and 41:** The burrowing owl location on the site has been partially constructed and we know that discussions with various land trust/management firms have been held by Granite Bay Holdings. You may wish to research in your files where the owl habitat issue sits and evaluate the final needs for this item. 6:1 mitigation is standard!
- **Condition 40:** 1:1 Mitigation for Swainson's Hawk is a pretty standard condition. We are certain that discussions were held with local land trusts for acquisition of appropriate easements. This is a required condition which cannot be changed.
- **Conditions 43-45:** Your biological consultant may wish to consider the development of a mitigation proposal for these and set a meeting time with City representatives to discuss alternatives.

If you have any questions, please do not hesitate to contact me at 530-794-6710.

Sincerely,



John W. Donlevy, Jr.
City Manager

CC: Dede Meyer- Meyer Crest LTD
Dara O'Farrell- Meyer Crest LTD.
Nick Ponticello- City Engineer

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September 13, 2013

VIA E-MAIL and US MAIL

John Donlevy, City Manager
CITY OF WINTERS
318 First Street
Winters, CA 95694

RE: Winters Highlands – Summary of August 19, 2013 meeting regarding the project Development Agreement and Conditions of Approval

Dear John:

The purpose of the letter is to summarize our August 19, 2013 discussion regarding the Winters Highlands' existing Development Agreement, its subsequent amendments, and the Conditions of Approval. Below is an itemized list of the areas discussed during our meeting, as well as a brief summary of the "next steps" that are to be conducted by both the City and Towne Development ("Towne").

The seller, Meyer Crest, has granted Towne an extension of its due diligence period to address the issues listed below. That extension goes through the end of this year, which means that we have to complete any actions with the City by December.

Annuity: Towne has expressed concerns with the existing fee-based annuity intended to fund the potential shortfalls in City services created by the project. During our meeting we discussed, and the City agreed, the need to update the existing fee study used to establish the per-unit fee to be paid into the annuity. Both Towne and the City understand that the previous fee study may not reflect current demands that may be placed on City services, nor the current cost of these potential services. Towne will be contracting with Goodwin Consulting, a well-known and respected municipal finance consultant, to provide a comprehensive review and analysis of the current fee study, as well as provide recommendations on how best to handle any fiscal deficits. We respectfully request that the City provide any and all information requested by Goodwin, including a copy of the current fee study, City budget and related materials.

Mello-Roos, CFD, or Special Taxing (Assessment District Financing): Similarly, Towne will be asking Goodwin Consulting to analyze the potential of using Mello-Roos, CFD or a Special Taxing District to fund the cost of all necessary offsite infrastructure that will benefit the project and the City at large. While we understand that the City has been reluctant to establish similar districts, they also acknowledge that these financing districts are very common throughout California and provide homebuilders with a viable option to finance offsite infrastructure that is not typically included in conventional development financing. Per your request, Towne will have Goodwin provide the City with a proposal on how best to institute a financing district without overburdening future project residents, or creating a significant tax disparity within the City.

TOWNE DEVELOPMENT OF SACRAMENTO, INC.
1640 Lead Hill Blvd., Suite 220 Roseville, CA 95661 Phone: (916) 782-2424 Fax: (916) 782-2666
www.homesbytowne.com

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John Donlevy
September 13, 2013
Page 2

Affordable Housing Plan: Pursuant to our conversation, Towne will provide the City with a proposal to satisfy the project's Affordable Housing requirement, which will be consistent with the City's General Plan and Inclusionary Housing Policy. Towne will provide this proposal to the City by the end of September.

404 Permit and Environmental Mitigation Measures: As we discussed, certain project Mitigation Measures are inconsistent, and in excess of, the conditions of the previously issued 404 permit that has since expired. There also appears to be no nexus between project impacts and Conditions of Approval 43 through 45. We also discussed the likelihood that Burrowing Owl may no longer be present onsite, thereby eliminating the mitigation requirement. The City agreed to investigate the basis of these Conditions, and provide documentation demonstrating the nexus between the project and these potential impacts. In the interim, Towne will be engaging a biological consultant to reauthorize the expired 404 permit, as well as conduct surveys to confirm the presence of Burrowing Owl at the project site. We expect that the project Mitigation Measures and Conditions of Approval will be revised to include only those conditions set by the 404 permit, and reflect the results of the updated raptor survey.

Solar Requirement: Towne understands that the City's General Plan requires that solar be incorporated into all new residential construction. We also understand that this policy was instituted prior to the establishment of several California green building codes. It is our contention that the new 2012 Building Code, coupled with Cal Green and the updated Title 24 standards, not only provide an energy efficient home, but also significantly reduce water and wastewater usage, storm runoff, and construction waste and pollution. Towne will provide the City with a synopsis of how the City's energy goals will be achieved via these recent building code updates, without requiring the installation of PV solar.

Project Phasing: Towne will be working with Laugenour & Meikle, the project engineer, to determine if the project phasing may be revised to better facilitate development. We are not proposing to eliminate any of the necessary infrastructure; instead, we will be determining if a certain portion of the project can be developed and built based upon the existing capacity of the City's backbone infrastructure. Towne anticipates sharing our findings with the City the week of October 14, 2013.

School Agreement: On September 12th we met with Brent Cushenberry and Mary Kay Callaway from the Winters Joint Unified School District Superintendent, to discuss the current Winter Highlands' school agreement. Among the items we discussed, Superintendent Cushenberry indicated that he would expect the Highlands project to enter into a revised Schools Agreement similar to that recently prepared for the Hudson-Ogando and Callahan properties. He will be sending us a copy to work from in the next week. As per our conversation with you, we would expect the City to amend the development agreement to correspondingly reflect any changes made to the School Agreement.

Cooperative Agreement: Towne acknowledges that the City will require a Cooperative Agreement between Winters Highlands and both Callahan and Hudson-Ogando be negotiated and executed prior to the City approving any amendments to the project Development Agreement. Towne has been in communication with Jim Hildenbrand regarding this agreement, and fully intends on negotiating and executing a final agreement with him corresponding with amending the Development Agreement. In the interim, we respectfully request that the issues discussed in this letter be addressed prior to the execution of the Cooperative Agreement.

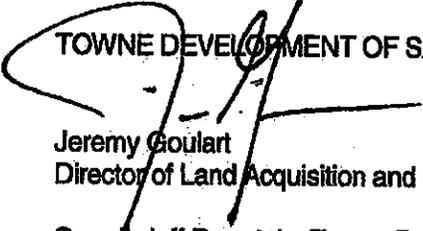
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John Donlevy
September 13, 2013
Page 3

Development Agreement Assignment: As you are aware, there are provisions within the Development Agreement (DA) that require the City approve any assignment to a third party. We would expect that all of the proposed DA amendments, along with the assignment, would be wrapped into one action for consideration by the City.

Thank you for your continued support and willingness to work with us through these issues. We are confident that we can address the various impediments to development of the Highlands property, and bring a quality project to the City.

Best Regards,


TOWNE DEVELOPMENT OF SACRAMENTO
Jeremy Goulart
Director of Land Acquisition and Development

- C: Jeff Penstein, Towne Development
- Dede Meyers, Meyer Crest
- Dara O'Farrell, Meyer Crest
- File



MEMORANDUM

December 20, 2013

To: Jeremy Goulart

From: ✓ Dave Freudenberger, Cindy Yan, and Miriam Adamec

Re: Winters Highlands Fiscal Impact Analysis

Jeremy, please find attached a set of preliminary analysis tables related to the fiscal impact analysis (FIA) for the Winters Highlands project (Project). Also attached are a few tables that evaluate the Project's CFD bonding capacity and annual burden, and a table that presents our findings from research into the use of CFDs by small cities.

Fiscal Impact Analysis

The FIA assumptions, methodologies, and results are contained in Tables A-1 through A-10. Table A-1 presents a summary of the current demographic and employment statistics in the City. Table A-2 summarizes land use, value, and related assumptions that are incorporated into the FIA. Table A-3 outlines the property tax allocation factors (after the ERAF shift) for the assorted funds, agencies, and districts that receive a share of the 1% property tax from the tax rate area in which the Project is located. As shown in this table, approximately 20% of the base property tax revenue generated by the Project is anticipated to be allocated to the City General Fund. Tables A-4 through A-7 summarize the revenue assumptions and approaches related to the FIA; Tables A-8 and A-9 summarize the expense assumptions and methodologies related to the FIA.

Finally, Table A-10 shows the annual fiscal impacts from the Project on the City General Fund when the Project is built out. As shown in Table A-10, the Project is expected to generate approximately \$815,000 in annual revenues and \$615,000 in annual expenses after buildout. This results in a total net annual surplus of approximately \$200,000, or \$507 per dwelling unit.

As you can see, the results of our analysis differ from the results presented in the original EPS study and subsequent updates. Our analysis indicates that you would not need to

implement any fiscal mitigation measure, whether an annual one like a CFD or a one-time annuity. There are many explanations for why the results vary between our current analysis and the prior EPS iterations, but the primary reasons include the following:

1. Changes to the overall unit count, as well as the land use mix.
2. Revised assessed value assumptions.
3. Passage of Proposition 1A in 2004 and its impact on the Property Tax in lieu of Vehicle License Fee revenue calculation. The 2003 EPS study identified approximately \$74,000 in revenues compared to \$151,000 in the current analysis.
4. Passage of Measure W in 2010, which doubled the City's Utility User's Tax rate from 4.75% to 9.5%. The 2003 EPS study identified approximately \$56,000 in revenues compared to \$130,000 in the current analysis.
5. Changes to the City's budget in the past 11 years related to both revenues and expenses. The EPS study is based on the City's FY 2002-03 budget, while our analysis is based on the City's FY 2013-14 budget.

CFD Financing and Related Research

Tables B-1 and B-2 present the CFD debt financing analysis and annual burden analysis, respectively. Table B-1 identifies the maximum special tax rates needed to fund project-specific infrastructure costs of approximately \$3.5 million. Table B-2 shows the annual burden on both residential land use categories based on existing ad valorem tax rates, assessments, and special taxes, as well as the proposed Project-specific special taxes for infrastructure. We'd need to levy an annual special tax of approximately \$900 and \$680 (both of which would escalate at a rate of 2% per year) on the R-2 and R-3 units, respectively, to support debt service on CFD bonds. The total annual burden on these units amounts to less than 1.4% of value, which should be highly competitive in the marketplace.

Table B-3 summarizes the research and surveying we did to gauge how widespread the use, or potential use, of CFDs for infrastructure and services is. We contacted cities in Northern California with a population of generally greater than 2,000 and less than 20,000 and asked them if they use, or would allow the use of, a CFD to fund infrastructure or services. Ten of the cities on our list did not respond to our request for information, which is why "NR" (i.e., No Response) is shown in the Services column. However, we were able to determine through CDIAC annual reports that each of those ten cities have at least one CFD that has issued bonds for infrastructure. Based on our fiscal analysis, it does not appear that you will need a CFD to fund services, but you have expressed an interest in using a CFD to fund infrastructure and we may need to work with staff and Council in Winters so that they permit the use of a CFD for that purpose. Hopefully, pointing out that fully 95% of comparable cities either already use or would allow the use of a CFD to fund infrastructure will help your cause, as will the relatively low proposed total annual burden as a percentage of home value.

**Table A-1
 City of Winters
 Winters Highlands Fiscal Impact Analysis
 General Assumptions**

<i>Year of Study</i>	2013
Constant Dollar Analysis (2013 \$)	
<hr/>	
City of Winters Statistics	
2013 Estimated Residential Population	6,974
2013 Estimated Employee Population	2,096
2013 Persons Served (Residents + 50% of Employees)	8,022

Source: California Department of Finance; SACOG; Goodwin Consulting Group, Inc.

03/13/2014



Table A-2
City of Winters
Winters Highlands Fiscal Impact Analysis
Land Use, Demographic, and Related Assumptions

Residential Land Uses	Dwelling Units	Population per Household	Population (Including 3% Vacancy)	Assessed Value per Unit	Annual Turnover Rate
R-2 Single Family Units	242	3.20	751	\$400,000	10%
R-3 Single Family Units	153	3.20	475	\$300,000	10%
Total	395		1,226		

Source: Towne Development; EPS; Goodwin Consulting Group, Inc.

03/13/2014

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**Table A-3
 City of Winters
 Winters Highlands Fiscal Impact Analysis
 Property Tax Allocation Assumptions**

	Property Tax Allocation to TRA <u>002-015</u>
Property Tax Fund	
County General Fund	0.082652
County ACO Fund	0.010056
County Library	0.020098
City of Winters	0.200176
Winters Cemetery District	0.027904
Sacto-Yolo Mosquito & Vector Control	0.009455
Yolo County Flood Control District	0.006893
County Schools	0.033962
Winters Joint Unified School District	0.340971
Solano Community College	0.043271
Educational Revenue Augmentation Fund	0.224561
Total	1.000000
Property Tax Distributed to the City of Winters General Fund	
	20.02%

¹ The reallocation of property taxes away from counties, cities, and other agencies to the ERAF is based on certain formulas; the allocation in the table reflects the net allocation to the City General Fund.

Source: Yolo County Auditor-Controller's Office; Goodwin Consulting Group, Inc.

03/13/2014

Table A-4
City of Winters
Winters Highlands Fiscal Impact Analysis
Revenue Calculation Methodology

Revenue	Total Revenue	Reference Table	Modeling Methodology
Property Tax (Secured & Unsecured)	\$658,317	Table A-5	Case Study
Real Property Transfer Tax	\$10,000	Table A-5	Case Study
Sales and Use Tax	\$496,229	Table A-5	Case Study
Prop 172 Sales Tax	\$62,295	Table A-5	Case Study
Property Tax In-Lieu of Vehicle License Fees (PTILVLF)	\$460,632	Table A-5	Case Study
Citywide Assessment District	N/A	Table A-5	Case Study
Service Charges	\$98,100	Table A-7	Multiplier - Persons Served
Licenses and Permits	\$117,031	Table A-7	Multiplier - Persons Served
Transfers	\$73,372	Table A-7	Multiplier - Persons Served
Utility User Tax	\$738,000	Table A-7	Multiplier - Residents Served
Franchise Fees	\$203,431	Table A-7	Multiplier - Persons Served
Municipal Services Tax	\$320,000	Table A-7	Multiplier - Persons Served
Business License Fee	\$24,000	Table A-7	Multiplier - Employees Served
TOT Tax	\$5,000	Table A-7	Multiplier - Persons Served
Rents and Concessions	\$38,500	--	Not Included in Analysis
Other Revenues	\$275,333	--	Not Included in Analysis
Interest	\$3,000	--	Not Included in Analysis
Grants	\$8,000	--	Not Included in Analysis

Source: City of Winters Adopted Biennial Budget FY 2013-14; Goodwin Consulting Group, Inc.

03/13/2014

**Table A-5
 City of Winters
 Winters Highlands Fiscal Impact Analysis
 Revenue Assumptions (Case Study Method)**

<u>Secured Property Tax</u>	
City of Winters Share (post-ERAF)	20.02%
<u>Unsecured Property Tax</u>	
Unsecured Property Tax as a Percentage of Residential Secured Property Tax	1.00%
<u>Real Property Transfer Tax</u>	
Rate = \$1.10 per \$1,000	0.0011
Percentage Allocated to City	50.00%
<u>Sales and Use Tax</u>	
Base Sales Tax Rate	1.00%
Countywide and Statewide Pooled Tax Revenue as a Percentage of Base Sales Tax Revenue	14.10%
Public Safety (Prop. 172) Sales Tax Rate	0.50%
Winters Allocation of Public Safety (Prop. 172) Sales Tax Revenue	0.18%
<u>Property Tax In-Lieu of Vehicle License Fees (PTILVLF)</u>	
City of Winters Net Assessed Value FY 2013-14 Tax Roll	\$436,124,186
City of Winters Property Tax In-Lieu of VLF for FY 2013-14	\$461,069
<u>Citywide Assessment District</u>	
Annual Assessment per Unit	\$82.50

03/13/2014

Source: California City Finance; Yolo County Auditor-Controller's Office; City of Winters;
 Yolo County Recorder's Office; State Board of Equalization; Goodwin Consulting Group, Inc.

Table A-6
City of Winters
Winters Highlands Fiscal Impact Analysis
Taxable Sales Generation from On-Site Residential Households

Existing Taxable Sales in Winters			
City of Winters Retail Stores Taxable Sales 2011			\$30,795,000
Adjusted Retail Stores Taxable Sales ¹			\$23,096,250
Population from DOF (mid-year 2011)			6,606
Average Taxable Sales per Capita			\$3,496
	Average Taxable Sales per Capita	Estimated Population (Including 3% Vacancy)	Total Taxable Sales
Residential Land Uses			
R-2 Single Family Units	\$3,496	751	\$2,626,274
R-3 Single Family Units	\$3,496	475	\$1,660,413
Total		1,226	\$4,286,686
Estimated New Taxable Sales in Winters			
Base Sales and Use Tax			\$42,867
Countywide and Statewide Pooled Sales Tax			\$6,044
Total Sales and Use Tax			\$48,911
Proposition 172 Sales Tax			\$39

¹ Assumes 25% of existing taxable sales are generated by non-residents.

Source: City of Winters; State Board of Equalization; Goodwin Consulting Group, Inc.

03/13/2014

Table A-7
City of Winters
Winters Highlands Fiscal Impact Analysis
Revenue Assumptions (Multiplier Method)

Revenue	Total Revenue	Average Revenue per Resident	Average Revenue per Employee	Average Revenue per Person Served
Service Charges	\$98,100	--	--	\$12.23
Licenses and Permits	\$117,031	--	--	\$14.59
Transfers	\$73,372	--	--	\$9.15
Utility User Tax	\$738,000	\$105.82	--	--
Franchise Fees	\$203,431	--	--	\$25.36
Municipal Services Tax	\$320,000	--	--	\$39.89
Business License Fee	\$24,000	--	\$11.45	--
TOT Tax	\$5,000	--	--	\$0.62

Source: City of Winters Adopted Biennial Budget FY 2013-14; Goodwin Consulting Group, Inc.

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Table A-8
City of Winters
Winters Highlands Fiscal Impact Analysis
Expense Calculation Methodology

Department	Total General Fund Expenditures	Reference Table	Modeling Methodology
City Council	\$2,904	Table A-9	Multiplier - Persons Served
City Clerk	\$9,433	Table A-9	Multiplier - Persons Served
City Treasurer	\$338	Table A-9	Multiplier - Persons Served
City Manager	\$31,718	Table A-9	Multiplier - Persons Served
Housing & Economic Development	\$17,923	Table A-9	Multiplier - Persons Served
Administrative Services	\$187,296	Table A-9	Multiplier - Persons Served
Finance	\$4,002	Table A-9	Multiplier - Persons Served
Police	\$2,205,484	Table A-9	Multiplier - Persons Served
Fire	\$798,904	Table A-9	Multiplier - Persons Served
Community Development ¹	\$215,298	Table A-9	Multiplier - Persons Served
Building Inspection	\$168,762	Table A-9	Multiplier - Persons Served
Public Works	\$277,306	Table A-9	Multiplier - Persons Served
General Recreation	\$6,200	Table A-9	Multiplier - Resident Served
Swimming	\$71,005	Table A-9	Multiplier - Resident Served
Community Center	\$90,943	Table A-9	Multiplier - Resident Served
Park Maintenance	N/A	Table A-9	Case Study

¹ Includes an additional \$90,000 to fund costs associated with a director position.

Table A-9
City of Winters
Winters Highlands Fiscal Impact Analysis
Expense Assumptions

Multiplier Expenses	Total General Fund Expenditures	Average Expense per Resident	Average Expense per Employee	Average Expense per Person Served
City Council	\$2,904	--	--	\$0.36
City Clerk	\$9,433	--	--	\$1.18
City Treasurer	\$338	--	--	\$0.04
City Manager	\$31,718	--	--	\$3.95
Housing & Economic Development	\$17,923	--	--	\$2.23
Administrative Services	\$187,296	--	--	\$23.35
Finance	\$4,002	--	--	\$0.50
Police	\$2,205,484	--	--	\$274.93
Fire	\$798,904	--	--	\$99.59
Community Development	\$215,298	--	--	\$26.84
Building Inspection	\$168,762	--	--	\$21.04
Public Works	\$277,306	--	--	\$34.57
General Recreation	\$6,200	\$0.89	--	--
Swimming	\$71,005	\$10.18	--	--
Community Center	\$90,943	\$13.04	--	--
Case Study Park Maintenance Expenses				
Park Acres	10.86 Acres			
Maintenance Cost per Acre	\$15,000 per Acre			
Estimated Annual Maintenance Cost	\$162,900			

Source: City of Winters Adopted Biennial Budget FY 2013-14; City of Winters; Goodwin Consulting Group, Inc. 03/13/2014

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Table A-10
City of Winters
Winters Highlands Fiscal Impact Analysis
Summary of Net Fiscal Impacts

<i>Revenues/Expenses</i>	<i>Annual Impacts after Buildout</i>	<i>Percent of Total</i>
<u>Revenues</u>		
Property Tax: Secured	\$285,652	36.5%
Property Tax: Unsecured	\$2,857	0.4%
Real Property Transfer Tax	\$7,849	1.0%
Base Sales and Use Tax	\$48,911	6.2%
Prop 172 Sales Tax	\$39	0.0%
Property Tax In-Lieu of Vehicle License Fees	\$150,862	19.3%
Citywide Assessment District	\$32,588	4.2%
Service Charges	\$14,994	1.9%
Licenses and Permits	\$17,887	2.3%
Transfers	\$11,214	1.4%
Utility User Tax	\$129,746	16.6%
Franchise Fees	\$31,092	4.0%
Municipal Services Tax	\$48,909	6.2%
Business License Fee	\$0	0.0%
TOT Tax	\$764	0.1%
Subtotal	\$783,362	100.0%
<u>Expenses</u>		
City Council	(\$444)	0.1%
City Clerk	(\$1,442)	0.2%
City Treasurer	(\$52)	0.0%
City Manager	(\$4,848)	0.6%
Housing & Economic Development	(\$2,739)	0.3%
Administrative Services	(\$28,626)	3.6%
Finance	(\$612)	0.1%
Police	(\$337,085)	42.6%
Fire	(\$122,104)	15.4%
Community Development	(\$32,906)	4.2%
Building Inspection	(\$25,794)	3.3%
Public Works	(\$42,383)	5.4%
General Recreation	(\$1,090)	0.1%
Swimming	(\$12,483)	1.6%
Community Center	(\$15,988)	2.0%
Park Maintenance	(\$162,900)	20.6%
Subtotal	(\$791,497)	100.0%
Net Fiscal Impact	(\$8,134)	
<i>Fiscal Surplus/(Deficit) per Dwelling Unit</i>	(\$21)	

Source: Goodwin Consulting Group, Inc.

03/13/2014

**Table B-1
City of Winters
Winters Highlands Fiscal Impact Analysis
CFD Debt Financing Analysis**

CFD Bond Analysis			
Total CFD Funded Infrastructure Costs	\$3,500,000		
Estimated Issuance Costs	5.0% \$224,100		
Bond Reserve Fund	10.0% \$446,000		
Capitalized Interest for 12 Months	6.5% \$289,900		
Total Bond Size	\$4,460,000		
Bond Term (Years)	30		
Interest Rate	6.5%		
Estimated Annual Debt Service (Assumes 2% Escalating Special Tax)	\$275,000		
Annual Administrative Costs	\$20,000		
Debt Service Coverage	10.0%		
Required Annual Special Tax Revenues	\$27,500		
	\$322,500		
Special Tax Analysis			
	<u>Units</u>	<u>R-2 Unit</u>	<u>Total Unit</u>
R-2 Single Family Units	242	<u>Equivalent</u> ¹	<u>Equivalents</u>
R-3 Single Family Units	153	1.00	242
Total	395	0.75	115
			357
Total Maximum Annual Special Tax			\$322,500
Proposed Maximum Special Tax per R-2 Unit Equivalent			\$900
Proposed Maximum Special Tax per R-2 Single Family Unit			\$900
Proposed Maximum Special Tax per R-3 Single Family Unit			\$680

¹ Based on assessed value.

Source: Goodwin Consulting Group, Inc.

03/13/2014

Table B-2
City of Winters
Winters Highlands Fiscal Impact Analysis
Annual Burden Analysis

	R-2 Single Family	R-3 Single Family
Estimated Assessed Value (AV)	\$400,000	\$300,000
<u>Ad Valorem</u>		
	<u>% of AV</u>	
General Tax	1.0000%	\$3,000
Winters JUSD 1998 Bond	\$4,000	\$138
Solano CCD 2002 Bond A	\$184	\$55
Solano CCD 2006 Bond B	\$73	\$8
Solano CCD 2012 Bond A	\$11	\$41
Solano CCD 2012 Bond B	\$55	\$14
Subtotal Ad Valorem Taxes	\$4,342	\$3,257
<u>Assessments and Special Taxes</u>		
Citywide Assessment	\$83	\$83
Citywide Municipal Services Tax	\$120	\$120
Proposed Project-Specific Infrastructure CFD Special Tax	\$900	\$680
Subtotal Assessments and Special Taxes	\$1,103	\$883
Total Annual Burden	\$5,445	\$4,139
Total Annual Burden as % of Value	1.36%	1.38%

03/13/2014

Source: City of Winters; Yolo County; Goodwin Consulting Group, Inc.

Table B-3
City of Winters
Winters Highlands Fiscal Impact Analysis
City CFD Research

City	Population	Allows CFDs for	
		Infrastructure	Services
Albany	18,430	Y	Y
Biggs	1,692	Y	Y
Bishop	3,877	N	N
Calistoga	5,194	Y	Y
Chowchilla	17,462	Y	NR
Clayton	11,093	Y	NR
Colusa	6,032	Y	Y
Corte Madera	9,320	Y	NR
Crescent City	7,243	Y	Y
Dixon	18,449	Y	Y
Emeryville	10,269	Y	Y
Escalon	7,208	Y	Y
Fowler	5,801	Y	Y
Gonzales	8,296	Y	N
Gridley	6,723	Y	Y
Gustine	5,626	Y	Y
Ione	6,829	Y	NR
Jackson	4,613	Y	NR
Lakeport	4,713	Y	Y
Larkspur	12,021	Y	Y
Lathrop	19,209	Y	Y
Livingston	13,542	Y	Y
Loomis	6,493	Y	N
Mammoth Lakes	8,307	Y	Y
Mendota	11,178	Y	Y
Mill Valley	14,147	Y	Y
Nevada City	3,069	Y	Y
Oroville	15,979	Y	Y
Pacific Grove	15,268	Y	Y
Patterson	20,846	Y	NR
Piedmont	10,889	Y	NR
Pinole	18,664	Y	Y
Pismo Beach	7,717	Y	Y
Rio Vista	7,599	Y	NR
Ripon	14,606	N	N
San Anselmo	12,431	Y	Y
Sausalito	7,116	Y	Y
Scotts Valley	11,678	Y	NR
Sutter Creek	2,484	Y	NR
Truckee	15,918	Y	Y
Wheatland	3,493	Y	Y
Yountville	2,983	Y	Y
	Y	40	28
	N	2	4
	Total	42	32

NR=No Response

Source: California Department of Finance; California Debt and Investment Advisory Commission; 03/13/2014
 Goodwin Consulting Group, Inc.



Date: December 20, 2013

To: John Donlevy, Winters City Manager

From: Jeremy Goulart, Towne Development of Sacramento, Inc.

Re: Meeting the City of Winters' Energy Efficiency Requirements – Winters Highlands

Pursuant to the Winters Highlands' Development Agreement (DA) Section 4.13, and Condition of Approval (COA) No. 6, the project is required to include a photovoltaic (PV) solar in 50 percent of the homes built, and pre-wire the remaining homes for a PV solar system. As we have discussed, the financial feasibility of including solar in new residential construction has been significantly diminished. At the time the project was approved, substantial subsidies were available to homebuilders to help defray the estimated \$25,000 per unit cost to purchase and install the PV solar system. These subsidies no longer exist leaving the homebuilder to cover 100 percent of the cost, thereby creating a significant financial burden.

We understand that DA and COA provisions were included in the project approvals to meet the City's General Plan requirements, and have reviewed the goals and policies contained therein; specifically Goal II.C.1 and VI.F. Based on our review, the City wishes to promote energy efficiency in a new residential construction beyond that of Title 24, ensure that energy conservation measures are employed, and provide access to solar. The 2013 Housing Element also discusses the City's goals of encouraging energy efficiency in new development, but does not specifically call out a solar requirement.

It is important to remember that the General Plan was adopted in May 1992 and was extended by resolution in May 2009. Moreover, the project was approved in 2006; before the implementation of the California Green Building Standards Code in 2008, which ultimately led to the 2010 Cal Green Code. As of July 2014, all new residential construction will be subject to the updated 2013 Cal Green Code that includes mandatory energy and water efficiency standards well beyond that of the 2008 and 2010 Codes.

According to the United States Environmental Protection Agency (USEPA), the 2008 and 2010 Codes each increased the energy efficiency of new homes by 15 percent. Furthermore, the California Energy Commission (CEC) reports that the 2013 Code will increase energy efficiency by an additional 25 percent. The new 2013 Code will provide for a home that is 55 percent more energy efficient than one that was built when the project was approved in 2006.

Some of the highlights of the new 2013 Cal Green Code include:

- Solar ready roofs to allow homeowners to add PV solar at a future date, where applicable. This includes providing a 250 square foot solar zone on the roof, free of venting, and with appropriate material to accommodate a PV solar system, not including pre-wiring.
- Whole house fans to reduce AC loads
- More energy efficient windows
- Increased wall insulation
- Plumbing fixtures that reduce water consumption by 20 percent

The CEC estimates that these mandatory building improvements will cost a homebuilder an average of \$2,300 per home. If the project is required to include PV solar, the cumulative cost of \$27,300 would result in a significant financial burden by increasing the average home construction cost by 20 percent.

We respectfully request that Section 4.13 of the DA and COA No. 6 be revised to state that the project will conform to the Title 24 and Cal Green Code in place at the time a building permit is pulled. This requirement would be consistent with the City's General Plan, 2013 Housing Element Update, and will provide for a more feasible residential development project.



AKK E
Housing

**PLANNING COMMISSION
STAFF REPORT**

TO: Board Chair and Members of the Planning Commission
DATE: April 22, 2014
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Dan Maguire, Economic Development and Housing Manager
SUBJECT: Winters Highlands – Proposed Affordable Housing Plan

RECOMMENDATION:

That the Planning Commission:

1. Receive a Staff Report on a proposed Affordable Housing Plan for the Winters Highland Subdivision;
2. Make recommendation, along with any suggested modifications, to the Winters City Council in support of the proposed Affordable Housing Plan to the previously approved Development Agreement for development of the property commonly known as the Winters Highland Property between the City of Winters and Homes by Towne, in order to amend the fulfillment of the affordable housing requirements.

BACKGROUND:

Since 2006, the City has entered into five (5) development agreements with various developers for the subdivision and development of residential projects. In 2007, the real estate market essentially “crashed” and none of the proposed projects proceeded. Because of this, amendments have been initiated and adopted over the past six years to keep the agreements current and viable for when the real estate market returns.

In August, 2013, the City Council approved amendments to the Hudson Ogando & Creekside Estates Subdivision Development Agreements. These amendments included a revision to the affordable housing obligation, essentially “modernizing” the agreements to acknowledge the new fiscal realities of residential development. The modification included the payment of in lieu fees, in lieu of constructing the very low- and low income housing required of the project under the existing Development Agreement. The Hudson Ogando & Callahan projects are obligated to pay \$360,000 in in-lieu fees, with the City taking on the production responsibility for 12 very low-income units, and 10 low income units.

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Subsequent to this action, Staff has been working with the developers for the Winters Highlands subdivision for similar modifications to encourage construction of their entitled project.

DISCUSSION:

In the Winters Highlands Affordable Housing Plan proposal discussions, Staff focused on a number of key elements, which included the following:

1. Acknowledgement of the development of affordable housing consistent with the obligations of the project, pursuant to the existing Inclusionary Housing Ordinance.
2. Allowed for flexibility in proposed project layout and in lieu fee payments.
3. Maintained consistency with the City's adopted Housing Element Update (2013-2021) and Inclusionary Housing Ordinance (Ord. 2010-18).

The modernization of the agreement was based on a very pragmatic approach to creating a balance between a project which will bring a quality project to the City and one which is financially viable to build for the developer.

In the discussions with Winters Highlands, the focus has included each of the items above, but also has included an open discussion on the provision of affordable housing issues, which was brought before the Affordable Housing Steering Committee (AHSC) on March 24, 2014, for possible amendments to the current Affordable Housing Plan. Subsequent to the March 24th meeting, staff worked with Homes by Towne on revisions to the AHP, with the revised Affordable Housing Plan presented to the AHSC on April 21, 2014.

DISCUSSION:

Project Description and Amendment:

The development on the 102.6 acre property consists of approximately 413 single family lots on 49.45 acres and 30 multi-family units on 2.01 acres, with Yolo County Assessor's Parcel Numbers 030-220-17, 030-220-19, 030-220-49, and 030-220-50, and located at the northwest side of the City of Winters. The proposed Affordable Housing Plan would amend the affordable housing requirement to accept in-lieu fees and land dedication for the very low and low income unit obligation of the project, changing the requirement for the construction of affordable housing.

DEVELOPMENT AGREEMENT MODIFICATIONS:

The modifications to the Winters Highlands Subdivision Affordable Housing Obligation per the proposed Affordable Housing Plan ("AHP") generally include the following:

- Requested changes in existing tentative map, converting the 36 duplex units to 18 SFR lots, resulting in the project having 395 SFR lots (was 413)
- Meeting the revised affordable housing through a combination of in lieu fees and land dedication, partnering with a developer for construction of affordable multi-family on the 2.01 acre portion of the property zoned R-4 (High Density Multi-Family Residential). Developer proposes to dedicate the 2.01 acre site to the City concurrent with recording the first final map.
- In Lieu Fee of \$47,619.05 per very-low and low income unit (24 very low and 18 low-income units) will generate \$2,000,000 in affordable housing trust funding. Specifics to be determined

but will be utilized by the City to facilitate affordable housing projects by providing a significant source of local funds to assist affordable housing project(s)

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ATTACHMENTS:

1. Homes by Towne Affordable Housing Plan
2. Sacramento Bee Affordable Housing article reprint
3. Legal Description and Project Map
4. Ordinance 2009-18 (Inclusionary Housing Ordinance)
5. Second Amendment to Development Agreement

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The Affordable Housing Plan proposed by Homes by Towne was presented to the Affordable Housing Steering Committee (AHSC) at the April 21, 2014 meeting. The AHSC voted unanimously to recommend the plan to the Planning Commission and City Council.

The plan was presented to the Planning Commission at the April 22, 2014 meeting. The Planning Commission voted unanimously to recommend approval of the AHP to the City Council.

E



Date: April 16, 2014

To: Dan Maguire, Housing Manager
John Donlevy, Winters City Manager

From: Jeff Pemstein, Towne Development of Sacramento, Inc.
Jeremy Goulart, Towne Development of Sacramento, Inc.

Re: Proposed Affordable Housing Plan – Winters Highlands

As you are aware, Towne Development of Sacramento, Inc. ("TDS") is in escrow to purchase the Winters Highlands project (the "Project"). Per our conversations and correspondence with you, TDS has prepared the following Affordable Housing Plan ("AHP") pursuant to Chapter 17.200 of the City of Winters' Municipal Code.

Background

The Project was approved in 2006 with an AHP, as proposed by the previous developer, Granite Bay Holdings. The current AHP includes dedication of a 2.01 acre apartment site for 30 Very Low Income ("VLI") units, as well as an additional 36 duplex units for Low (LI) or Moderate income homebuyers, for a total of 66 inclusionary units. The Project's Conditions of Approval place additional parameters on these affordable housing units as follows: 26 VLI, 25 Low Income and 15 Moderate Income units are to be constructed, and 50 percent of both for sale and for rent units must be 3 bedroom 2 bath, while the remaining 50 percent shall be 4 bedroom 2 bath. The Second Amendment of the Development Agreement clarifies the timing of afford housing construction limiting the issuance of market-rate building permits in subsequent phases until all affordable housing units in previous phases are constructed.

It is clear that the Project's current AHP is infeasible in today's economic climate. Underwriting criteria and investment, typically called A, D and C lending has changed dramatically in the past several years. Overburdening a development project with fees and costly inclusionary housing requirements will result in a serious impediment to investment.

Proposed Affordable Housing Plan

Inclusionary Housing Requirement – Chapter 17.200.030 of the City's Municipal Code requires that 15 percent of a project's total number of residential units must be dedicated to affordable housing, with 6 percent meeting the VLI requirement and 9 percent meeting the Low Income or Moderate Income Requirement. These units can be rental, for-sale, or a combination of the two.

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TDS will be requesting that the City approve changes to the existing tentative map and convert the 36 duplex units to 18 SFR lots. This change would result in a total of 395 SFR lots. We request that 395 lots be the baseline number for determining the requisite proposition of VLI, Low and Moderate Income units, pursuant to the City's Municipal Code. We also request that the City acknowledge that the baseline lot count may be adjusted to accommodate market conditions and final engineering associated with each final map. As for project phasing, TDS anticipates recording four (4) final maps; however this is also subject to market conditions and final engineering.

To satisfy the City's Affordable Housing requirement, TDS proposes the following:

Payment of an Affordable Housing fee of \$2,000,000, which is to be amortized over the market-rate single family lots on a per unit basis. Fifty percent (50%) of the per unit fee will be paid at recordation of final map equal to the number of lots included within the map. For example, if the fee were to be \$5,500 per market-rate unit, and we were to record a final map for 100 market-rate units, TDS would pay \$275,000 at recordation. The remaining fifty percent (50%) will be paid at Close of Escrow to the home buying public through sales proceeds or separate agreement, so long as the payment is concurrent with each home closing. As per the example presented above, and based on a \$5,500 fee, \$2,750 would be paid to the City at each closing. This fee acknowledges the infrastructure burden placed on the project, namely the cost to extend necessary services to the affordable apartment site (Lot A described below). TDS and the City will agree to adjust the fee based on the actual cost of installing this infrastructure, but by no more than a five percent (5%) increase or decrease of the \$2,000,000 fee.

Dedication of the Affordable Apartment Site (Lot A) – TDS will agree to record the necessary documents and deed restrictions on title for Lot A upon recordation of the first final map within the Project.

Construct for-sale, inclusionary Moderate Income Units within the project, and to be built within each final map, not to exceed 4% of the total number of affordable units required by City Ordinance. The construction of these units will keep pace with market-rate construction as the City will limit the recordation of subsequent final maps until all affordable units within the current map are constructed and offered for sale to qualified homebuyers.

Satisfying the Affordable Housing Requirement – Chapter 17.200.050 of the City's Municipal Code identifies multiple ways in which a developer may satisfy its affordable housing obligation. Included in these alternatives is land dedication, construction, and payment of an in-lieu fee. Pursuant to our conversations with City staff, our AHP satisfies the City's requirements in the following ways:

- A portion of the \$2,000,000 fee will be used to support the City's efforts in developing an affordable senior apartment project that will satisfy a portion of the project's VLI and LI housing requirement.
- Dedication of Lot A and the remaining funds from the \$2,000,000 fee will be used to plan and develop an additional affordable for-rent project that will satisfy the remaining VLI and LI requirement.
- Construction of for-sale Moderate Income units, as described above, will satisfy our Moderate Income requirement.

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We appreciated the opportunity to meet with the Affordable Housing Steering Committee (AHSC) on March 24, 2014, and from that meeting, as well as continued discussions with staff, we gained a clearer understanding of the City's housing needs and goals. Our intent in presenting this AHP is to provide the City with a clear path to meet its housing needs, while without jeopardizing the feasibility of the Winters Highlands project.

Thank you in advance for your consideration. We look forward to further discussing our AHP with you and the AHSC on April 21, 2014.

Mitigation

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March 14, 2014

John Donlevy, City Manager
City of Winters
318 First Street
Winters, CA 95694

RE: Proposed Modifications to Mitigation Measures for the Winters Highlands

Dear John:

This letter is being provided as a follow to our meeting of February 25, 2014 in which we discussed certain modifications to the Conditions of Approval for the Winters Highlands project. These proposed modifications should not be construed as either an elimination of an obligation nor a change in circumstance, as defined under the California Environmental Quality Act (CEQA).

More specifically we are proposing to modify certain Conditions, referred to as Mitigation Measures 4.3-2 (a), 4.3-3(a), 4.3-4(b), 4.3-5(a) and 4.3-9(a), by making minor technical changes as allowed under CEQA Section 15164. Such changes do not warrant any revision or recirculation of the certified EIR for the Highlands Project, and can be considered by the City Council when considering the other various changes to the project entitlements we have been discussing with your office over the past 6 months.

The entire original condition or approval is provided for reference purposes, along with a summary of our proposed changes as noted below. Our proposed changes are in ***bold/italics*** and/or strike-out.

Condition 39/Mitigation Measure 4.3-2(a): The applicant will develop and implement a plan to manage the Preserve with the objective of ensuring that the wetland and upland habitat within the Preserve core zone are maintained in perpetuity at their present condition or better, and ensuring that any activities or structures authorized with the Preserve buffer zone are consistent with preserving the integrity of the Preserve core zone.

The Preserve shall cover approximately 7.43 acres in the northeast portion of the Project site and will include both a core zone (wetland area) and a buffer zone (open space area). The Preserve core zone shall be approximately 3.10 acres and include the 0.99 acres of seasonal wetland/vernal pool habitat and 2.10 acres of immediately adjacent annual grassland habitat. The Preserve buffer zone will cover approximately 4.33 acres and border the Preserve core zone to the north and west and provide upland buffer to protect the Preserve core zone from the adjacent land uses.

The Management Plan shall be consistent with the terms proposed by the applicant as outlined in the EIR, *and the US Army Corps of Engineers as the 404 permit issuing authority. However, the ultimate terms and conditions will be established through consultation and permitting with the Corps of Engineers. Upon issuance of the appropriate permits, the applicant will furnish the City with copies with the following modifications:*

1. ~~The conservation easement shall protect the entire 7.43 acres, not just the 3.10 acre core zone.~~
2. ~~The buffer zone shall be maintained in a natural condition and shall not be planted with non-native vegetation. Irrigation will occur only during the initial establishment of any vegetation planted at the Preserve.~~
3. ~~The US Army Corps of Engineers does not need to be involved in the decision-making for removal of problematic non-native species.~~
4. ~~No surface runoff from other sources shall be allowed.~~
5. ~~Approval for the use of pesticides and other chemical agents must go through the US Fish and Wildlife Service, but need not go through the US Army Corps of Engineers.~~
6. ~~"Low Impact" activities shall be defined and guidance on activities not allowed shall be provided. The US Army Corps of Engineers need not be involved in the decision-making.~~
7. ~~The structure of the conservation easement, including parties to the agreement, shall be to the satisfaction of the City of Winters.~~
8. ~~The US Fish and Wildlife Service, rather than the US Army Corps of Engineers, shall be given authority to enforce provisions of the Management Plan and conservation easement.~~
9. ~~The Management Plan shall include provisions for access by the Sacramento Yolo Mosquito & Vector Control District personnel for routine surveillance of the ponded area(s) and shall identify a procedure for addressing possible vegetation management concerns should the District determine that dense vegetation growth in the wetland(s) may contribute to future mosquito outbreaks.~~

Note: This modification is proposed to recognize that the mitigation is tied to the issuance of a 404 permit, and that the management of a preserve plan is under the jurisdiction of the US Army Corps of Engineers. The above items may not either be applicable or may be in conflict with the ultimate requirements of the federal permit and associated Management plan. Further, such additional requirements appear to be outside of the scope of a federal Clean Water Act.

Condition 40/Mitigation Measure 4.3-3(a): The applicant shall mitigate for potential project-related impacts to Swainson’s hawk foraging habitat by complying with one of the following:

i) If the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson’s hawk foraging habitat is in full force and effect at the time the applicant seeks to satisfy this mitigation, the applicant may pay the appropriate fees allowed by this agreement. The MOU requires the applicant to mitigate at a 1:1 ratio for every acre of suitable Swainson’s hawk foraging habitat that is impacted by the project. A fee will be collected by the City of Winters for impacts to 102.6 acres of potential Swainson’s hawk foraging habitat. The fee shall be payable to the Wildlife Mitigation Trust Account. Funds paid into the trust account shall be used to purchase or acquire a conservation easement on suitable Swainson’s hawk foraging habitat and for maintaining and managing said habitat in perpetuity. The cost per acre for acquisition and maintenance of foraging habitat is reviewed regularly and the applicant shall be charged at the rate per acre in effect at the time. Payment shall be made to the trust account prior to the initiation of construction activity and shall be confirmed by the City of Winters prior to the issuance of a grading permit.

ii) If the Yolo County NCCP/HCP has been adopted, the applicant shall mitigate for Swainson’s hawk impacts by complying with the terms and requirements of the Plan. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit.

iii) If the MOU is not in full force and effect and if the NCCP/HCP has yet been adopted, the project applicant shall purchase **through credits** and set aside in perpetuity 102.6 acres of Swainson’s hawk foraging land in proximity to the City of Winters (as approved by the City). **This can be** accomplished through the purchase of the underlying land, and/or the **associated** development rights, and the execution of an irrevocable conservation easement to be managed by a qualified party (e.g. Yolo Land Trust) **or through the purchase of mitigation credits from a qualified mitigation bank.** Mitigation shall include an endowment or other mechanism to pay for permanent maintenance and management by a managing entity. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit, **and the City will make every effort to assist the applicant with identifying appropriate lands for the purchase of credits.** To the extent feasible as determined by the City, identification of acceptable mitigation lands shall be coordinated with the Yolo County Habitat Conservation Joint Powers Agency.

Note: Given that the MOU and the NCCP/HCP are not anticipated to be viable alternatives available to the applicant in a timely manner, the most readily practical approach is to pay a fee for a credit to a land conservancy or mitigation bank.

Condition 42/Mitigation Measure 4.3-4(b): The loss of burrowing owl foraging and nesting habitat on the Project site **appears to longer be applicable given the lack of the species being present on-site.** **Prior to issuance of a grading permit, the applicant will retain a qualified biologist to conduct a survey of the site to confirm that presence or absence of the burrowing owl. Should no species be found, no further action shall be necessary. However, if the species is found to still occur on-site, then the**

~~applicant will coordinate with the California Department of Fish and Wildlife for appropriate mitigation prior to grading. will be offset by either acquiring and permanently protecting off-site at a location satisfactory to the City a minimum of 6.5 acres of foraging habitat (calculated on a 100 m (approx. 300ft.) foraging radius around the burrow) per pair or unpaired resident bird or acquiring the requisite number of acres of credit at an approved mitigation bank satisfactory to the City.~~

~~The applicant shall either acquire and protect, or mitigation credits purchased at an approved mitigation bank 19.5 acres of burrowing owl habitat. If the applicant chooses to acquire and protect land for the burrowing owl, the protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to the California Department of Fish and Game and the City. If the applicant chooses to acquire and protect land for the burrowing owl, existing unsuitable burrows at the protected land shall be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1. This will require that the applicant have the Project site surveyed to determine the number of active burrows being used by the burrowing owl.~~

~~The applicant shall provide funding for long-term management and monitoring of the protected lands should the applicant choose to pursue that option. The monitoring plan shall include success criteria, remedial measures, and an annual report to the California Department of Fish and Game and the City of Winters.~~

Note: Through recent site reconnaissance, burrowing owl no longer appears to inhabit the site, therefore such prescriptive mitigation is both not warranted and out of date. To ensure compliance with the potential impact, the applicant will conduct a field survey to ensure that the species is no longer present prior to site grading.

~~**Condition 43/Mitigation Measure 4.3-5(a):** Pursuant to General Plan Policy VI.C.2 the applicant must replace loss of riparian and wetland habitat acreage and ecological value on at least a 1:1 basis. Replacement entails creating habitat that is similar in extent and ecological value to that displaced by the Project. The replacement habitat must consist of locally occurring, native species and be located either at the City's Community Sports Park site north of Moody Slough Road or elsewhere as directed and approved by the City. Study expenses shall be borne by the applicant.~~

~~The mitigation ratio for the 0.54 acre of seasonal wetlands that occur in the Highlands Canal shall be at a 1:1 ratio but the mitigation ratio for the 0.81 acre of wetlands that occur outside the Highlands Canal shall be mitigated at a 2:1 ratio (creation of 1.62 acres of new wetlands). The 0.81 acre of seasonal wetlands are dominated by native species and either provide known habitat or potential habitat for federally listed vernal pool crustaceans. These seasonal wetlands represent one of the few areas in the western part of Yolo County and nearby area of Solano County known to support federally listed vernal pool crustaceans.~~

~~The applicant shall develop and submit to the City of Winters a written plan that describes the actions to be taken to identify an appropriate site to construct 2.16 acres of seasonal wetlands, the construction~~

procedures and a monitoring plan with performance criteria to document that the constructed seasonal wetlands achieve the desired habitat conditions. The format of the plan shall follow the format prescribed by the Corps of Engineers for wetland mitigation and monitoring plans. The plan shall contain the following sections:

- Detailed description of the proposed mitigation site, including the location, ownership status, presence of any jurisdictional areas, topography and hydrology of the proposed site, soils (subsurface soil information to confirm that the soils are appropriate for wetland construction), vegetation and wildlife habitat and use of the proposed site, present and historical uses of the proposed mitigation site, and present and planned use of areas adjacent to the proposed mitigation site.
- Description of the seasonal wetland habitat to be created, including the mitigation ratio, long-term goals, anticipated future site topography and hydrology, vegetation, and anticipated wildlife habitat on the proposed mitigation site.
- Performance criteria and monitoring protocol to document that the constructed seasonal wetland habitat are meeting or exceeding the performance criteria, including a detailed description of the monitoring methods and justification of the methods, the monitoring schedule and other means of documenting the development of the mitigation (e.g., photo documentation).
- An implementation plan that describes in detail the physical preparation of the site, the planting plan, irrigation (if necessary) and the implementation schedule. The surface soils at the seasonal wetlands at the Project site that support primarily native species shall be collected and used to inoculate the constructed pools, especially the three largest pools at the Project site.
- A maintenance plan that describes the actions to be taken to address or prevent adverse conditions, such as invasion by undesirable vegetation, control of erosion of bare ground. This plan shall present a maintenance schedule and identify the party responsible for the maintenance, which will be the applicant unless another party agreeable to the City of Winters is selected.
- A contingency plan that identifies measures to be taken if the constructed seasonal wetlands are not performing according to the established standards. This plan shall be adaptive and identify how monitoring data will be used to define future actions to achieve the performance criteria. The contingency plan shall also identify the funding mechanism for the initial monitoring period and the endowment that will be provided by the applicant for the long-term management of the site.

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~~The applicant shall work with the City of Winters to identify an acceptable third party entity (e.g., Yolo Land Trust, Wildlife Heritage Foundation) to manage the mitigation site once the initial monitoring Period has been completed. The applicant will be responsible for the site until the performance criteria have been met and will work with the third party entity to develop the long term management endowment.~~

Note: We are proposing to eliminate this requirement in its entirety as it is over and above the wetland mitigation requirements established through the Section 404 and 401 permits.

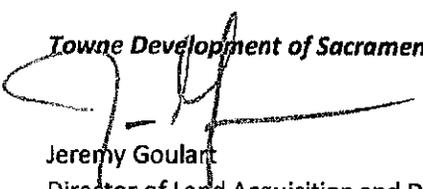
Condition 45/Mitigation Measure 4.3-9(a): ~~The applicant shall prepare and submit to the City for its approval a riparian restoration plan for restoring riparian trees and shrubs along a 50-foot section of Dry Creek on either side of where the outlet from the Highlands Canal is constructed. This plan shall be similar in content to the wetland mitigation and monitoring plan described for Mitigation Measure 4.3-5(a) and shall be approved by the City prior to issuance of the grading permit. The proposed Any~~ modifications to Dry Creek shall be coordinated with representatives of the California Department of Fish and Game *Wildlife*, U.S. Army Corps of Engineers, and Central Valley Regional Water Quality Control Board, as necessary, to obtain the required permits and authorizations, **and applicant shall furnish the City with Copies.**

Note: All required mitigation will be developed and monitored by the responsible regulatory agencies.

Again, our proposed changes to the mitigation measures detailed above are not an attempt to avoid compensating for project impacts. As you are aware, each regulatory agency will require certain mitigation for impacts within their prevue, and will be compelled to comply with these permit conditions under the penalty of law.

Thank you for the opportunity to provide the above comments. We are hopeful we can resolve these issues, and look forward to becoming part of the City.

Respectfully,

Towne Development of Sacramento, Inc.

Jeremy Goulart
Director of Land Acquisition and Development

- C: Jeff Pemstein, Towne Development
- Bruce Barnett, Barnett Environmental Consulting
- File



Environmental Consulting,
Regulatory Compliance and
Aerial Photographic Services

5214 El Cerrito Avenue
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Tel/Fax: 530.758.9235
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barnettenvironmental.com
flickr.com/photos/bfoflyer

MEMORANDUM

To: Jeff Pemstein, Jeremy Goulart, Homes by Towne
From: Bruce D. Barnett, Ph.D.
Date: 7/25/13
Re: Winters Highlands Due Diligence – Biological Mitigation Burden

Jeff and Jeremy,

As requested, I have reviewed the previously-issued 404 and 401 permits for this project, along with Yolo County's *Winters Highlands Conditions of Approval for Tentative Subdivision Map No. 4937 (8/28/06)* and have concluded the following

From the table below, the previous project's anticipated impacts would require a total of 2.73 acres of vernal pool creation/preservation (@ ~\$150,000/acre) = \$410,000 and 1.68 acres of seasonal wetland creation/preservation (@ ~\$90,000/acre) = \$145,000 for a total of 4.41 acres of mitigation credits to be purchased @ an approved conservation bank @ an approximate cost of \$555,000.

Wetlands Impact and Mitigation Summary		
Description	Impacts	Mitigation
Vernal pool habitat	0.85 acres direct impact + 0.00 acres indirect impact = 0.85 acres of impact	1.88 acres of vernal pools to be preserved (1.88 acres = 0.04 acres of direct and indirect impacts x 2:1 ratio) and 0.85 acres of vernal pools to be created (0.85 acres = 0.85 acres of direct impact x 1:1 ratio)
Seasonal wetlands	0.56 acres of impact	1.12 acres of seasonal wetlands to be preserved (1.12 acres = 0.56 acres of impact x 2:1 ratio) and 0.56 acres of seasonal wetlands to be created (0.56 acres = 0.56 acres of direct impact x 1:1 ratio)
TOTALS	Total direct impacts to wetlands = 1.41 acres	Total Preservation = 3.00 acres of wetlands Total Creation = 1.41 acres of wetlands

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In addition, and much more onerous, are the City of Winters' conditions of approval for the tentative map, which include (over and above the agency-required mitigation):

- (COA #39) – Establishment and maintenance of a 7.43-acre wetlands preserve in the NE portion of the site, requiring a Conservation Easement, Management Plan, O&M Endowment, etc. that could easily cost upwards of \$1M;
- (COA #40) – A City of Winters development fee or purchase and preservation of land for impacts to 102.6 acres of Swainson's hawk foraging habitat. This cost alone would likely approach \$1M;
- (COA #42) – *"The loss of burrowing owl foraging and nesting habitat on the Project site will be offset by either acquiring and permanently protecting off-site at a location satisfactory to the City a minimum of 6.5 acres of foraging habitat foraging radius around the burrow) per pair or unpaired resident bird or acquiring the requisite number of acres of credit at an approved mitigation bank satisfactory to the City. The applicant shall either acquire and protect, or mitigation credits purchased at an approved mitigation bank 19.5 acres of burrowing owl habitat. If the applicant chooses to acquire and protect land for the burrowing owl, the protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to the California Department of Fish and Game and the City."*

Though not stated, I'm guessing this assumes burrowing owls are found on the site during a pre-construction survey. While a city "fee" for this impact has not yet been determined, acquisition, protection and maintenance of a nearby preserve could add a significant cost to the overall mitigation burden and cost in the ballpark of \$200,000

- (COA #43) – In addition to the required agency (401, 404) mitigation, the City is requiring 2.16 acres of wetlands restoration for impacts to the Highlands Canal wetlands @ either the City's Community Sports Park site north of Moody Slough Road or elsewhere as directed and approved by the City. The studies, plans, construction and maintenance of this preserve (in addition to the 7.43-acre preserve in the NE portion of the site) would also be very costly, likely approaching \$500,000;
- (COA #45) – Finally, the City is requiring *"Restoration of riparian trees and shrubs along a 50-foot section of Dry Creek, on either side of the outlet from the Highlands Canal, to be coordinated with the California Department of Fish and Game, U.S. Army Corps of Engineers, and Central Valley Regional Water Quality Control Board, as necessary, to obtain the required permits and authorizations."* With all the planning, permitting and implementation of such a restoration, costs could easily exceed \$250,000;

The (currently) required biological mitigation for this project is expensive, time-consuming, labor-intensive and, in my opinion, unreasonable. Not to mention that a number of these requirements refer to an HCP that is far from adopted, an MOU that has expired, and other questionable assumptions. At a minimum, should you decide to proceed with the project, you would definitely need to re-negotiate the COAs with the City.

My professional advice would be to walk very quickly away from this one, as it stands right now.

Bruce

Reciprocal
Access
G

January 13, 2014

John Donlevy, City Manager
City of Winters
318 First Street
Winters, CA 95694

RE: Letter of Intent to Provide Right of Way, Access Easements and Public Utility Easements for Backbone Infrastructure Improvements – Winters Highlands

Dear John:

As you are aware, Reichtert-Lengfeld LP and GBH-Winters Highlands, LLC, are the owners of the Winters Highlands project (the "Project"), and are in escrow to sell the Project to Towne Development of Sacramento, Inc. ("TDS"). It is our understanding that TDS has been working with you and your staff, as well as Jim Hildenbrand, the owner of the adjacent Callahan project, to address the shared backbone infrastructure necessary to build both projects. We further understand the need to execute a Cooperative Agreement (the "Agreement") between the Project proponent and Mr. Hildenbrand, and that TDS has had several conversations with Mr. Hildenbrand regarding this matter, and has retained legal counsel to assist in the drafting of the Agreement.

Included in the Agreement will be the offering of all necessary Right of Way ("ROW") and access easements to the party construction the required backbone infrastructure improvement, as well as Public Utility Easements ("PUE") to the City of Winters following construction. Please be advised that we *fully* intend to offer, and/or accept, the ROW and access easements as defined by the attached figure and legal descriptions prepared by our mutual engineer, Bryan Bonino.

It is our hope that this Letter of Intent will provide you and your staff with the comfortable level necessary to elevate discussions relative to the feasibility of constructing the backbone infrastructure, while TDS and Mr. Hildenbrand continue to work on the Cooperative Agreement.

Please feel free to contact us with any questions you may have. We look forward to TDS continuing the progress they have made on the Project, and are in full support of their efforts.

Sincerely,


Reichert-Lengfeld LP
Diana R. Meyer, Member and Manager

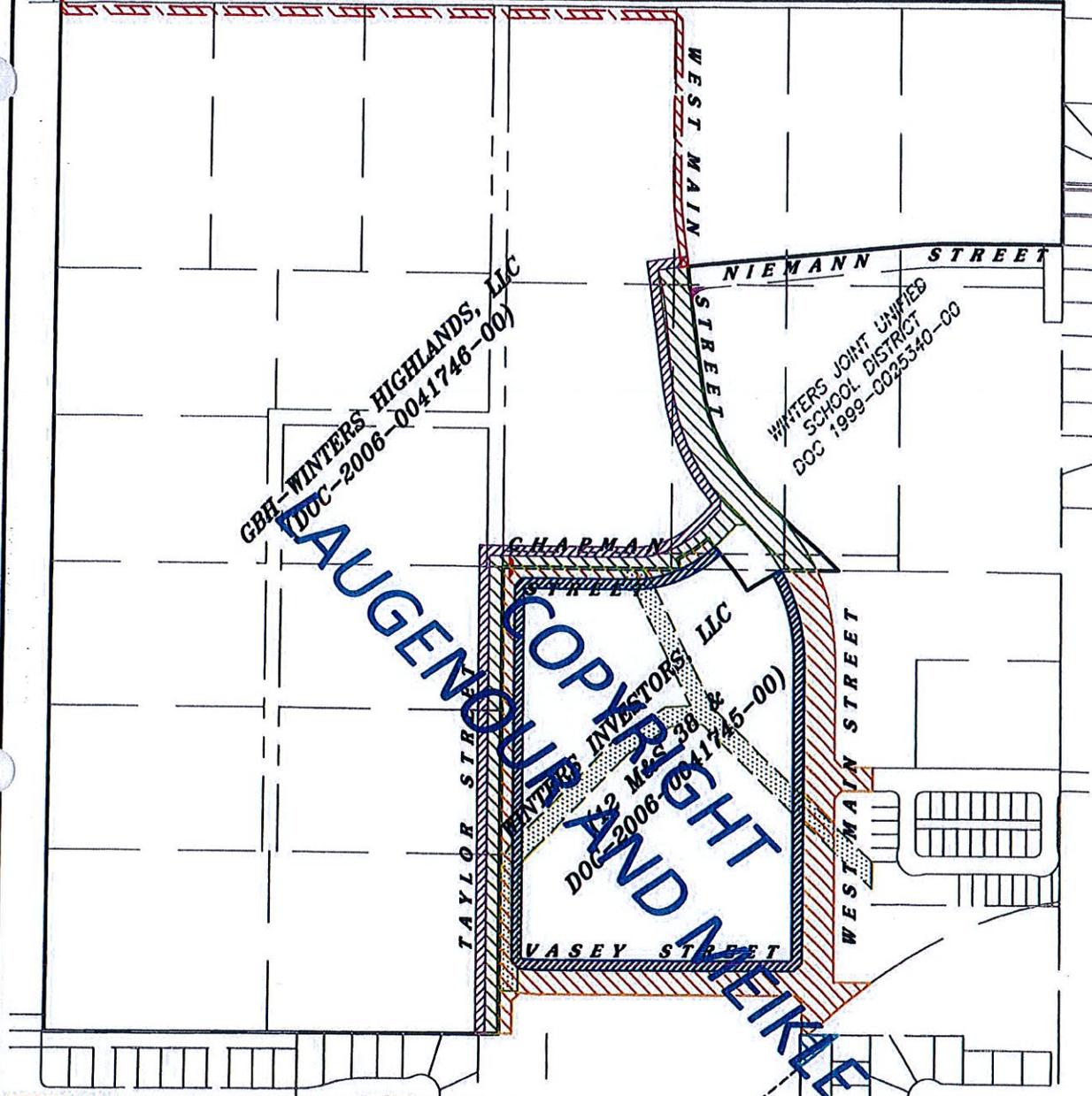

GBH-Winters Highlands, LLC
Dara S. O'Farrell, Member and Manager

C: Jeff Pemstein, Towne Development of Sacramento, Inc.
Jeremy Goulart, Towne Development of Sacramento, Inc.
Jim Hildenbrand, Winters Investors, LLC
Bryan Bonino, Laugenour & Meikle

Attachment

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MOODY SLOUGH ROAD

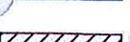


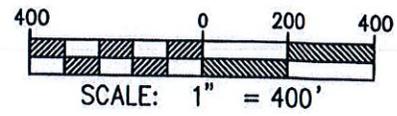
GBH-WINTERS HIGHLANDS, LLC
DOC-2006-0041746-00

WINTERS JOINT UNIFIED
SCHOOL DISTRICT
DOC 1999-0025340-00

WINTERS INVESTORS, LLC
M&S 38 &
DOC-2006-0041745-00

AUGEN COPY AND RIGHT MEIKER

-  R.O.W. FROM WINTERS INVESTORS, LLC TO GBH-WINTERS HIGHLANDS, LLC
-  R.O.W. FROM GBH-WINTERS HIGHLANDS, LLC TO WINTERS INVESTORS, LLC
-  S.F.M. EASEMENT THROUGH WINTERS HIGHLANDS
-  R.O.W. REQUIRED FROM CARTER RANCH DEVELOPERS
-  R.O.W. REQUIRED FROM WINTERS JOINT UNIFIED SCHOOL DISTRICT
-  TEMPORARY FLOWAGE EASEMENT FROM WINTERS INVESTORS, LLC TO GBH-WINTERS HIGHLANDS, LLC
-  TEMPORARY CONSTRUCTION EASEMENT FROM WINTERS INVESTORS, LLC TO GBH-WINTERS HIGHLANDS, LLC
-  TEMPORARY CONSTRUCTION EASEMENT FROM GBH-WINTERS HIGHLANDS, LLC TO WINTERS INVESTORS, LLC



RIGHT-OF-WAY ACQUISITION
 FOR
GRANITE BAY HOLDINGS, LLC
 AND
WINTERS INVESTORS, LLC
 LOCATED IN A PORTION SECTION 21,
 TOWNSHIP 8 NORTH, RANGE 1 WEST
 MOUNT DIABLO MERIDIAN
 CITY OF WINTERS, YOLO COUNTY,
 CALIFORNIA
 SHEET 1 OF 1 MAY 17, 2007

X:\Land Projects\2159-3\dwg\EXH_ROW_OVERALL_COLOR

CONFORMED COPY
NOT COMPARED
WITH ORIGINAL



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RECORDING REQUESTED BY:

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

YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2014-0006104-00

REQD BY BRENT CUSHENBERY

Tuesday, MAR 25, 2014 08:51:00

Ttl Pd \$56.00 Rcpt # 0001088763

FRT/X7/1-15

Exempt from recording fees per Government
Code section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**RESTATED MUTUAL BENEFIT AGREEMENT FOR THE
MITIGATION OF DEVELOPMENT IMPACTS
UPON THE SCHOOL FACILITIES OF
THE WINTERS JOINT UNIFIED SCHOOL DISTRICT**

THIS RESTATED MUTUAL BENEFIT AGREEMENT FOR THE MITIGATION OF DEVELOPMENT IMPACTS UPON SCHOOL FACILITIES (hereinafter "Agreement"), is entered into by and between Reichert-Lengfeld LLP., a California Limited Partnership and GBH-Winters Highlands, LLC., a California Limited Liability Company (hereinafter referred to as "Developer") and the WINTERS JOINT UNIFIED SCHOOL DISTRICT (hereinafter "District"). This Agreement shall take effect on April 1, 2014 (hereinafter "Effective Date").

RECITALS

WHEREAS, Developer seeks to develop approximately Three Hundred Seventy-Seven (377) units on what is referred to as the "Winters Highlands" project (hereinafter the "Development") on approximately One Hundred and Two Point Six (102.6) acres it owns in Yolo County, California, APN No. 030-220-17, -19 and -33, as such APN existed on the Effective Date of this Agreement (hereinafter referred to as the "Property"). The Property is more thoroughly described in Exhibit "A" attached hereto and incorporated by reference;

WHEREAS, improved land is necessary to serve future residents of the Property;

WHEREAS, the Development will have a direct impact on the District and its existing and future needs;

WHEREAS, Developer and District (collectively referred to as "Parties") agree that state funding for school construction is extremely limited and not likely to provide adequate monies for this project;

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WHEREAS, Developer, in order to proceed with planned development, may be required to obtain approval of maps, permits, annexations, rezoning application from a local government agency, and other approvals or actions which may be lead to opposition from the District;

WHEREAS, Developer desires that the Development move forward without opposition from District, and District desires to secure a binding and enforceable Agreement from Developer which provides sufficient funding for school facilities necessary to serve the residents of the Development;

WHEREAS, Developer desires to both fully mitigate the anticipated impacts caused by the Development on school facilities and assure the existence of adequate school facilities for the student population generated by this Development of the Property by entering into this Agreement with District;

WHEREAS, Developer desires a predictable cost of providing school mitigation in the District during construction of the Development, thus avoiding the uncertainty of mitigation amounts which may vary considerably from year to year;

WHEREAS, District desires that the cumulative school mitigation collected from Developer on Development through build-out be sufficient to offset the anticipated costs of providing school facilities required by the Development;

WHEREAS, District and Developer desire that school facilities be timely funded and developed to provide adequate facilities for K-12 students expected to be generated by the planned Development through agreement on a level of school mitigation that will remain in effect, subject to adjustment as provided in this Agreement, through the term of this Agreement.

WHEREAS, District and Developer's predecessor in interest previously executed a Mutual Benefit Agreement which the parties desire to rescind and replace with this Restated Mutual Benefit Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual promises and covenants of the Parties contained in this Agreement, and in exchange for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1.0 Recitals

The preceding recitals are incorporated herein as though fully set forth herein.

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2.0 School Mitigation

2.1 School Mitigation Fee

Developer agrees to mitigate the impacts the Development creates on the District's facilities through payment of a fee. Accordingly, Developer or Developer's successor(s)-in-interest to all or any portion of the Property, whoever applies for building permits for the Property ("Builders"), shall pay the District the following "School Mitigation Amount," for each residential permit issued on the Property:

- For homes for which building permits are issued by the City on or before December 31, 2015: Three Dollars and Twenty Cents (\$3.20) per square foot of "assessable space," as that term is defined in Section 65995(b)(1) of the California Government Code.
- For homes for which building permits are issued by the City on or after January 1, 2016: Four Dollars and Twenty-Three Cents (\$4.23) per square foot of "assessable space," as that term is defined in Section 65995(b)(1) of the California Government Code.

These fees shall be paid at the earlier of: (1) issuance of a Certificate of Occupancy; or (2) six (6) months from the issuance of the building permit by the City of Winters. It shall constitute a material obligation of Developer under this Agreement to inform the District each time a permit or Certificate of Occupancy is issued.

2.1.1 Bi-Annual Index

The School Mitigation Amount shall be increased every two years (in even-numbered years), commencing in January 2015, according to the adjustment for inflation set forth in the statewide cost index for Class B construction, as determined by the State Allocation Board at its January meeting. The increase shall be effective as of the date of that meeting. If the State Allocation Board uses another index in making its determination, then that index increase shall apply. In no event shall the School Mitigation Amount decrease.

2.1.2 Interest

If Developer does not pay the School Mitigation Amount by the deadline set forth in Section 2.1.1 above, then in addition to withholding the Certificate of Compliance, an interest rate of one-point five percent (1.5%) per month, shall apply to the full outstanding balance. The District retains the right to invoke all legal recourse to recover delinquencies including the outstanding balance, interest, fees, and costs associated with recovery.

2.1.3 The adjustments required by 2.1.1 and 2.1.2 shall take effect only upon expiration of the Amended Development Agreement entered into between the City of Winters and Developer or December 31, 2019, whichever comes first.

2.2 No Offset

The School Mitigation Amount shall not be offset or reduced by the receipt of any monies or the waiver of any fees or expenses by the State, the City or District and/or any funds that may be received by the District that are required to or could be designated for school construction. Additionally, the School Mitigation Amount shall not be offset for bond monies that have been or may in the future be issued by the State, the City, the District or any other unit of government.

3.0 Full Mitigation

Compliance with this Agreement operates to fully mitigate Developer's impact on the school facilities of the District for the Development, and will relieve Developer of any responsibility for additional school mitigation for the Development.

4.0 Certificate of Compliance.

Every time Developer makes payment of the full School Mitigation Amount for a residential unit, District shall provide Developer with a "Certificate of Compliance" indicating full mitigation.

5.0 Non-Opposition

5.1 By Developer

Developer agrees to pay the School Mitigation Amount and/or provide approved Mitigation as required by this Agreement even if future legislation, voter initiative or a final court judgment limits the type or amount of fees or charges that can be collected by the District. Failure or refusal by Developer or any successor-in-interest to pay the School Mitigation Amount shall constitute a material breach of this Agreement.

By executing this Agreement, Developer further agrees not to challenge the validity, amount or application of the School Mitigation Amount. Without limiting the foregoing, Developer specifically agrees not to challenge the amount or validity of the School Mitigation Amount based on the School Mitigation Amount being greater than the maximum school mitigation amount justifiable now or at any time in the future. Participation in any challenge referenced above shall constitute a material breach of this Agreement.

5.2 By District

5.2.1 Payment of Fees is Full Mitigation The District shall not oppose development of the Property and shall inform the City that Developer made provision, by execution of this Agreement, to fully mitigate the anticipated impacts caused by their Development on school facilities. This Agreement shall constitute the maximum financial obligation of Developer to pay or mitigate for school facilities under the Mitigation Fee Act and Government Code sections 65995-65998 including all cross referenced sections therein.

5.2.2 Allowed Taxes and Assessments. Notwithstanding 5.2.1, nothing in this Agreement shall preclude application to the Property of new special taxes or assessments as long as the taxes or assessments apply to all private property District wide.

6.0 Disclosure by Developer

Developer shall disclose this Agreement and its obligations to all successors to, assigns of, and/or subsequent purchasers from Developer. This disclosure shall be made prior to Developer's assignment or sale of all or any of its interest in the Property. This disclosure shall state that the obligations hereunder must be satisfied by payment of School Mitigation Amount and that the obligations of this Agreement run with the Property.

If this Agreement and its obligations are not disclosed to a subsequent successor, Developer shall be liable for the payment of the School Mitigation Amount on each residential unit as though the Developer still owned the Property.

Developer's duty of disclosure pursuant to this Section shall be extinguished when Total School Mitigation Amount has been paid to the District.

Disclosure shall be accomplished by recording this Agreement with the Recorder's Office of the County of Yolo.

7.0 Material Breach

7.1 By Developer

The District is entering into this Agreement in reliance upon the representation of Developer that during the term of this Agreement Developer will not individually or collectively challenge, or participate, encourage or support, either directly or indirectly, any challenge to the validity, amount, and/or applicability of the School Mitigation set forth herein (regardless of whether the amount exceeds the maximum school mitigation amount justified now or in the future). If Developer violates the conditions or covenants set forth in this Agreement, or engages in any other conduct which constitutes a material breach of the Agreement, the following consequences shall result:

7.1.1 Certificates of Compliance

If the Developer's action or inaction constitutes a material breach of this Agreement, District may suspend the issuance of new Certificates of Compliance to Developer, and shall notify City of such suspension. This suspension shall remain in effect until the breach is cured.

7.1.2 Specific Performance

The Parties agree that the matter of this Agreement is unique. Therefore, in addition to any and all other remedies, if Developer violates the conditions or covenants set forth in this Agreement, or engages in any other conduct which constitutes a material breach of the Agreement, District shall have the right to obtain specific performance of this Agreement. In the event that the District seeks to obtain specific performance or any other form of injunctive relief, it will not be required and developer will not request that District post any form of bond.

7.1.3 Cumulative Remedies

Each of the remedies set forth in this Section 7.0 shall be cumulative and not exclusive. District may pursue one or more remedies simultaneously or consecutively until it receives the Total School Mitigation Amount as contemplated by this Agreement.

7.2 By District

The Parties agree that the matter of this Agreement is unique. Therefore, in addition to any and all other remedies, if District violates the conditions or covenants set forth in this Agreement, or engages in any other conduct which constitutes a material breach of the Agreement, Developer shall have the right to

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obtain specific performance of this Agreement, including, but not limited to, the issuance of a Certificate of Compliance.

8.0 Term of Agreement

- 8.1 Unless there is a material breach as set forth in Section 7.0, this Agreement shall expire when Total School Mitigation Amount and any additional fees required of Developer under this Agreement have been paid to District in full or otherwise fully complied with.
- 8.2 Notwithstanding Section 8.1, this Agreement shall automatically terminate as to any building for which Developer has paid the required fee. Upon request of a title company or Developer, District shall record a document, to the reasonable satisfaction of the title company, evidencing that this Agreement has been terminated as to that building for which the required fee has been paid.

9.0 Binding Agreement

- 9.1 This Agreement shall be binding upon the Parties hereto. All of the covenants, stipulations, promises, and agreements contained in this Agreement by or on behalf of, or for the benefit of either of the Parties hereto, shall bind and inure to the benefit of their respective successors or assigns.
- 9.2 Developer agrees to pay, and not to challenge, protest or pay under protest, the School Mitigation Amount required by this Agreement. Developer further agrees to pay the School Mitigation Amount even if future legislation or a final court judgment invalidates the required mitigation payment (or any portion thereof), or if the School Mitigation Amount exceeds the maximum amount that the District otherwise could impose.
- 9.3 This Agreement shall run with the land and be binding upon all prospective successors and assigns of Developer. Any material breach by a successor, representative or assign of this Agreement shall have the same force and effect as provided for in Paragraph 7.0 above. Written assumption of this Agreement by a purchaser of the Property or part thereof shall release Developer of its obligations under this Agreement as to the transferred property. The release of the Developer shall not take effect until written notice of the assumption, including the name, address and telephone number of the assignee is given to the District.

10.0 Entire Agreement; -Supersedes and Replaces Existing Mutual Benefit Agreement

10.1 This Agreement constitutes the entire agreement between the Developer and the District regarding school mitigation. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to school mitigation. Each party to this Agreement acknowledges that (i) representations by any party with respect to the subjects identified in this paragraph which are not embodied herein, or (ii) any other agreements, statements or promises not contained in or expressly authorized by this Agreement shall not be valid and binding.

10.2 The Parties represent, warrant and agree that in executing and entering into this Agreement they are not relying upon, and have not relied upon, any representation, promise or statement made by anyone which is not recited, contained or embodied herein. The Parties agree and assume the risk that any fact not verified, contained or embodied in this Agreement may turn out to be other than, different from, or contrary to, the facts now known to them and believed by them to be true. The Parties further agree that this Agreement shall be effective in all respects notwithstanding, and shall not be to termination, modification or rescission by reasons of any such differences in fact.

10.3 This Agreement operates to fully rescind the prior Mutual Benefit Agreement entered into between District and Developer's predecessor in interest, GBH-Winters Highlands, LLC entered into on November 18, 2005, as acknowledged in the Memorandum of Mutual Benefit Agreement recorded as document 2006-0005313-00 in the Yolo County Official Records on February 8, 2006.

_____ The rescission shall take effect upon the Effective Date. The District shall execute such documents as may be reasonably required by a title company to evidence the rescission of the existing agreement.

10.4 Each Party executing this Agreement hereby acknowledges and agrees that they have carefully read all of its terms and provisions, have been advised of its many consequences by its attorneys, and signs this Agreement of their own free will and with advice of counsel.

11.0 Third Party Beneficiaries

The Parties agree that this Agreement is by and between the Parties named herein, and/or their successors and assigns, and no third party (including, but not limited to, future home Developer) is intended, expressly or by implication, to be benefitted by this Agreement.

12.0 Amendment and Waiver

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the Parties. No waiver of one provision of this Agreement shall be deemed to constitute a waiver of any other provision(s), whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of the Agreement by the District as against any Developer shall be deemed to be a waiver of the same provisions as against the other Developer.

13.0 Invalid Term

If any provision of this Agreement is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining portions hereof shall not, in any way, be affected or impaired thereby.

14.0 Applicable Law

14.1 The Parties understand and agree that this Agreement shall be governed by, and interpreted under, the laws of the State of California.

14.2 In the event of a dispute concerning the terms of this Agreement, the Parties expressly agree that the venue for any legal action shall be with the appropriate court in the County of Yolo, State of California.

15.0 Interpretation

All Parties warrant that they participated at arms length in drafting this Agreement. The terms of this Agreement shall not be construed for or against any party by reason of authorship of this Agreement, but shall be construed in accordance with the meaning of the language used herein.

16.0 Additional Matters

Each Party shall execute, promptly upon request from another party, any further papers or documents not herein specifically mentioned which may be reasonably necessary to carry out the letter and spirit of this Agreement, and will do all things necessary to carry out and effectuate the terms and intent of this Agreement.

17.0 Recording of Agreement

Developer shall record a copy of this Agreement or a Memorandum of Agreement in the official records of Yolo County, indexed to all parcels to the Agreement.

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18.0 Attorney's Fees

The prevailing party in any action or proceeding to enforce, interpret or otherwise, arising out of or relating to, this Agreement or any provision thereof (including, but not limited to, any trial, arbitration, administrative hearing or appeal) shall be entitled to recover from the other party (or parties) all of the costs and expenses, including but not limited to reasonable attorney's fees and expert's fees.

19.0 Notices, Communications, and Demands

Formal notices, communications or demands to a party shall be sufficiently given if:

- 19.1 personally delivered; or
- 19.2 mailed by registered or certified mail, first class postage prepaid, return receipt requested to the principal office of the Parties; or
- 19.3 delivered by Federal Express or other reliable private express delivery service to the principal office of the affected Parties.

19.4 The Principal Offices of the Parties are:

19.4.1 For District:

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

19.4.2 For:

Reichert-Lengfeld LLP., a California Limited Partnership and GBH-
Winters Highlands, LLC., a California Limited Liability Company

20.0 Identical Counterparts

This Agreement may be executed in identical counterparts, each of which shall constitute a duplicate original.

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21.0 Headings

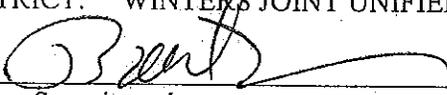
The headings contained herein are for the purpose of convenience only, and shall not be constructed to limit or extend the meaning of this Agreement.

22.0 Authority to Execute

Each signatory to this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of his or her principal.

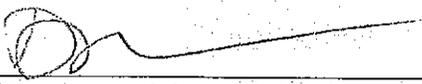
IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed as of the date set forth above.

DISTRICT: WINTERS JOINT UNIFIED SCHOOL DISTRICT

By: 
Title: Superintendent

Date: 3-12-2014

DEVELOPER: Reichtert-Lengfeld LLP., a California Limited Partnership and GBH-Winters Highlands, LLC., a California Limited Liability Company

By: 
Title: Developer – Manager/Principal

Date: 3/12/14