

acre parcel shown on Exhibit F. In order to provide sufficient funds for the City to commence construction of this facility, the Developer shall, concurrently with the filing of the final subdivision map for the Hudson-Ogando Subdivision pay to the City development fees as follows:

1. A police facilities fee at its then current rate for all 72 residential units in the Hudson-Ogando Subdivision.

2. A fire facilities fee at its then current rate for all 72 residential units in the Hudson-Ogando Subdivision .

3. A general municipal facilities fee at its then current rate for all 72 residential units in the Hudson-Ogando Subdivision.

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

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

Section 4.5 Annuity in Lieu of Mello-Roos District.

a. The Developer agrees that the City will establish, and the Developer will fund, an annuity to offset the projected fiscal deficit to the General Fund of the City created by the development of The Hudson-Ogando Subdivision per the Economic & Planning Systems reports titled "City of Winters Ogando-Hudson Fiscal Impact Analysis-- Revised Land Use Plan Technical Addendum", dated August 18, 2005, and "Revised Administrative Draft Report Ogando-Hudson

Subdivision Fiscal Impact Analysis", dated December 20, 2004. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.

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

1. Subject to the provisions of b.3., below, from the escrow for the sale of each residential unit to a third party the Developer will pay to the City the sum of Two Thousand Four Hundred Two Dollars(\$2,402.00).

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

3. The amount of Two Thousand Four Hundred Two Dollars (\$2,402.00)will be adjusted with the first closing of a residential unit to a third party and on or before April 30 of each subsequent year to take into account rising assessed values resulting from increased new home prices within the Hudson-Ogando Subdivision, if any. The formula for making this adjustment is set forth in Exhibit G.

c. At the end of the third year after the recording of this Agreement, the City will prepare an updated fiscal analysis. The amount set forth in subsection b. 3., as may be amended from time to time by the formula set out in Exhibit G, shall be modified according to the results of that analysis.

Section 4.6 Payment to Library Fund and Community Pool Fund.

a. Prior to recording of the final map for the Hudson-Ogando Subdivision the Developer shall pay to the City the sum of Thirty-Six Thousand Five Hundred Forty-One Dollars (\$36,541.00). This amount shall be kept in a specific designated account and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.

b. Prior to recording of the final map for the Hudson-Ogando Subdivision the Developer shall pay to the City the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). This amount shall be kept in a specific designated account and used solely for constructing, maintaining, and/or improving a community swimming pool in the City of Winters.

Section 4.7 Wastewater Treatment Plant Expansion.

a. Wastewater (sewage) from the Hudson-Ogando Subdivision will be treated in an expanded and upgraded Wastewater Treatment Plant ("WTP") to be built by the City using sewer fees collected from the developers of property within the City of Winters. Wastewater from the Hudson-Ogando Subdivision will eventually flow to the expanded and upgraded WTP through conveyance facilities to be constructed to the north of The Property across adjacent property commonly referred to as Winters Highlands and Callahan Estates.

b. The Developer shall be required to pay all applicable sewer impact fees.

c. The WTP expansion and upgrade will not be completed by the time the first residential unit of the Hudson-Ogando Subdivision requires sewer treatment. However, the facilities through the Winters Highlands and Callahan Estates to the existing WTP are expected to be complete by the time the first

residential unit of the Hudson-Ogando Subdivision requires sewer treatment. In the event the facilities across Winters Highlands and Callahan Estates are not completed by the time the first residential unit of the Hudson-Ogando Subdivision requires sewer treatment, the Developer may, at its sole cost and expense and without reimbursement or fee credit from the City, connect to the City's existing sewage collection facilities located to the south of The Property on Grant Avenue. This will be an interim connection only. All necessary improvements to the Grant Avenue facilities as determined by the City Engineer will be paid by the Developer.

d. When the WTP is expanded and upgraded, and the facilities across Winters Highlands and Callahan Estates are installed, sewage from the Hudson-Ogando Subdivision will be redirected to the new facilities. This will be the permanent connection. The cost of disconnecting the interim connection, if installed, and connecting to the permanent connection will be paid by the Developer. If the new facilities described above are not installed by the time the first residential unit of the Hudson-Ogando Subdivision requires sewer treatment, and the interim facilities described above are used, the City Engineer may require the Developer to post security in the amount determined to be the cost of connecting to the permanent connection. Such security, if required, will be posted at the time of the filing of the final subdivision map for the Hudson-Ogando Subdivision.

e. The amount and timing of reimbursement under this section shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.8 New Sewer Pump Station.

a. The Developer shall pay its *pro rata* share of the construction of a new sewer pump to be located at a site specified by the City Engineer which will redirect existing sewage flows from the current East Street Pump Station. The new pump will be financed entirely by developers without any reimbursement from the City.

b. The City Engineer shall determine the *pro rata* share to be borne by each participating developer and shall allocate each share accordingly.

c. The City Engineer shall determine when the pump is to be built and who will build it.

Section 4.9 Urban Water Management Plan.

a. The Developer shall pay the cost for preparation of a City Urban Water Management Plan ("Management Plan"). Payment shall be due and payable no later than the date upon which the final map for the Hudson-Ogando Subdivision is recorded. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the Management Plan to be paid by other developments benefiting from the Management Plan, but only those commonly identified as Winters Highlands and Callahan Estates, as provided by section 3.11.

b. The amount and timing of reimbursement under this section shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.10 Water Well.

a. A water well will be constructed at the location to be determined by the City Engineer according to the design and specifications approved by the

City. Provision for the construction of the well and security for its construction shall be included in the agreement for the installation of public improvements which is entered into between the City and the Developer in connection with the recording of the final map for the Hudson-Ogando Subdivision. The City Engineer, in his sole discretion, shall determine whether the well will be built by the Developer or whether it will be built by a third party under contract with the City. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the water well to be paid by other developments benefiting from it, including, but not limited to, those commonly identified as Winters Highlands, Callahan Estates, and Creekside, as provided by section 3.11.

b. The amount and timing of reimbursement under this section shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.11 Pedestrian Circulation and Safety Improvements.

a. Subject to the provisions of Section 3.8, the Developer shall construct pedestrian circulation and safety improvements at the intersection of Grant Avenue and Morgan Street according to one of the four options selected by the City Engineer as those options are described in the Morgan Street Area Circulation Study, July 1999.

b. The Developer may receive, but is not guaranteed, a *pro rata* reimbursement for these improvements from other developments benefiting from it, including, but not limited to those commonly identified as Winters Highlands, Callahan Estates, and Creekside, as provided by section 3.11.

c. The amount and timing of reimbursement under this section, if any, shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.12 Walnut Street - Dutton Street- East Street Intersection Corridor.

a. Subject to the provisions of Section 3.8, the Developer shall analyze, design, and construct intersection and roadway improvements as specified by the City Engineer in the Walnut Street - Dutton Street- East Street intersection corridor.

b. The Developer may receive, but is not guaranteed, a *pro rata* reimbursement for these improvements from other developments benefiting from them, including, but not limited to the development commonly identified as Winters Highlands, as provided by Section 3.11.

c. The amount and timing of reimbursement under this section, if any, shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.13 Energy Efficiency.

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

a. Fifty percent (50%) of the 61 market rate units shall be built with: a photovoltaic solar energy system capable of producing 2.4 peak rated direct

current (DC) kilowatts. The remaining market rate units shall be pre-wired to accommodate such a system.

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

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

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

Section 4.14 Certain Mitigation Measures.

The Developer shall, on behalf of the City, implement at its sole cost and expense mitigations for the City Public Safety Facility City Public Safety Center as identified in the Mitigation Monitoring Plan for Mitigation Measures # 4, 5, 6, 7, 8, and 11.

Section 4.15 Masonry Wall and Landscaping.

a. The Developer, at its sole cost and expense, shall install a masonry wall consistent with the Conditions of Approval.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

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

Section 5.2 City's Remedies.

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

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

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

3. Specific performance as provided in subsection c.

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

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

b. Default by the Developer.

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

2. Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in

default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code section 65868 and Section 11-2.802 of the Winters Municipal Code.

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

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

1. To complete or demolish any uncompleted improvements which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion.

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

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

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

Section 5.3 Developer's Remedies.

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

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

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

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

b. Default and Notice of Default. With respect to a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer

period as is reasonably necessary to remedy such default(s), provided that the City has continuously and diligently pursued such remedy at all times until such default(s) is cured.

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorneys' fees for actions under a., above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

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

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

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

Section 6.2 No Liability for Acts of the Developer.

a. It is expressly understood that the development of The Hudson-Ogando Subdivision is an undertaking that may create for the Developer liability to third parties, including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of residential units, building contractors and subcontractors, and suppliers. The Developer understands and agrees that the City would not execute this Agreement if, in so doing, it created for the City any liability to any third party.

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

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

Section 6.3 Duty to Defend Challenges to this Agreement.

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

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

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

d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

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

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE TO FOLLOW

**DEVELOPER
WINTERS INVESTORS, LLC**

By: Th. A. Walsh

Its: Managing Partner

Dated: 12/19/05

CITY OF WINTERS

By: [Signature]
Mayor

Dated: 5/26/06

Attest: [Signature]
City Clerk

Approved as to form:

[Signature]
John Wallace, City Attorney

[Signature]
Joel Ellinwood, AICP
Abbott & Kindermann, LLP,
Attorneys for Developer

.....

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa } ss.

On December 19, 2005 before me, Sandra K. Curran, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Thomas A. Whalen
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sandra K. Curran
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

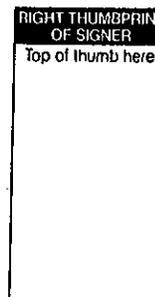
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

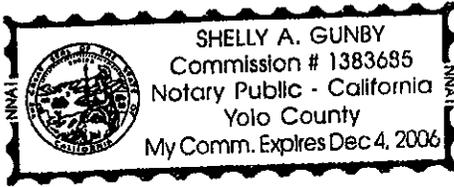
State of California

County of Yolo

} ss.

On May 26, 2006 before me, Shelly A. Gunby, Notary Public
Date Name and Title of Officer, (e.g., "Jane Doe, Notary Public")
 personally appeared Don Martinez
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Shelly A. Gunby
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

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Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



LIST OF EXHIBITS

- EXHIBIT A Map of Hudson-Ogando Property
- EXHIBIT B Legal Description of Hudson-Ogando Property
- EXHIBIT C The Hudson-Ogando Tentative Subdivision Map
- EXHIBIT D: Conditions of Approval, including Mitigation Measures
- EXHIBIT E-1 School Agreement
- EXHIBIT E-2 First Amendment to School Agreement for Hudson-Oganda
Property
- EXHIBIT E-3 First Amendment to School Agreement for Callahan Estates
Property
- EXHIBIT F Map of Parcel Conveyed to the City and Adjacent City-Owned
Parcel
- EXHIBIT G Annuity Adjustment Formula

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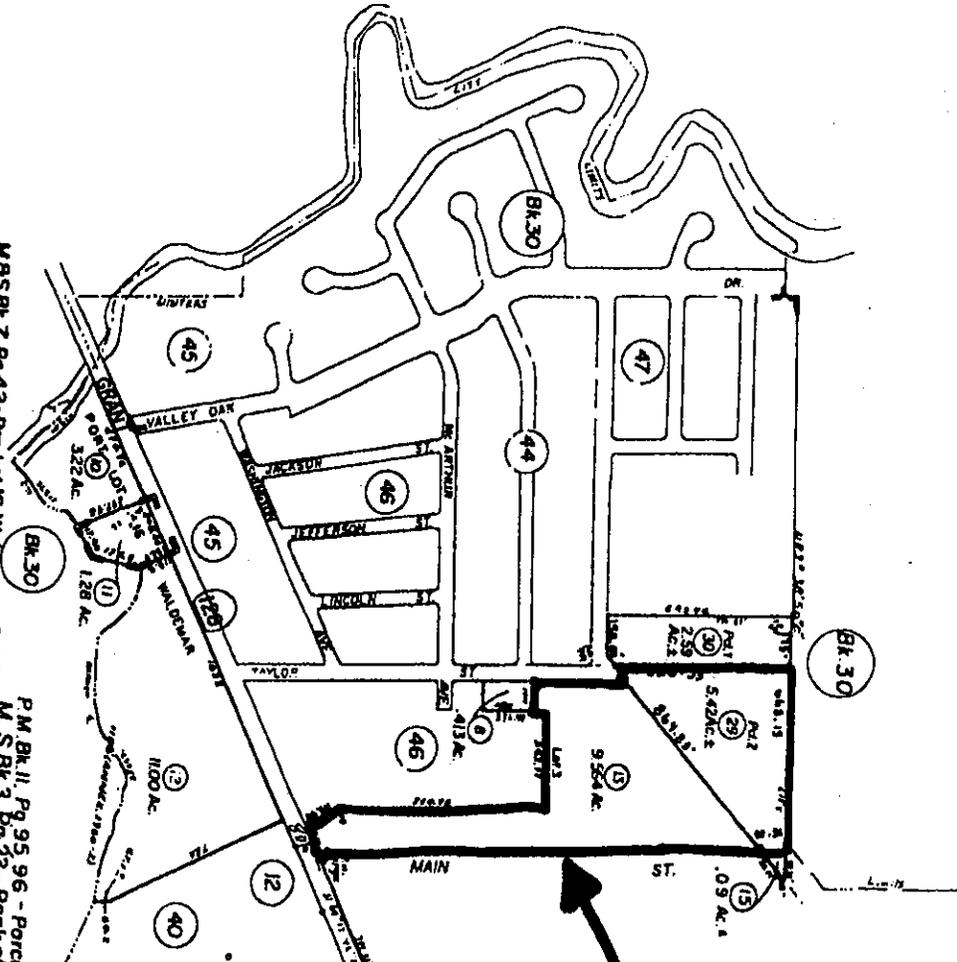
This Agreement was adopted by Ordinance No. 2005-09 of the City Council of the City of Winters. Ordinance No. 2005-09 was adopted on December 19, 2005 and is effective on the date it is recorded with the Yolo County Recorder.

EXHIBIT A

POR. T8N, R.1W., M.D. B. & M.

CAUTION - These Maps ARE NOT to be used for legal descriptions.

03-43



M.S.Bk. 7, Pg. 42 - Por. Lot 15, Waldemars Subd.
 M.B.S. Bk. 11, Pg. 64 - J.W. Vickrey Enterprises Subd.
 P.M. Bk. 5, Pg. 60 - Joe Ogando, A. 3030
 P.M. Bk. 7, Pg. 58 - Pcl. Map 3209 for Vickrey Enterprises, Inc.
 P.M. Bk. 7, Pg. 59 - Pcl. Map 3336 for Vickrey Enterprises, Inc.
 M.B. Bk. 13 Pg. 76-78 - Dry Creek Unit 1, A. 3188
 P.M. Bk. 11, Pg. 95-96 - Parcel Map A 4242
 M.S. Bk. 3, Pg. 23 - Bank of Yolo Subd.
 P.M. Bk. 00, Pg. 34, 35 - Pcl. Map, #4268
 P.M. Bk. 00, Pg. 170 to 174 - Subd. # 4284.

(Formerly 30-13)
 NOTE - Assessor's Block Number Shown in Ellipse.
 Assessor's Parcel Number Shown in Circles.

CITY OF WINTERS
 Assessor's Map Bk. 3, Pg. 43
 County of Yolo, Calif.
 03/18

APN	ACRES	OWNER	DATE
001-000-000	1.00	State of California	1/1/75
001-000-001	1.00	State of California	1/1/75
001-000-002	1.00	State of California	1/1/75
001-000-003	1.00	State of California	1/1/75
001-000-004	1.00	State of California	1/1/75
001-000-005	1.00	State of California	1/1/75
001-000-006	1.00	State of California	1/1/75
001-000-007	1.00	State of California	1/1/75
001-000-008	1.00	State of California	1/1/75
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001-000-025	1.00	State of California	1/1/75
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001-000-029	1.00	State of California	1/1/75
001-000-030	1.00	State of California	1/1/75

EXHIBIT B

2260-3
November 17, 2005

EXHIBIT A-1

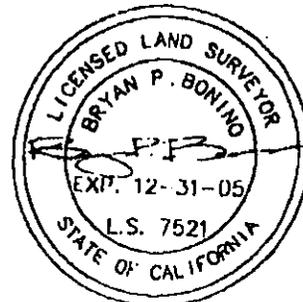
LEGAL DESCRIPTION for WINTERS INVESTORS, LLC

That real property situate in the City of Winters, County of Yolo, State of California, being a portion of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, and being a portion of Lot 3, Bank of Yolo Subdivision, Book 3, Maps and Surveys, Page 23, as said Lot is described in Document Number 2004-0007937-00, and Lot B, as said Lot is described in that certain Certificate of Compliance for Lot Line Adjustment, Document Number 2004-0005956-00, Yolo County Records, and being more particularly described as follows:

BEGINNING at the Northeast corner of said Lot B; thence, from said POINT OF BEGINNING, South 00°04'55" East 80.56 feet to the Southeast corner of said Lot B, said point also being the Northeast corner of that Parcel described in Document Number 2004-0007937-00; thence, continuing along the exterior boundary of said Parcel, South 00°00'23" West 1595.59 feet to a point on the Northerly right-of-way of State Highway 128; thence, along said right-of-way, South 65°17'42" West 109.53 feet; thence, leaving said right-of-way, North 24°42'18" West 115.98 feet; thence South 65°17'42" West 15.00 feet; thence North 00°03'41" 764.98 feet; thence South 89°56'19" 343.77 feet; thence South 00°03'41" East 53.00 feet; thence South 89°56'19" West 99.99 feet to a point on the Easterly right-of-way of Taylor Street; thence, along said right-of-way, North 00°03'41" East 307.64 feet; thence, leaving said right-of-way, North 90°00'00" West 28.00 feet to a point on the Southeasterly line of said Lot B; said point also being the Northwesterly corner of said Parcel described in Document Number 2004-0007937-00; thence, along said line, South 50°30'05" 42.38 feet to the Southwest corner of said Lot B; thence, along the Westerly line of said Lot B, North 00°04'55" West 626.53 feet to the Northwestern corner of said Lot B; thence, along Northerly line of said Lot B, North 89°38'50" 668.13 feet to the POINT OF BEGINNING.

Containing 15.97 acres, more or less.

End of description.



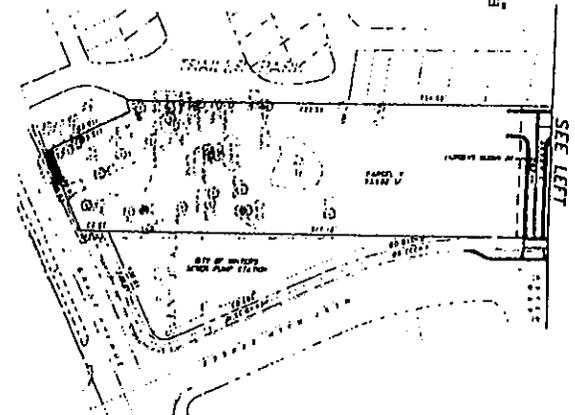
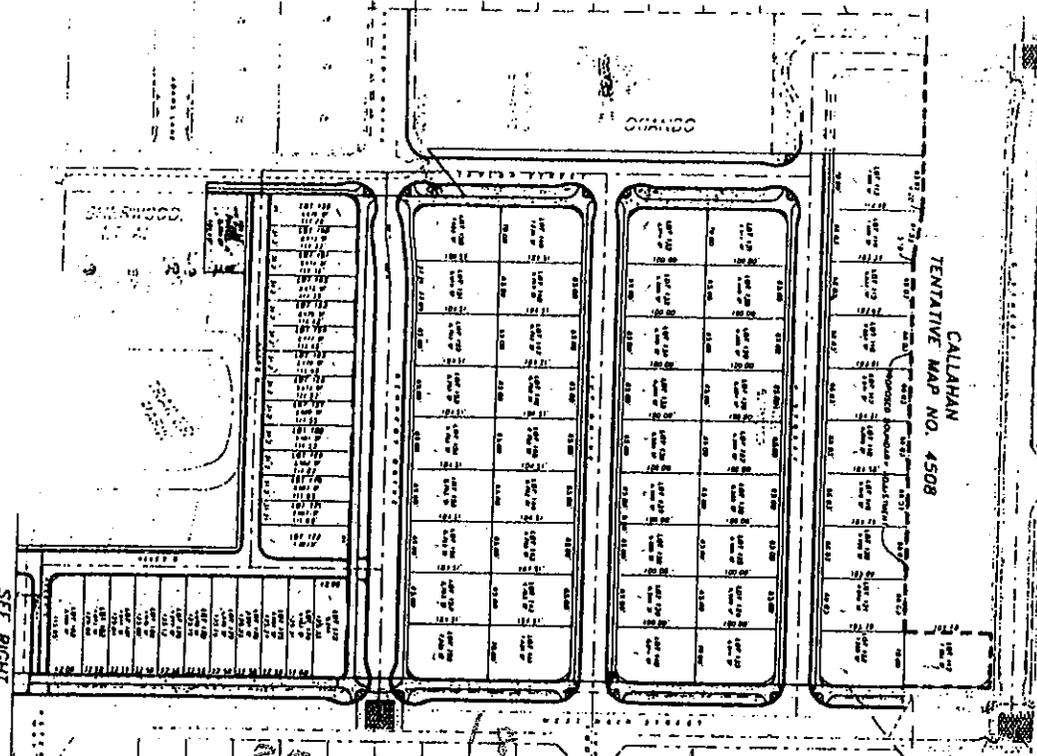
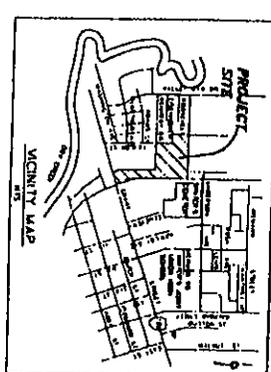
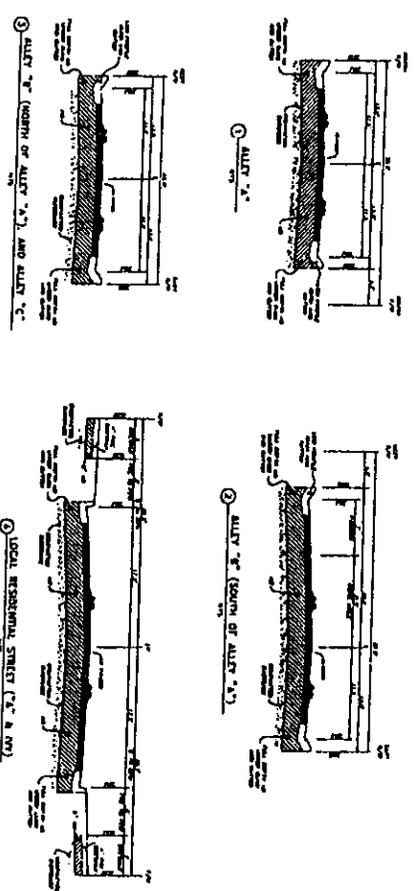


EXHIBIT C



PROPERTY OWNER: [Name]

PROJECT: [Name]

DATE: [Date]

SCALE: [Scale]

BY: [Name]

FOR: [Name]

APPROVED: [Signature]

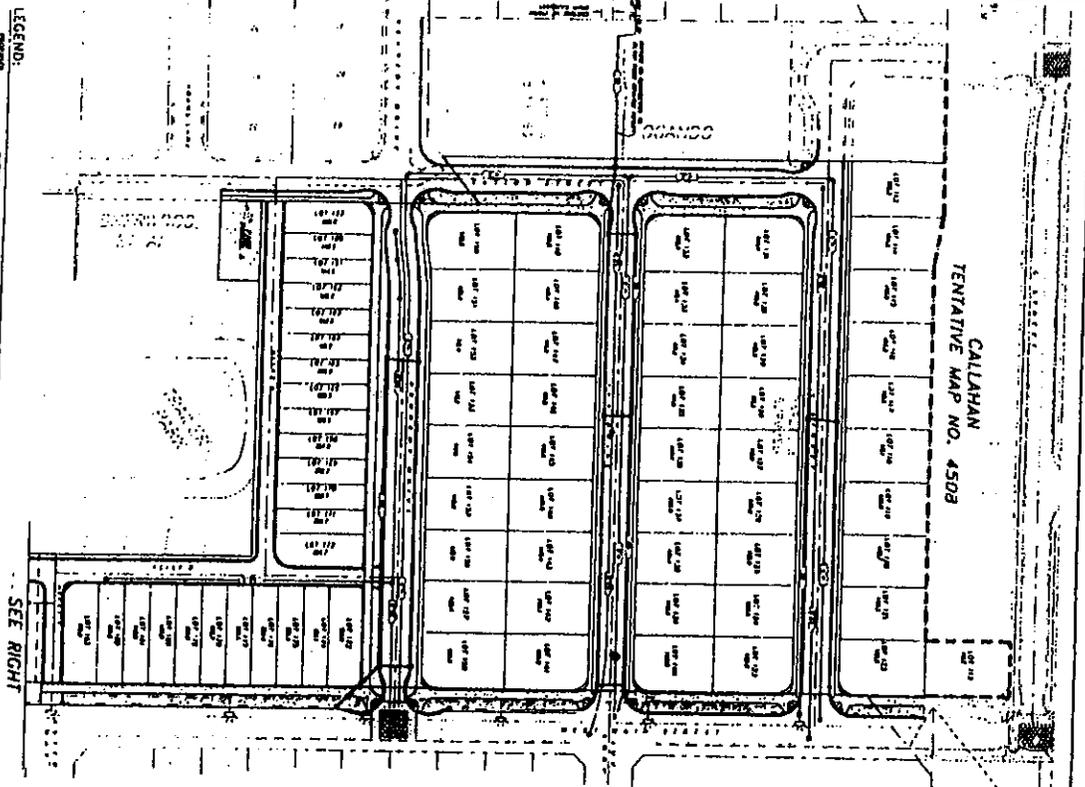
DATE: [Date]

RECEIVED
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CITY OF WINTERS

WINDSON/Grand
1625 1/2 St
Subdivision No 4508
and other Land Development
City of Winters, California
City Engineer



City of Winters
1200 W. 1st St.
Winters, CA 95986
Tel: 916.835.1200
Fax: 916.835.1201



LEGEND

REVISIONS

DATE

DESCRIPTION

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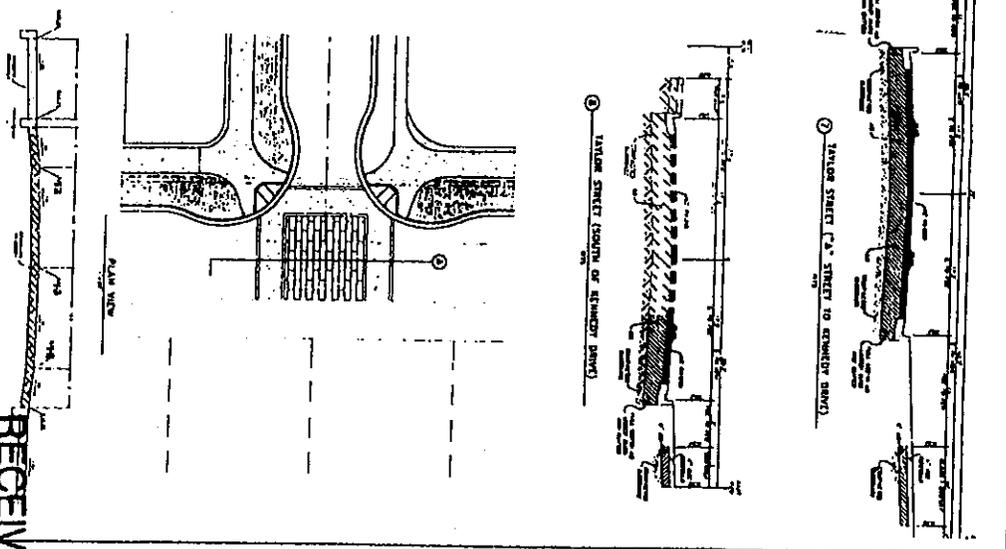
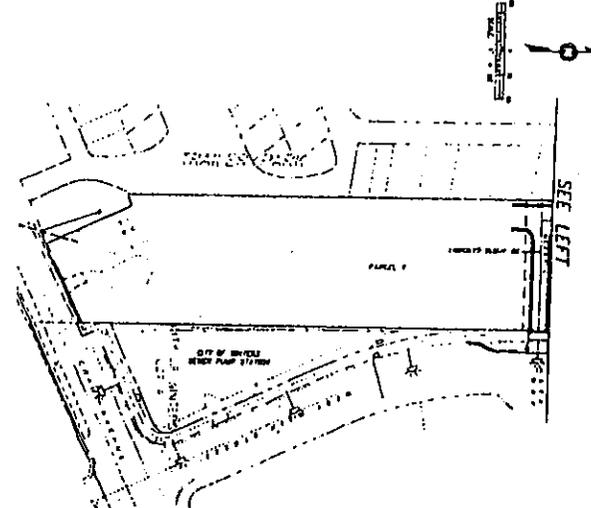
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CITY OF WINTERS

MAR - 9 2005



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City of Winters

1000 W. 1st Street

Winters, CA 95989

Phone: (530) 938-2200

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www.cityofwinters.com

**FINDINGS OF FACT AND CONDITIONS OF APPROVAL FOR HUDSON/
OGANDO PROJECT (approved November 15, 2005 City Council)**

EXHIBIT D

FINDINGS OF FACT

Findings for Adoption of Mitigated Negative Declaration

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

Findings for General Plan Amendment

1. Amendment of the General Plan to modify the land use designation of this property is in the best interest of the citizens of Winters.

Findings for Rezoning

1. The public health and general welfare warrant the change of zone and the change of zone is in conformity with the General Plan.

Findings for Exclusion from West Central Master Plan

1. The proposed project, as modified and conditioned, better meets the requirements of the General Plan and there is no detriment to property remaining in the West Central Master Plan by removing this parcel.

Findings for PD Overlay and PD Permit

2. The project, as modified and conditioned, is consistent with the General Plan and the purposes of Section 8-1.5117 of the Zoning Ordinance.
3. Deviations from specified provisions of the basic zoning district on the property have been justified as necessary to achieve an improvement design for the development and/or the environment. The development complies with the remaining applicable provisions of the basic zoning district on the property.
4. The proposed development, as modified and conditioned, is desirable to the public comfort and convenience.
5. The requested plan, as modified and conditioned, will not impair the integrity or character of the neighborhood nor be detrimental to the public health, safety, or general welfare.
6. Adequate utilities, access roads, sanitation, and/or other necessary facilities and services will be provided or available.
7. The development, as modified and conditioned (including execution of the Development Agreement) will not create an adverse fiscal impact for the City in providing necessary services.

Findings for Amendment of the Circulation Master Plan, Standard Street Cross Sections, and Bikeway System Master Plan

1. The amendments to these City documents result in increased bicycle trail standards for the City resulting in a net benefit to the community and net increase in protected routes for alternative circulation.

Findings for Tentative Subdivision Map (G.C. 66474) and Lot Line Adjustment

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

Findings for Development Agreement

1. The DA is consistent with the objectives, policies, general land uses and programs specified in the General Plan.
2. The DA is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located.
3. The DA is in conformity with and will promote public convenience, general welfare and good land use practice.
4. The DA will not be detrimental to the health, safety and general welfare.
5. The DA will not adversely affect the orderly development of property or the preservation of property values.
6. The DA will meet the intent of Section 11-2.202(a) (Public Benefits) of the City Code.
7. The DA is consistent with Ordinance 2001-05 (Development Agreements).

Findings for the Demolition Permit

1. The demolition is consistent with the General Plan and zoning requirements and has been fully analyzed under CEQA.

CONDITIONS OF APPROVAL

The following conditions of approval are required to be satisfied by the applicant/developer prior to final map, unless otherwise stated.

General

1. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project Applicant shall defend, indemnify, and hold harmless the City or its agents, officers and employees, from liability, damages, penalties, costs or expense in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of Winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense which includes court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the subdivider in good faith approves the settlement, and the settlement imposes not direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning commission, any advisory agency to the City, local district and the City Council.
2. All conditions identified herein shall be fully satisfied prior to acceptance of the first final map unless otherwise stated.
3. The project is as described in the October 25, 2005 Planning Commission staff report. The project shall be constructed as depicted on the maps and exhibits included in the October 25, 2005 Planning

General Plan Requirements

4. Pursuant to General Plan Policy II.A.18, a minimum of ten percent of the single-family lots (7 lots) shall be offered for sale to local builders or owner-builders. These lots shall not be the same lots as those identified to meet the City's affordable housing requirement.
5. Pursuant to General Plan Policy II.C.1 and VI.F.2, energy efficient design shall be used. Pursuant to Policy II.C.2 of the Housing Element, energy conservation and weatherization features shall be incorporated into the home design. At a minimum this shall include: a) maximization of energy efficient techniques as identified in the July 27, 2004 Planning Commission staff report on "Proposed Energy Resolution". b) Attainment of EPA Energy Star Standards in all units. c) Low emission furnaces in all units. d) Avoidance of dark colored roofing on all units. e) A minimum of 50 percent of the market-rate units shall have a photovoltaic solar energy system capable of producing a minimum of 2.4kW (peak-rated DC watts) photovoltaic. The remainder of the market-rate units shall be pre-wired for an equivalent system.
6. Pursuant to General Plan Policy II.D.4 and IV.A.1 necessary public facilities and services shall be available prior to the first occupancy of the project.
7. Pursuant to General Plan Policy IV.A.4 (second sentence), the developer shall pay in-lieu fees for the increment of parkland not provided on site, or at the City's discretion may construct needed improvements according to City specification in lieu of paying the fees.
8. Pursuant to General Plan Policy VI.C.7, drought-tolerant and native plants, especially valley oaks, shall be used for landscaping roadsides, parks, schools, and private properties. Pursuant to General Plan Policy VI.C.8, drainage-detention areas shall incorporate areas of native vegetation and wildlife habitat. All homes in this subdivision shall have "low application rate" lawn sprinkler systems, as approved by the Planning Commission.
9. Pursuant to General Plan Policy IV.B.14, there shall be a water meter on each new hook-up.
10. Pursuant to General Plan Policy IV.C.2, adequate sewer service shall be provided prior to the issuance of any individual building permit.
11. Pursuant to General Plan Policy IV.J.2, all new electrical and communication lines shall be installed underground.
12. Pursuant to General Plan Policy VI.A.6, grading shall be carried out during dry months, when possible. Areas not graded shall be disturbed as little as possible. Construction and grading areas, as well as soil stockpiles, should be covered or temporarily revegetated when left for long periods. Revegetation of slopes shall be carried out immediately upon completion of grading. Temporary drainage structures and sedimentation basins must be installed to prevent sediment from entering and thereby degrading the quality of downstream surface waters, particularly Putah Creek. The full cost of any necessary mitigation measures shall be borne by the project creating the potential impacts. Pursuant to General Plan Policy VII.B.3, should the City allow any grading to occur during the rainy season, conditions shall be implemented to ensure that silt is not conveyed to the storm drainage system.
13. Pursuant to General Plan Policy VI.E.6, construction-related dust shall be minimized. Dust control measures shall be specified and included as requirements of the contractor(s) during all phases of construction of this project and shall be included as a part of the required construction mitigation plan for the project.

14. Pursuant to General Plan Policy VII.A.1, VII.A.2, and VII.C.4 all site work and construction activities shall be in accordance with the requirements of the City, and other applicable local, regional, state, and federal regulations.
15. Pursuant to General Plan Policy VII.C.1, necessary water service, fire hydrants, and access roads shall be provided to the satisfaction of the Fire Chief and Fire Protection District standards.
16. Pursuant to General Plan Policy VII.C.2, a minimum fire-flow rate of 1,500 gallons per minute is required for all residential uses.
17. Pursuant to General Plan Policy VIII.D.2, street trees shall be planted along all streets, in accordance with the City's Street Tree Plan and Standards. There shall be a minimum of one street tree in the center front of each single-family lot, and on both frontages for corner lots. All trees shall be of a type on the approved street tree list and shall be a minimum of fifteen gallons in size with a mature tree canopy of at least a thirty-foot diameter within five years. The intent is that majestic street tree species that create large canopies at maturity will be required in all medians and streetside landscape strips. The goal is create maximum shade canopy over streets and sidewalks.
18. Pursuant to General Plan Policy VIII.D.4, a permanent mechanism for the ongoing maintenance of street trees is required, to the satisfaction of the City Manager and City Finance Director.
19. Pursuant to General Plan Policy VIII.D.7, all lighting including street lighting, shall be designed, installed, and maintained to minimize excess light spillage, unnecessary brightness and glare, and degradation of night sky clarity.

Negative Declaration Mitigation Measures

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

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

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

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

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

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

- 22. Mitigation Measure #3** -- Homes constructed as a part of the project shall contain only low-emitting EPA certified wood-burning appliances or natural gas fireplaces.
- 23. Mitigation Measure #4** – The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving equivalent suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.
- 24. Mitigation Measure #5** – The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with one of the following:
- a) 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 project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. A fee is collected by the City of Winters for impacts to 15.97 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 annually and the project proponent shall be charged at the rate per acre 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.
 - b) 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.
 - c) If the MOU is not in full force and effect, and if the NCCP/HCP has not yet been adopted, the project applicant shall purchase and set aside in perpetuity, 15.97 acres of Swainson's hawk foraging land in proximity to the City of Winters (as approved by the City) through the purchase of development rights and execution of an irreversible conservation easement to be managed by a qualified party (e.g. Yolo Land Trust). Mitigation shall include an annuity or other mechanism to pay for permanent maintenance and management by the managing entity. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit.
- 25. Mitigation Measure #6** -- The project proponent shall mitigate for potential project-related impacts to nesting raptors (White-tailed Kite, Northern Harrier, and Loggerhead Shrike) by conducting a pre-

construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests are found during the preconstruction survey, a 0.25-mile (1,320-foot) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

- 26. Mitigation Measure #7** -- If special-status vernal pool invertebrates are not found at the completion of a full protocol-level survey conducted by qualified biologists, and the USFWS agrees with the findings of the survey, then no further mitigation would be required. If special-status vernal pool invertebrates are found onsite, or if the USFWS disagrees then the mitigation specified below would still be required. The City of Winters shall confirm implementation of this mitigation measure prior to the issuance of a grading permit. The project proponent shall mitigate for potential project-related impacts to federally listed vernal pool invertebrates by complying with U.S. Fish and Wildlife Service (USFWS) guidelines regarding mitigation for project-related impacts to vernal pool invertebrate habitat. The USFWS typically requires a 250-foot setback from the edge of vernal pools to be avoided, however, this setback may be reduced if pools are degraded or no potential adverse effects to the habitat are anticipated with a decreased setback. If vernal pools onsite cannot be avoided, a mitigation plan shall be developed in conjunction with the USFWS to ensure no net negative effect to these species occurs. Likely mitigation measures include onsite or offsite preservation and creation of vernal pools at a ratio acceptable to the USFWS or purchase of credits at a qualified proximate vernal pool mitigation bank as specified by the USFWS and agreed to by the City. Typically, the USFWS in coordination with the Corps requires a 3:1 combination ratio (1:1 preservation and 2:1 creation) of vernal pools that potentially, or are known to support listed invertebrates.

Notwithstanding other federal jurisdiction, the Regional Water Quality Control Board may have jurisdiction over the wetlands, and shall be contacted regarding any separate regulatory authority or requirement they may have. Prior to the commencement of work on the project site, the applicant shall contact the RWCQB regarding their potential jurisdiction over wetlands that exist on the project site and comply with all applicable requirements, if any, established by that agency.

The California Department of Fish and Game (CDFG) retains jurisdiction over State biological resources including wetlands, and shall be contacted regarding any separate regulatory authority or requirement they may have for vernal pool species. Prior to the commencement of work on the project site, the applicant shall contact the CDFG regarding their potential jurisdiction over wetlands that exist on the project site and comply with all requirements, if any, established by CDFG arising from this consultation with the Department.

- 27. Mitigation Measure #8** -- (a) Pursuant to General Plan Policy VI.C.2, the applicant must replace loss of riparian and wetland habitat acreage and/or 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, at the wetlands site in the northeast corner of the Winters Highlands property, or elsewhere as directed/approved by the City Council. Implementation of this condition shall be based on baseline data concerning existing native species. Study expenses shall be borne by development.
- 28. Mitigation Measure #9** -- If cultural resources (historic, archeological, paleontological, and/or human remains) are encountered during construction, workers shall not alter the materials or their context until an appropriately trained cultural resource consultant has evaluated the situation. Project personnel shall not collect cultural resources. Prehistoric resources include chert or obsidian flakes,

projectile points, mortars, pestles, dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or adobe foundations or walls, structures and remains with square nails, and refuse deposits often in old wells and privies.

29. **Mitigation Measure #10** -- Grading of the site, design of foundations for proposed structures and construction of other related facilities on the property shall follow the criteria identified in the Geotechnical Investigation (Stevens Ferrone & Bailey, February 6, 2004) prepared for the project.
30. **Mitigation Measure #11** -- Asbestos and lead-based sampling shall be conducted on the structures prior to demolition, and appropriate precautions shall be implemented consistent with any requirements of the Fire Department, the County Environmental Health Department, and the Yolo-Solano Air Quality Management District.
31. **Mitigation Measure #12** -- All aspects of the project shall be subject to design review to ensure compatibility with the surrounding area and satisfaction of the Community Design Guidelines and other applicable principles of good neighborhood design. Prior to issuance of a building permit for each home, the builder shall submit for design review and approval.
32. **Mitigation Measure #13** -- Well pump noise shall not exceed 40 dBA at the nearest residential property line. This shall be demonstrated to the City via a noise analysis prepared by a qualified consultant prior to acceptance of the well facility.
33. **Mitigation Measure #14** -- Construction equipment (including well drilling equipment) shall be fitted with adequate engine mufflers and enclosures.
34. **Mitigation Measure #15** -- The applicant shall enter into a Development Agreement with the City that includes provisions acceptable to the City Council for controlling the pace of growth on an annual basis. Provisions for the design, funding, and construction of necessary infrastructure to accommodate allowed growth shall also be addressed. Threshold requirements for the construction of affordable units shall be included to ensure that the development of affordable units reasonably keep pace with the development of market-rate units within the project.
35. **Mitigation Measure #16** -- The applicant shall enter into a Development Agreement with the City that includes provisions acceptable to the City Council for mitigating the projected fiscal deficit. This may include an on-going Mello-Roos Community Facilities District (CFD) to fund eligible services, a Lighting and Landscaping District which could fund eligible park and landscaping expenses, establishment of an annuity the interest proceeds of which would cover the projected deficit, or other acceptable mechanisms.
36. **Mitigation Measure #17** -- The applicant shall pay park mitigation fees to satisfy the obligation for 1.64-acre of developed parkland. Fees shall include both the value of the land and improvements that would otherwise be constructed if the parkland was provided on-site.
37. **Mitigation-Measure #18** -- a) Install a traffic signal at the intersection of Grant Avenue/I-505 Northbound Ramps. The traffic signal would need to be installed after construction and occupancy of 40 single family dwelling unit "equivalents" citywide (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents");

b) Install a traffic signal at the intersection of Grant Avenue/Walnut Lane. The traffic signal would need to be installed after construction and occupancy of 380 single family dwelling unit "equivalents" citywide (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents"). A preliminary review of traffic volumes indicates that conditions at this intersection would likely not meet the warrants, or criteria, applied by Caltrans for installation of traffic signals on a state highway. OR Prohibit left turn movements from southbound Walnut Lane onto eastbound Grant Avenue. Southbound vehicles on Walnut Lane would be forced to turn right and make a u-turn at the signalized intersection of Grant Avenue/Railroad Avenue;

c) Install a traffic signal at the intersection of Grant Avenue/West Main Street. The traffic signal would need to be installed after construction and occupancy of 50 single family dwelling unit "equivalents" from this project and/or Winters Highlands, Callahan Estates, or Creekside (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents");

d) The applicant shall pay a fair share of the cost for design and installation of a traffic signal at the intersection of Railroad Avenue/Main Street at buildout.

38. **Mitigation Measure #19** -- The applicant shall be required to complete full roadway improvements, including traffic calming, to City Standards. Where phasing of improvements is allowed to support phased construction of residences, interim phased improvements shall be to the satisfaction of the City Engineer.
39. **Mitigation Measure #20** -- The proposed systems for conveying project sewage, water, and drainage shall be finalized and approved by the City Engineer prior to final map. The project is required to fund and construct off-site improvements necessary to support the development. Such improvements could include, but not be limited to a water well, water lines, sewer lines and storm drainage lines. Should property acquisition or additional CEQA clearance be required for off-site improvements, this will be the responsibility of the developer.
40. **Mitigation Measure #21** -- The applicant shall offer three alternative locations, satisfactory to the City, for locating a new well to serve the subdivision. Upon determination of an acceptable site, the City will release unused sites back to the applicant. At the City's discretion, the City may waive the requirement for an on-site location, should an acceptable off-site location be acquired and cleared procedurally (e.g. CEQA, etc.) for construction. If determined to be necessary, a separate CEQA analysis shall be conducted to clear the well site for construction. The applicant shall fund the up-front costs of design and construction of the well (including CEQA clearance), subject to later fair share reimbursement.

Community Development

41. Construction activities shall be limited to 7:00 am to 7:00 pm, Monday through Friday only (holidays excluded) in compliance with the City's Noise Ordinance and Standard Specifications. The applicant shall submit a Construction Noise Control Plan for review and approval by the City prior to acceptance of final map. This plan shall address job site noise control and establish protocols for addressing noise complaints. Job site signage with 24-hour contact information for noise complaints shall be included.
42. Foundations shall be poured in place, onsite. No pre-cast foundations will be permitted. This shall be stipulated in all construction contracts.
43. All address numbering shall be clearly visible from the street fronting the property. All buildings shall be identified by either four (4) inch illuminated numbers or six(6) inch non-illuminated numbers on contrasting colors. For residences on alleyways, the address numbering shall appear on the front and rear of the structure. Naming of streets and address numbering shall be completed by a committee comprised of the Community Development Department, the Fire District, the Police Department, and the Postal Service.
44. The applicant shall pay all development impact fees, fees required by other entities, and permit fees.
45. The applicant shall be responsible for any additional costs associated with the processing of this project including but not limited to: plan check, inspections, materials testing, construction monitoring, and other staff review and/or oversight including staff time necessary to ensure completion/satisfaction of all conditions of approval and mitigation measures. The applicant shall, on a monthly basis, reimburse the City for all such costs. Project applicant shall pay all development impact fees adopted by the City Council and shall pay fees required by other entities.

46. The developer shall obtain the following approvals from the Central Valley Regional Water Quality Control Board, as appropriate: 1) coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activities; 2) compliance with post construction storm water Best Management Practices pursuant to the NPDES General Permit for Small Municipal Separate Storm Sewers Systems; 3) 401 Water Quality Certification for wellands impacts; 4) Dewatering Permit under Waste Discharge Requirements General Order for Dewatering and Other Low Threat Discharges to Surface Waters Permit.
47. Prior to acceptance of the final map, the applicant shall submit for review and approval by the City, design specifications for decorative and aesthetically pleasing masonry wall (minimum 6 feet in height) and landscaping (minimum 4.5 feet in width) along the north and east boundaries of the mobile home park property. This wall and landscaping shall be installed by the applicant and accepted by the City on a schedule to be determined by the City. Lots 150 through 183 shall not be occupied until the wall and landscaping improvements are installed and accepted. There shall be an opening in the wall along the north side of the mobile home park to allow for pedestrian and bicycle access to the north.
48. Parcel A shall be recorded with the stipulation that it is and shall remain an open space ("pocket park") lot and can not be converted to other uses in the future.
49. MAP CORRECTIONS: Sheet 1 of 2 – a) The acreage for Parcel Y shall be corrected in the legend to 93,608 as shown on the map itself. b) "Parcel A (Open Space/"Pocket Park") 5,360 square feet" shall be added to the legend.
- 49.1 The subdivision map shall be revised to show varying lot widths and depths within the R-1 residential area. The intent of this condition is to increase lot size and add variety to the resulting yard areas. Some 8,000 square foot lots shall be achieved through these revisions. This shall be approved by staff and reflected in the final map prior to recordation.

Design Review

50. Prior to recordation of the Final Map, a deed restriction shall be recorded against each property that precludes conversion of garage area to livable areas.
51. Repetition of facades within builder tracts (subdivisions) shall be avoided. Abrupt changes in facades between builders shall be avoided.
52. In order to achieve architectural diversity, the developer shall offer four floor plans and 16 elevations (four per plan). A minimum of half of the required elevations shall include brick or stone veneer installed to a minimum height three feet from grade, with no more than a four-inch opening at the base. The veneer shall wrap around all sides of the structure visible from the front and sides so that it terminates at a point where the yard fencing begins. Each elevation for a particular floor plan shall be distinctive, with a unique roof design, architectural detailing, and application of exterior materials. Single story and two-story plans shall be varied.
53. The same (or substantially similar) elevation may appear no more than twice on one side of a block, or three times on either side of facing blocks, and may not be opposite or kitty-corner from the same elevation on the opposite side of the block. In addition, no more than ten percent of the homes can share the same elevation within a development.
54. A minimum of 50 percent of all detached units shall have useable front porches (minimum 6-feet by 8-feet). The remaining 50 percent shall have other prominent useable architectural features such as courtyards, balconies, and/or porticoes.
55. Units on opposing sides of a street shall be compatible in terms of design and color.

56. Lights along local streets shall not exceed 20-feet in height and shall be spaced to meet illumination/safety requirements. Lights along collector and arterial streets shall be as low as feasible in order to maintain pedestrian scale. Historic-style street lamps shall be used along all streets.
57. Entry walks to individual residences shall be separated from the driveway by a landscaped area.
58. Exterior colors on residential units shall not be restricted.
59. Single family structures shall be consistent with applicable development standards identified in Tables 3A and 4, and Section 8-1.5302, of the Zoning Ordinance unless otherwise modified through the PD Permit in subsequent Design Review approvals.
60. Fencing and parking shall be consistent with the applicable requirements of Section 8-1.6001 and 8-1.6003 of the Zoning Ordinance.
61. Landscaping and signage shall be consistent with the applicable requirements of Section 8-1.6004 and 8-1.6005 of the Zoning Ordinance.
62. Universal design features shall be incorporated as an option in residential units. These features shall include first floor passage doors and hallways, a handicap accessible path of travel from either the driveway or sidewalk to the entrance of the residential units, and other features determined by the Community Development Department.
63. The applicant shall ensure that lots along West Main Street receive special design and architectural treatment to showcase neo-traditional principles along this new segment of the City's original Main Street. Front doors for all lots that adjoin West Main Street (front-on or side-on) shall open onto West Main Street. Side-on homes shall include wrap around porches. There shall be no driveways onto West Main Street.
64. A site plan for Parcel A (open space) and landscaping plans for the entire project shall be submitted for design review and approval by the City prior to acceptance of the final map. These improvements shall be developed at the same time as adjoining lots, and shall be completed to the City's satisfaction prior to occupancy of adjoining lots.
65. Homes on lots along Taylor Street shall include wrap-around porches with front doors facing Taylor Street and driveways on the local street.
66. Details for side yard fencing along West Main Street and Taylor Street shall be provided for City review and approval as a part of subsequent Design Review for the project. Height, materials, setback, and landscaping shall be considered in light of the visibility of those areas from proposed bicycle trails along those streets.
67. Alley loaded garages shall have rear lighting that illuminates the alley. Style and wattage of fixtures shall be subject to City review and approval for both safety and aesthetic purposes as a part of subsequent Design Review for the project. Project CC&Rs shall specify the requirement for these fixtures to be maintained, and kept lit during evening hours, by the resident.
68. Deleted.

Affordable Housing

69. The tentative map and affordable housing plan shall be modified to denote the obligation to deed restrict 11 lots as affordable. Of the 11 affordable units, 5 shall be restricted to very low income occupants and 6 shall be restricted to low/moderate income occupants. These lots shall not be the same lots as those identified to meet the City's local builder requirement.

70. Prior to recordation of the Final Map, an inclusionary housing agreement shall be prepared and executed for the identified income-restricted units/properties. Deed restrictions shall be recorded against each income-restricted property to ensure permanent affordability.
71. The construction of the affordable units shall keep pace or exceed the construction of the market rate units.
72. Fifty percent of the affordable for-sale (single family) units shall have 3 bedrooms and 2 baths and fifty percent shall have 4 bedrooms and 2 baths.
73. Pursuant to Policy II.A.13 of the Housing Element, the affordable units shall be visually indistinguishable from the market-rate units.

Street Improvements

72. All proposed roads within the subdivision shall comply with the City's Public Works Improvement Standards and Construction Specifications, dated September 2003, unless otherwise approved by the City Engineer.
73. If the traffic signal is not funded by the Callahan Estates development prior to approval of the first final map for Ogando-Hudson development, the project proponent shall fund the installation a traffic signal at the Grant Avenue and Interstate 505 northbound off ramp per Mitigation Measure #13. The signal is to be constructed at applicant's expense subject to a reimbursement from the City Development impact fees through a reimbursement agreement. If the traffic signal has been previously funded by others, the project proponent shall participate in a fair share cost of the signal.
74. West Main Street:
 - a) Full widening improvements to include off-street landscaping and ped/bike path on west side shall be constructed from Grant Avenue to the northern terminus of this Tentative Map with the first final map on the project.
 - b) If the extension of West Main Street is not funded and constructed by the Callahan Estates development prior to approval of the first final map for Ogando-Hudson development, the project proponent shall fund and construct improvements. The improvements shall be constructed from the northern terminus of existing West Main Street to the proposed Niemann Street on the Winters Highlands property with the first final map on the project. Applicant shall acquire the necessary right of way for this purpose on the Winters Highlands property prior to approval of the first final map. Occupancies of home shall not be granted until this improvement is constructed and approved for use by the City Engineer.
 - c) Interim street improvements may be approved by the City Engineer. If approved by the City Engineer, the minimum interim roadway improvements shall consist of two 12-foot lanes with 6-foot shoulders on each side and a temporary 10 foot wide asphalt concrete Class 1 pedestrian/bike lane on east side or west side (to be determined during design) of roadway. The structural street cross section shall meet City design and construction standards. Approval of any request for deviation in the minimum roadway improvements shall be at the sole discretion of the City Engineer. Applicant shall acquire the necessary right of way on the Winters Highlands property prior to approval of the first final map. Interim improvements that are of a temporary nature shall be constructed at the sole expense of the Applicant. Any permanent improvements constructed that are subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.
 - d) If the Traffic Signal at West Main Street and Grant Avenue is not funded and constructed by the Callahan Estates development prior to approval of the first final map for Ogando-Hudson development, the project proponent shall fund and construct improvements after construction and occupancy of 50 family dwelling unit "equivalents" from this project and/or Highlands, Ogando, or Creekside (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents" The signal

is to be constructed at applicant's expense subject to a reimbursement from the City Development impact fees through a reimbursement agreement.

75. Taylor Street:

a) Applicant shall acquire the right of way on the Ogando property and construct full improvements of Taylor Street. The street cross improvements between Kennedy Street and "A" Street shall consist of a 36-foot back-of-curb to back-of-curb roadway section, a 5-foot sidewalk and 5.5-foot landscape strip on the west side, and a 13.5-foot landscape strip, 10-foot Ped/Bike path, and 2-foot landscape clear zone on the east side. "A" Street to the north Tentative Map boundary shall be constructed and shall have the same cross section dimensions with the Ped/bike landscape corridor on the west side and the sidewalk on the east side.

b) Applicant shall acquire the right of way on the east side of Taylor Street and construct full street and sidewalk improvements adjacent to the Sherwood et al property, between Parcel A and the existing street and sidewalk improvements to the south.

76. Kennedy Drive: Applicant shall acquire the right of way on the Ogando property and construct full street and sidewalk improvements on the north side, between proposed Taylor Street and the existing street and sidewalk improvements to the west.

77. Niemann Street: Niemann Street from its existing westerly terminus to W. Main Street is off-site and shall be included with the development of the Ogando-Hudson project if not already constructed with the Callahan Development or other developments. Improvements shall consist of full improvements on the south side of Niemann with the addition of a 12-foot travel lane and 4-foot shoulder on the north side of Niemann. The extension of Niemann Street shall be constructed with the first Final Map of development. Improvements subject to reimbursement shall be reimbursed subject to the terms of a reimbursement Agreement.

78. Grant Avenue:

a) Full widening improvements to include off-street landscaping and ped/bike path on north side shall be constructed from West Main Street to the western terminus of this Tentative Map with the first final map on the project.

b) Remove existing non-standard sidewalk and construct 5-foot wide concrete pedestrian sidewalk improvements, as approved by the City Engineer, from the west boundary of the Tentative Map improvements to the existing sidewalk at Taylor Street to the east. Relocate fire hydrant as necessary.

c) Restricted (no) public vehicle access shall be designated on the Final Map along the north side of Grant Avenue from the intersection of West Main Street to the west boundary of the Tentative Map. The final map shall identify relinquishment of access rights, except as noted.

d) No parking shall be allowed on Grant Avenue.

79. Anderson Avenue: Anderson Avenue from its existing westerly terminus to W. Main Street is off-site and shall be included with the development of the first Final Map of the Ogando-Hudson project to serve the existing Middle School on Anderson Avenue, if not already constructed with the Callahan Estates Development or other developments. Applicant shall construct full roadway improvements. Applicant shall acquire the needed right-of-way prior to approval of the final map. Improvements subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.

80. Alley "C" Street: The Applicant shall construct a 30-foot face-of-curb to face-of-curb alley street cross section between West Main Street and Alley Street "B". No parking shall be allowed in the alley, within the public right-of-way.

81. Alley "A" Street: Restricted (no) public or private vehicle access shall be designated on the Final Map along the south side of Alley "A" from the intersection of Alley "B" Street to the intersection of Taylor Street. The final map shall identify relinquishment of access rights, except as noted. No parking shall be allowed in the alley, within the public right-of-way.
82. Intersection Enhancement Details: Island Planters and crosswalks shall be constructed of colored brick pavers, stamped concrete or other enhanced feature as approved by the City Engineer.
83. Local Streets: Local streets shall provide for ADA compliant sidewalk turnouts where sidewalk widths do not meet ADA. All sidewalks at driveway locations shall be 6-inch thick Portland Cement Concrete (PCC).
84. Tentative Map Street Cross-Sections, Sheet 1 and 2, dated March 8, 2005. Conditions and Changes shall be made as follows:
 - a) Street Cross section details as modified by these conditions of approval, including all intersection geometric design, complying with the conditions of approval, shall be revised on tentative map, submitted to the City, and approved by the City Engineer prior to submitting a final map and improvement plans.
 - b) A signing and striping, and stop plan is required and shall be approved by the City Engineer. All signing and striping shall be in accordance with the City of Winters Public Improvements Standards and Construction Standards.
 - c) Street light types shall be those historic types as approved by the City. Applicant shall fund the analysis for designing standards and details for spacing historic lights. Improvement plans shall be designed to those standards once approved.

Storm Drainage and Site Grading

85. A comprehensive storm drainage plan shall be prepared by a registered civil engineer for project watershed(s), including the plan area. The plan shall identify specific storm drainage design features to control increased runoff from the project site. The drainage plan shall demonstrate the effectiveness of the proposed storm drainage system to prevent negative impacts to existing upstream and downstream facilities and to prevent additional flooding at off-site downstream locations. All necessary calculations and assumptions and design details shall be submitted to the City Engineer for review and approval. The design features proposed by the applicant shall be consistent with the most recent version of the City's Storm Drainage Master Plan criteria and City Public Works Improvement Standards. The plan shall incorporate secondary flood routing analysis and shall include final sizing and location of on-site and off-site storm conduit channels, structures. The Storm Drainage Plan shall be submitted for approval prior to submittal of the first final map and/or construction drawings for checking. The applicant shall pay the cost associated with all improvements required by the plan and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on a pro rata basis per the Project level Development Agreement.
86. A topographic survey of the entire site and a comprehensive grading and drainage plan prepared by a registered civil engineer, shall be required for the development. The plan shall include topographic information on adjacent parcels. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any. A statement shall appear on the site grading and drainage plan, which shall be signed by a registered civil engineer or land surveyor and shall read, "I hereby state that all improvements have been substantially constructed as presented on these plans". Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
87. The Tentative map Grading and Drainage plan showing grading and drainage information including topographic information, drainage routing, pipe slopes and sizing and locations and excluding

topographic information, and overland drainage routing are preliminary only and do not constitute approval in any way. Final approval for the grading and Drainage Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.

88. To accommodate the storm water project run-off and pass-through run-off from project into the existing Rancho Arroyo Pond the applicant shall be required to participate in the funding of a pump station in the pond that would consist of an approximate sized 14.5 cfs of pumping capacity. The applicant would also be required to fund and construct all storm drainage piping to accommodate flows from their project area to the storm pipe in West Main street, to include participating in funding a new inlet structure to the Rancho Arroyo detention pond and the abandonment of the existing inlet structure on the Cottages at Carter Ranch property and the existing detention pond pump and standpipe. The cost of work performed in and for the improvement of the Detention Basin shall be subject to fee credits and/or reimbursement, as determined by the City.
89. Construction materials for storm drainpipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP).
90. Applicant shall be required to coordinate with FEMA through the City's Floodplain Administrator to determine if a CLOMR or LOMR is needed for the project as a result of possible impacts to Dry Creek or Putah Creek Flood Plain. Applicant shall obtain all necessary permits and CLOMRs/LOMRs as required prior to First Final Map approval.
91. The differential in elevation between rear and side abutting lot lines shall not exceed twelve inches (12") without construction of concrete or masonry block retaining walls. Deviation from this condition may be allowed subject to approval by the City Engineer.
92. Drainage fees shall be paid prior to issuance of a building permit.
93. All perimeter parcels and lots shall be protected against surface runoff from adjacent properties in a manner acceptable to the City Engineer.
94. If disposal and sharing of the excavated soil from the construction of the Development occurs, prior to approval of the first Final Map, Applicant shall prepare a written agreement with the other participating property owners and submit to the City.
95. All projects shall include implementation of post-construction best management practices (BMP). Post construction BMP's shall be identified on improvement plans and approved by the City Engineer.
96. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit.
97. Applications/projects disturbing less than one acre of soil shall implement BMP's to prevent and minimize erosion. The improvement plans for construction of less than 1 acre shall include a BMP to be approved by the City Engineer.
98. An erosion and sedimentation control plan shall be included as part of the improvement plan package. The plan shall be prepared by the applicant's civil engineer and approved by the City Engineer. The plan shall include but not be limited to interim protection measures such as benching, sedimentation basins, storm water retention basins, energy dissipation structures, and check dams. The erosion control plan shall also include all necessary permanent erosion control measures, and shall include scheduling of work to coordinate closely with grading operations. Replanting of graded areas and cut and fill slopes is required and shall be indicated accordingly on plans, for approval by City Engineer.
99. Where possible landscaped slopes along streets shall not exceed 5:1; exceptions shall require approval of the City Engineer. All other slopes shall comply with the City of Winters Public Works

improvements standards. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes.

100. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.
101. Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.
102. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.
103. Construction equipment and engines shall be properly maintained.
104. If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.
105. Construction practices will minimize vehicle idling.
106. Potentially windblown materials will be watered or covered.
107. Construction areas and streets will be wet swept.

Wastewater and Sewer Collection System

108. The applicant shall obtain a no-cost Wastewater Discharge Permit from the Public Works Department prior to the issuance of a Building Permit.
109. The property shall be connected to the City of Winters sewer system, with a separate sewer lateral required for each parcel, in accordance with City of Winters Public Improvement standards and Construction Standards. Applicant shall construct sewer service lateral to parcel "A".
110. A Tentative Map Sewer comprehensive Collection System Master Plan shall be submitted for approval by the City Engineer prior to submittal of the final map and/or construction drawings for checking. A registered civil engineer for project shall prepare the sewer collection system plan. The plan shall include final sizing and location of on-site conveyance facilities, structures, and engineering calculations. Said plan shall also include provisions for cost sharing among affected adjacent development for facilities sized to accommodate those developments.
111. The applicant shall pay the cost associated with all improvements, and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for reimbursable improvements. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
112. The Tentative Map Sewer Plan showing sewer routing, pipe slopes and sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Sewer Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.
113. As an interim connection, Developer shall have the option to direct its sewer flows south into the existing Grant Ave. sewer system as an interim connection on the condition that Developer fund all necessary new improvements and upgrades to the existing sewer system as required by the City at its own expense, which will not be subject to reimbursement. Once infrastructure is constructed to the north, the development shall be required to make that connection and disconnect from the Grant Ave sewer system. In addition, Ogando-Hudson shall be required to pay the full citywide sewer impact fee that funds the WWTP expansion that would still serve their development and associated sewer conveyance pipelines and regional pump station that would have served their development should the development have elected to continue to direct its development flows north through the Winters Highlands Development to the new proposed regional pump station at West Main Street and

the Rancho Arroyo Detention Pond. Should the development elect not to direct its flows south and not fund improvements, it shall be required direct their flows north through the Winters Highlands property, advance funds for those improvements, and construct the conveyance pipe line system and regional pump station in order to connect to the WWTP and comply with all conditions of approval. Any permanent improvements constructed that are subject to reimbursement shall be reimbursed subject to the terms of a reimbursement agreement.

114. Prior to approval for use of the City's existing force main pipe, Applicant shall assess the capacity and physical condition of the force main and obtain City Engineer approval for use on the project. If the force main cannot be used, the Applicant shall be required to construct a new force main to the WWTP or other acceptable alternative approved by the City Engineer.
115. Construction of sewer mains deeper than 16-feet at the bottom of the pipe shall be connected to laterals by a parallel mains and connections at Manholes.

Water Infrastructure

116. If required, per the Subdivision Map Act, project applicant shall obtain a Water Verification (WV) prior to approval of final map that addresses the following:
117. Actual water service to the subdivision will be predicated upon satisfaction of terms and conditions set by the water supplier
118. The WV is non-transferable, and can only be used for the specific tentative map for which it was issued.
119. The WV shall expire along with the tentative map subdivision map if a final map is not recorded within time allowed under law
120. Until such time as actual service connections are approved for the subdivision, the water agency may withhold water service due to a water shortage declared by the water agency.
121. Based on City water modeling, a new well is needed to serve the first phase of development. If the Water Well is not funded and constructed by the Callahan Estates development, Developer shall advance fund the construction of a water well and required water system conveyance pipelines with the project. Per Mitigation Measure #18, the applicant shall fund the up-front costs of design and construction of the well (including CEQA clearance), subject to later fair share reimbursement. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units.
122. If the Water Well site plan is not funded and prepared by the Callahan Estates development The Applicant shall fund and prepare a well site plan with facility elevations with the first final map application subject to fee credits.
123. The Tentative Map Water Plan showing water routing, sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Water Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval. Applicant shall comply with making changes to water system distribution pipe sizes and alignments based on the results of the specific water modeling performed for the development. Applicant shall pay for all required water modeling for identifying water infrastructure needs to serve its development and shall construct offsite water improvements to connect to the City water distribution system.
124. At the time the Building Permit is issued, the applicant will be required to pay the appropriate City connection Fees. All domestic water services will be metered. Water meters shall be installed on all water services to the satisfaction of the City Engineer.
125. Applicant shall construct water service lateral to parcel "A" and install a meter for the service.

126. Per City of Winters Cross Connection Control Program, all types of commercial buildings and landscape irrigation services are required to maintain an approved backflow prevention assembly, at the applicant's expense. Service size and flow-rate for the backflow prevention assembly must be submitted. Location of the backflow prevention assembly shall be per the City of Winters Public Improvements Standards and Construction Standards. Prior to the installation of any backflow prevention assembly between the public water system and the owner's facility, the owner or contractor shall make application and receive approval from the City Engineer or his designated agent.
127. Per the City of Winters Cross Connection Control Program, fire protection systems are required to maintain approved backflow prevention, at the applicant's expense. Required location, service size and flow-rate for the fire protection system must be submitted. Actual location is subject to the review and approval of the Public Works Department, Fire Department, and Community Development Department.
128. The City of Winters Plan Review Fee applies and is due upon submittal of the maps and plans for review.
129. FINAL PLANS, PERIODIC TESTS FOR FIRE HYDRANTS: All final plans for fire hydrant systems and private water mains supplying a fire hydrant system shall be submitted to the City of Winters Fire Department for approval prior to construction of the system. All fire protection systems and appurtenances thereto shall be subject to such periodic tests as required by the City of Winters Fire Department.
130. WATER PRESSURE: All water lines and fire hydrant systems must be approved by the Fire Chief and operating prior to any construction taking place on the site. Prior to issuance of building permits, water flow must be measured and certified for adequacy by the Winters Fire District. The minimum residual pressure shall be 20 PSI.
131. REFLECTORS FOR FIRE HYDRANTS: Any fire hydrant installed will require, in addition to the blue reflector noted in Standard Drawings, an additional blue reflector and glue kit that is to be supplied to the City of Winters Fire Department for replacement purposes.
132. All construction, new or remodeling, shall conform to the most current Uniform Fire Codes, the Winters Fire Prevention Code, and section of the National Fire Codes that the Winters Fire Chief or his/her agent may find necessary to apply.
133. Prior to approval of the first final map, a comprehensive on-site water system master plan shall be prepared by a registered civil engineer for project, and shall be submitted to the Public Works Director for review and approval. The master plan shall include final sizing and location of on-site conveyance facilities, structures, and engineering calculations. Said plan shall also include provisions for cost sharing among affected adjacent development for facilities sized to accommodate the plan area. The applicant shall pay the cost associated with all improvements required by the study, and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on a pro rata basis per the Project level Development Agreement. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
134. Forty-eight hours notice shall be given to the Winters Fire District prior to any site inspections.
135. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.
136. When the fire protection facilities are in the City of Winters, the developer shall contact the Winters Fire District Chief or his/or agent prior to construction for a pre-construction meeting.

137. All required fire accesses that are to be locked shall be locked with a system that is approved by the Fire Chief or his/her agent.
138. Submit three sets of plans for each fire suppression sprinkler system to the Fire Department for review and approval prior to the issuance of each building permit.
139. All residences shall have fire suppression sprinkler systems meeting or exceeding NFPA 13-D. Water laterals shall be appropriately sized to accommodate sufficient water flows for fire suppression sprinkler systems.

140. The conditions as set forth in this document are not all inclusive. Applicant shall thoroughly review all City, state, and federal planning documents associated with this tentative map and comply with all regulations, mitigations and conditions set forth.
141. The applicant agrees to adhere to the terms of the of the ordinance (Ordinance No. 96-02) adopted by the City Council to address impact fees to be paid for development of property within the Rancho Arroyo Drainage District, to offset costs associated with drainage improvements.
142. Closure calculations shall be provided at the time of initial map check submittal. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the map shall be directly verifiable by information shown on the closure calculation print out. The point(s) of beginning shall be clearly defined and all lot acreage shall be shown and verifiable from information shown on the closure calculation print out. Additionally, the square footage of each lot shall be shown on the subdivision map. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
143. A subdivision map (Final or Parcel) shall be processed and shall be recorded prior to issuance of a Building Permit. The Developer shall provide, to the City Engineer, one recorded Mylar copy and four print copies of the final map from the County, prior to issuance of the first building permit.
144. U.S. Post Office mailbox locations shall be shown on the improvement plans subject to approval by the City Engineer and Postmaster.
145. A registered landscape architect shall design public landscape and privacy wall improvements and improvements shall be per City Standards, as applicable.
146. Applicant shall make every attempt to submit joint trench/utility/composite plans for review, prior to approval of the final map and improvement plans. Construction will not be allowed to proceed prior to submittal of the joint trench/utility/composite plans for City review.
147. All existing and proposed utilities (Electric, phone/data, and cable) shall be installed underground per the subdivision ordinance and shall meet the policies, ordinances, and programs of the City of Winters and the utility providers.
148. Street lighting location plan shall be submitted and approved by the Department of Engineering, prior to approval of improvement plans and final recordation of Map.
149. Roads must be constructed and paved prior to issuance of any building permit. Under specific circumstances, temporary roads may be allowed, but must be approved by the City of Winters City Engineer and Fire Department
150. Occupancy of residential units shall not occur until on-site and off-site improvements have been accepted by the City Council and the City has approved as-built drawings, unless otherwise approved by the City Engineer and Community Development Director. Applicants, and/or owners shall be responsible to so inform prospective buyers, lessees, or renters of this condition.
151. If relocation of existing facilities is deemed necessary, the applicant shall perform the relocation, at the applicant's expense unless otherwise provided for through a reimbursement agreement. All public utility standards for public easements shall apply.
152. A Subdivision Improvement Agreement shall be entered into and recorded prior construction of improvements, issuance of any building permits, or recordation of a final map.
153. At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform to the standards described in Section 8771 of the Business and

Professions Code. All monuments necessary to establish the exterior boundaries of the subdivision shall be set or referenced prior to recordation of the final map.

Easements and Right of Way

154. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way
155. The applicant shall facilitate, with City cooperation, the abandonment of all City easements and dedications currently held but no longer necessary as determined by the Public Works Department.
156. A five (5) foot public utility easement back of sidewalk, adjacent to all public streets within the development shall be dedicated to the City. Additional easements shall be dedicated as requested by the utility companies and approved by the City.
157. Per the project level Development Agreement, prior to approval of first set of improvement plans and final map, Applicant shall acquire all rights of way and easements necessary to construct off-site and on-site improvements associated with that set of improvement plans and final map.

Reimbursements for Applicant Install Improvements

158. Applicant shall pay appropriate reimbursements for benefiting improvements installed by others, in the amount and at the time specified by existing reimbursement agreements.

Landscaping and Lighting

159. Project proponents shall enter into the City wide Landscape and Lighting Maintenance District, in order to maintain and provide for the future needs of parks, open space, street lighting, landscaping, sound walls, and other related aspects of development. The project proponent is responsible for all costs associated with this condition. The project proponent shall fulfill this condition prior to the sale of any buildable lots or parcels within the project area.
160. Applicant of multi-family residential, commercial and industrial project shall provide refuse enclosure detail showing bin locations and recycling facilities to the approval of the Public Works Department.
161. Prepare, and submit for approval, a utility site plan prior to preparation of full improvement plans.
162. Prepare improvement plans for any work within the public right-of-way and submit them to the Public Works department for review and approval. The improvement plan sheets shall include the title block as outlined in the City of Winters Public Improvements Standards and Construction Standards. This submittal is separate from the building permit submittal. The Developer shall provide, to the City Engineer, one Mylar original and four sets of the improvement plans and electronic media (AutoCAD .DWG or DXF on Zip Disk or Compact Disk), for approval of plans by the City Engineer.
163. Conform to County Health regulations and requirements for the abandonment of a septic tanks and water wells.
164. Existing public and private facilities damaged during the course of construction shall be repaired by the subdivider, at his sole expense, to the satisfaction of the City Engineer.
165. The area of each lot, in square feet, shall be calculated and shown on the Final Map.
166. Encroachment permits if necessary from will be acquired from Yolo County, Cal-Trans, and PG&E.
167. All utility poles that are to be relocated in conjunction with this project shall be identified on the improvement plans, with existing and proposed locations indicated.

168. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers.
169. Prior to recording of the final map, if required, provide evidence of payment for the Habitat Mitigation Fee. This fee is paid to the Yolo County Planning Department.
170. If improvements are constructed and/or installed by a party or parties other than the Applicant, which improvements benefit Applicant's property, prior to issuance of a building permit (approval of the final map) on Applicant's property, Applicant shall pay a proportionate share of the costs of said improvements, including interest, prior to the issuance of building permit(s) (approval of the final map) to Applicant.
171. The main electrical panel for each residence shall be located at the exterior of the residence and capable of total electrical disconnect by a single throw.

conditions.1002505.doc



PLANNING COMMISSION STAFF REPORT
July 27, 2004

TO: Chairman and Planning Commissioners
FROM: Jenaye Shepherd – Management Intern
SUBJECT: **Agenda Item VIII #1, Discussion Item – Proposed Energy Resolution.**

Please find attached the proposed Energy Resolution and a Power Point Presentation.

The proposed Energy Resolution will require newly constructed homes to follow a number of energy efficient techniques and allow all new homes to be built to EPA Energy Star Standards, which in California is 15-percent less energy use than required by Title 24. Many of these energy saving strategies have rebates available and a short money return period. Implementing this resolution will not only save energy and money, but it will also increase the comfort ability for many residents in Winters.

Attachments:

1. Proposed Energy Resolution
2. Power Point Presentation

Planning Commission/Energy Efficiency Resolution PC Stf Rpt 27Jul04

PROPOSED ENERGY RESOLUTION

City of Winters, July 2004

PREFACE

This document is a proposal to improve the energy performance of all new single family homes by implementing measures that reduce their individual energy consumption and energy use related to their construction. The intent is to improve performance over Title 24 energy standards and to qualify homes for Energy Star ratings while insuring that the added cost can be amortized by energy savings. Implementation of these improvements would be through resolution or ordinance.

The State of California is increasingly facing limitations to its electric infrastructure, including both transmission and distribution systems and generation capacity, which will be worsened by the forecasted doubling of California's population by the year 2040¹. Most of this problem results from residential air conditioning, which is responsible for 40% of California's peak load. The California Energy Commission is responding to this problem by supporting development of technologies that reduce residential peak load, by introducing "time-dependent valuation" of energy into the 2005 energy standards, and by promoting photovoltaics through a "Zero Energy New Homes" program.

Two federal programs, Zero Energy Buildings, and Building America have been in operation for over three years to promote the construction of homes that are more energy efficient and that utilize renewable energy sources. The objective of these programs is to improve our energy independence and security. Research completed under these programs has demonstrated that energy efficiency and photovoltaics can be cost-effective, is well received by homebuyers, and has the current potential to reduce energy use by 70% or more.

With the support of the Building America program, Davis Energy Group compiled a list of efficiency measures that are proposed to be enacted by resolution of the Winters City Council. These measures are grouped under the major categories of Site Planning & Landscape; Building Envelope, Appliances, and HVAC; Photovoltaic Systems; and Waste Reduction. The primary objectives of this proposal are to:

- Utilize site planning principals to facilitate improved cooling performance of new homes and that reduce transportation energy use
- To employ a list of cost-effective energy efficiency measures that enable homes to qualify under the Energy Star label, and that result in a positive cash flow for the buyers
- To require photovoltaics for those homes for which the systems will be readily affordable

Rather than allow builders to employ a performance approach to verify Energy Star ratings, we propose that a prescriptive list of measures that have been predetermined to

¹ CALTRANS Office of Community Planning

be cost-effective be required be required on all homes. This approach greatly reduces the burden of verification on plan checkers and building inspectors.

The following sections define the proposed measures and provide background, justification, and detail on each. Appendix F of the California Environmental Quality Act pertaining to energy conservation is also attached for reference.

1 SITE PLANNING & LANDSCAPE

1.1 Subdivision maps shall comply with Section 66473.1 of the California Subdivision Map Act by providing lots that allow homes to be sited with their fronts facing either north or south, to the maximum extent feasible.

Section 66473.1 of the Subdivision Map Act states: "The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure." When it was drafted almost 30 years ago the act did not anticipate the need to reduce air conditioning peak load, nor the development of photovoltaics for residential applications. However, the principals on which was based still apply. Most streets must be orientated east-west in order to facilitate siting homes so that they use less cooling energy.

When windows are exposed to direct sunlight in summer, the resulting solar heat gain increases air conditioning energy use and compromises comfort. Since most windows are located in the front or back of homes, homes oriented with their fronts facing east or west can use over 50% more energy for cooling than homes facing north or south. East and west-facing windows are very difficult to shade. Comfort problems are particularly apparent on the second floor of two-story homes, because heat added by the sun rises to the upper floor. South-facing windows can be shaded by roof overhangs in summer and allow sunlight into the house in winter, thereby reducing heating bills.

Photovoltaic systems and solar water heaters perform much more efficiently when modules are located on south-facing roofs. Also, facing the majority of windows to the south can reduce winter heating energy use.

1.2 Deciduous street trees shall be provided by the developer, spacing and species to be approved by Planning Commission and/or listed on the City of Winters approved tree list.

Trees reduce local temperatures in summer by shading streets and roofs, and by evaporating moisture. On warm summer days urban areas can be 6-8% warmer than the surrounding agricultural areas. Street trees also improve the appearance of neighborhoods and contribute to higher property values. The City adopted an approved tree list but some new colorful varieties are available that are not on the list, such as the Chinese Tallow Tree (*Sapium sebiferum*) and the Autumn Fantasy maple (*Acer Fremanii* x). The City should also designate specific trees that are suitable for various street applications (primary feeder, secondary feeder, etc.)

1.3 Residential streets that provide access to dwellings shall not be wider than the City's adopted street standard.

Streets absorb the sun's rays and give off heat, increasing the need for air conditioning. Narrower streets are easier to shade with trees and tend to slow traffic down, improving neighborhood safety, are less expensive to build, and reduce rainwater run-off. Currently, the minimum street width is 35'. The Village Homes development in Davis has 20' and 26' street widths and provides off-street parking areas. It is recommended that the City review the current street guidelines and encourage developers to build narrower streets with off-street visitor parking areas. Alleys, such as those provided in Putah Creek Hamlet, are another alternative to parking areas.

1.4 Paved paths shall be provided to facilitate bike/pedestrian traffic to schools. Paths shall not cross secondary collectors.

Winters Highlands and Callahan Estates developments will be within easy walking distance of Shirley Rominger School, but current street layouts do not provide for easy pedestrian access, and require several streets to be crossed that are primary or secondary collectors. As a result, parents are likely to drive students to school. The auto exhaust will degrade local and regional air quality, and the children will be deprived of exercise. Obesity is becoming an enormous problem, which making provisions for increased pedestrian and bicycle activity can help solve.

2 BUILDING ENVELOPE, APPLIANCES, AND HVAC

2.1 All houses shall be built to EPA Energy Star standards.

The top builders in the country are building whole developments to EPA Energy Star standards, which in California is 15% less annual energy use than required by Title 24 energy standards. The added costs of improvements needed to meet the Energy Star rating when amortized over 30 years is more than offset by annual energy savings, so the buyer typically experiences a positive cash flow, even if the builder marks up these improvements. Thus, the buyer saves money and the builder makes more on the sale of the house. Studies have also shown that energy efficient homes have a higher resale value. Efficient neighborhoods are quieter (less air conditioner noise), and there is less air pollution from combusted natural gas.

The utilities and California at large benefits because most measures that save energy also reduce peak electricity load, meaning that utilities are not as pressed to add generating capacity and transmission-distribution systems to serve the loads added by new development. Because of the high cost of building new power-plants, and of running inefficient "peaker" plants, the costs that utilities would pass on to ratepayers is not as great. Everyone benefits.

Improvements that are implemented now are likely to yield much bigger payoffs to homeowners in the future. Last year Alan Greenspan gave testimony before the House Committee on Energy and Commerce that "Canada, our major source of imported natural gas, has had little room to expand shipments to the United States, and our limited capacity to import liquefied natural gas (LNG) effectively restricts our access to the

world's abundant supplies of gas." He also said "We are not apt to return to earlier periods of relative abundance and low prices anytime soon." Dwindling supplies resulted in an increase in the market price for natural gas of nearly 73% since the previous year. Regulation of energy prices will not protect consumers from these price hikes for long, and there is nothing in the near future that is likely to improve this scenario. Since most of California's electricity is generated by natural gas plants, the price of electricity is certain to be affected as well.

Analysis Davis Energy Group has completed under the Department of Energy sponsored Zero Energy Home and Building America programs has identified specific measures that are particularly cost-effective, market ready, and currently being used by many builders. If made mandatory, the following measures will assure that homes meet Energy Star standards:

- **High performance windows.** Most windows that are now installed by production builders are treated with a special "Low E" coating that reduces the amount of heat that is transmitted by the glass, and that reduces the amount of light transmitted in the non-visible spectrum. This property reduces solar heat gain without making the windows appear dark. Builders should only install windows that have a U-value of 0.36 and solar heat gain coefficient (SHGF) of 0.36 or lower.
- **Energy Star roof tiles.** Several companies, including Hanson Roof Tile in Dixon, are producing concrete roof tiles using pigments that reflect sunlight, even in darker colors. This higher reflectivity reduces summer attic temperatures and cooling loads, and helps keep neighborhood temperatures lower. Composition shingles with higher reflectivity are expected to be on the market soon.
- **Minimum R-38 ceiling insulation.** Deeper ceiling insulation results in better performance of buried ducts, as well as reducing heat gain and loss through the attic. The added cost for R-38 compared to the minimum standard R-30 is minimal.
- **Insulated headers.** Solid wood headers waste wood and degrade wall thermal performance. Insulated headers are similar to web trusses except they include two webs which sandwich foam insulation. Experience has shown they are less expensive than solid wood, don't cause cracking due to shrinkage, and since they are lighter, make walls easier to stand.
- **Air conditioners that meet the 2006 DOE minimum efficiency standard of 13 SEER.** Currently air conditioner manufacturers are not allowed to sell units that have a "SEER" rating of under 10. The U.S. Department of Energy proposed, and congress approved, a minimum rating of 13, effective in 2006. Since the proposed development will be required to install 13 SEER air conditioners on part of the homes (due to the build-out schedule), they should be installed on all new homes. The DOE standards are based on cost-effectiveness to the buyer.
- **Duct leakage HERS-certified to be not more than 6%.** Duct leakage can substantially degrade heating and air conditioning efficiency, and proper sealing is very inexpensive if done during construction. Since many ducts are not accessible after the houses are built, proper sealing can only be done during construction. The Energy Commission provides for independent Home Energy Rating System (HERS)

raters to test ducts when Title 24 credit is taken for tight ducts. This testing is necessary to assure proper installation.

- **Ducts installed in accordance with the California Energy Commission's 2005 Standards "Buried Duct" compliance option.** The 2005 energy standards will allow credit to be taken for ducts that are buried in attic insulation instead of suspended from roof trusses. According to a large Sacramento HVAC contractor, there is no added cost to install ducts in this fashion.
- **Pilotless, tankless gas water heaters.** Depending on how much hot water is used, these appliances reduce natural gas use by about 30 to 90% compared to storage type water heaters. They are available from several manufacturers and are seen increasingly in production homes. Since they heat water instantaneously they do not run out of hot water, and they do not take up valuable floor space.
- **Engineered "home run" hot water distribution systems using PEX pipe.** With conventional piping systems, it is not uncommon to have half of the hot water generated by the water heater lost in the piping, and a substantial amount of water is wasted while waiting for hot water to arrive at the tap. "Home run" piping that is properly designed saves energy and shortens hot water waiting times, thereby saving water. The cost for these systems is becoming comparable to that of conventional copper systems.
- **Energy Star approved dishwashers.** These are widely available in all popular brands, and save water as well as energy. Since dishwashers are permanently installed by the builder, they are not subject to easy replacement like refrigerators and clothes washers.
- **Fluorescent lights provided in all ceiling can fixtures and bathroom fixtures.** Fluorescent lights provide the same light output at less than a third of the electricity use and heat generation of incandescent lights, and last many times longer. The size, configuration options, cost, reliability, and color rendition of compact fluorescent lights (CFL's) have improved to the point that they are acceptable substitutes for incandescent lamps in most applications. Fixture manufacturers are beginning to introduce more fixtures designed for fluorescent lamps. The prolific use of ceiling can lights by builders provides a good opportunity to improve lighting efficiency by installing only CFL flood lamps, which can be screwed in to the conventional fixtures. Globe CFL's are good substitutes for incandescent lamps in most fixtures installed at bathroom mirrors. Efficient linear T8 lamps with electronic ballasts also provide very high quality light when used above kitchen cabinets for indirect lighting, and T5's provide excellent light for under counter applications.

3 PHOTOVOLTAIC SYSTEMS

Solar photovoltaic systems are becoming more economical every year, and there are new breakthroughs in technology that are likely to make these systems more competitive with conventionally generated electricity as time goes on. Currently, the California Energy Commission offers a \$3.00 per Watt rebate for residential systems that are grid-connected, that is they feed excess power into the utility's power lines rather than storing

it in batteries. PG&E also offers a time-of-use rate that allows homeowners to "sell" power to PG&E at a higher price during the day (12-6 PM) than they purchase it for during night and morning hours. California also offers a 15% tax credit to purchasers of PV systems.

In addition, the DOE sponsored Zero Energy Homes and Building America programs offers assistance to builders to who combine energy efficiency improvements with photovoltaic (PV) systems. The reason that states and the federal government are supporting PV systems is that they are seen as a solution to both local electricity supply problems and a contributor to our national energy security.

Recent studies have shown that these incentives combine to make PV marginally cost-effective at current electric prices, which are likely to increase significantly over the 20 year life of the systems. PV systems are becoming increasingly common on production homes, and manufacturers such as General Electric and Sharp Electronics are aggressively marketing systems to residential builders. PV modules are now available that are easy to install and blend in with concrete roof tiles and other roofing materials.

3.1 All new homes shall be constructed with a minimum of 240 ft² of south roof area that is free of vents, chimneys, and other obstructions to facilitate future installation of solar electric systems.

Making homes easier to retrofit with PV systems reduces the future cost of installing these systems while not adding significantly to the construction cost. Allowing for 200 ft² of PV module area will assure that future systems can have a significant impact on reducing electric use.

3.2 All new homes having a conditioned floor area of 2500 ft² or greater shall be equipped with 1" minimum size conduit between the attic space and the main electrical panel to facilitate wiring for future photovoltaic systems.

Conduit is inexpensive to install while homes are under construction. Pre-installing conduit will further reduce the cost of installing PV systems, especially in larger two-story homes.

3.3 All new homes having a conditioned floor area of 3500 ft² or greater shall be equipped with a functioning photovoltaic system with an STC rating of 1.5 kW or greater.

On larger, less affordable, homes a small PV system may constitute only 1% of the selling price and the cost is more easily borne by the buyer. Also, energy savings are greater in larger homes because the PV system typically offsets higher tier rates. Experiences from other builders offering PV systems show that the cost for systems is lower when some or all of the homes are scheduled to have PV systems (instead of offered as buyer options), and that the added cost rarely discourages buyers. Providing PV systems on 100% of the larger homes will help mitigate the added electricity load contributed by the new developments, and will reduce carbon and other emissions from natural gas combustion by electricity generation plants.

4 WASTE REDUCTION

Construction projects contribute substantial waste to landfill sites. Much of this waste can be eliminated by implementing simple recycling measures that can reduce the builders' disposal costs.

4.1 All construction waste shall be separated to allow recycling of wood, steel, and gypsum products.

This is a measure that has been adopted by several "green building" programs, including the Alameda County Waste Management Board's Green Builder Program. Energy savings resulting from this measure include reduced fuel costs for waste transport and landfill vehicles, reduction of the energy required for extraction of raw materials, and the potential use of wood waste in plants that generate electricity from biomass.

EXHIBIT E-1

MUTUAL BENEFIT AGREEMENT BETWEEN

WINTERS INVESTORS, LLC

AND

WINTERS JOINT UNIFIED SCHOOL DISTRICT

THIS MUTUAL BENEFIT AGREEMENT ("Agreement") is entered into this 24 day of OCT, 2005, by and between

WINTERS INVESTORS, LLC, a California limited liability company,
hereinafter referred to as "*Developer*"

whose address is
1380 Galaxy Way, Concord, California 94522

and

WINTERS JOINT UNIFIED SCHOOL DISTRICT

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

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

RECITALS:

A. WHEREAS, *Developer* is the owner and developer of certain real property commonly referred to as the Hudson-Ogando Parcel located in the City of Winters, California described on Exhibit "A", attached hereto and incorporated herein by reference (Yolo County APN 030-230-29 & 030-430-13) (hereinafter "the Hudson-Ogando Parcel"); and

B. WHEREAS, the Hudson-Ogando Parcel is located within the boundaries of the District; and

C. WHEREAS, *Developer* represents to the District that it proposes to construct residential dwelling units on the Hudson-Ogando Parcel consisting of a total of Seventy Two (72) single family residential units. Of these 72 residential units, eleven (11) shall be constructed for low and/or very low income persons; and

D. WHEREAS, the District's facilities are currently at capacity and the District has the authority to levy fees on developers to mitigate the impact that future development will have

on the District's school facility needs within certain limits prescribed by law; and

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

F. WHEREAS, *Developer* and the City of Winters ("the City") are intending to enter into a development agreement ("the Development Agreement") concerning the development of the Hudson-Ogando Parcel, which, among other things, will provide for the voluntary payment by *Developer* of additional impact fees to the District of the equivalent of Level III fees on Sixty One (61) residential units in the Hudson-Ogando Parcel; and

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

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

1. *Developer* agrees to mitigate the impact on District facilities as a result of the development of the Hudson-Ogando Parcel by the payment directly to the District of the equivalent of Level III fees in effect as of the date of payment as specifically described herein, which will be payable in two installments as follows:

A. Payment of the equivalent of Level II fees which are in effect at the time *Developer* seeks issuance of a building permit from the City, covering the square footage of residential construction for each single family residential unit, to be payable to the District prior to the time a building permit is issued.

B. Payment of additional voluntary fees to be calculated as the difference between the first installment of Level II fees previously paid pursuant to Paragraph A above, and the current Level III fees in effect at the time of payment of the second installment, covering the square footage of residential construction for each single family residential unit to be payable at the close of escrow on the sale of each single family residential unit.

2. The payments described in paragraph 1 shall be paid on the Sixty One (61) market rate and affordable residential units for moderate-income persons within the Hudson-Ogando Parcel.

3. This Agreement and specifically paragraph 1, shall not apply to the eleven (11) residential units in the Project constructed specifically for low and very low income persons, it being acknowledged by the parties that those residential units would remain subject to the statutory Level II fees as described in Paragraph E hereof.

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

herein shall prevent the City from requiring other impact fees from *Developer* for purposes other than school impact mitigation which may also benefit District properties.

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

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

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

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

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

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

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

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

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

8. This Agreement is for the benefit of the Hudson-Ogando Parcel and is intended to preserve its value and enhance its development. *Developer* agrees that for the benefit of the District, the City, and for itself, that it will construct and pay for any and all road improvements (including, in addition to the traveled way, such items as shoulders, bike lanes, sidewalks, and utilities) along any District property which may be required by the City or otherwise, and that it

will not seek reimbursement for such improvements from the District.

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

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

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

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

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

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

Developer:

Winters Investors, LLC

10/21/2005

1380 Galaxy Way
Concord, CA 94522
Attn: A. T. Shaw

District:

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

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

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

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

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

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

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

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

Winters Joint Union School District

Winters Investors, LLC

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

By: A. J. Shaw
Name: A. J. SHAW
Title: MANAGING MEMBER

When Recorded, Return to:

Winters Joint Union School District
909 West Grant Avenue
Winters, CA 96594

Exempt: Government Code §5103

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT
BETWEEN WINTERS INVESTORS, LLC., AND
WINTERS JOINT UNIFIED SCHOOL DISTRICT

This Memorandum of Mutual Benefit Agreement is entered into on this 24 day of OCT, 2005, by and between Winters Joint Unified School District, of Yolo County, California, a body politic, with an office at 909 West Grant Avenue, Winters, California, (hereinafter referred to as "District"), and Winters Investors, LLC, ("Developer") the owner and developer of certain real property hereinafter referred to as the Hudson-Ogando Parcel (Yolo County APN 030-230-29 & 030-430-13) and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

1. District and Developer entered into a Mutual Benefit Agreement ("Agreement") on the 24 day of OCT, 2005, for the purpose of reaching an agreement covering developer-mitigation impact fees necessitated by the expected impact on the District by the proposed construction and occupancy occurring on, in or about the property described on Exhibit "A." All of the foregoing is set forth in the Agreement.

2. The term of the Agreement is indefinite with no termination date.

3. The Property which is the subject of the Agreement is described in Exhibit "A" attached hereto.

4. The duties, promises and covenants set forth in the Agreement are binding upon and inure to the benefit of the parties and their heirs, successors, assigns and personal representatives and shall constitute covenants which shall run with the land.

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

Winters Joint Union School District

Winters Investors, LLC

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

By: A. J. Shaw
Name: A. T. SHAW
Title: MANAGING MEMBER

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT

Page 2 of 2

State of California
County of Contra Costa

On Oct. 24, 2005, before me, Sandra K. Curran, Notary Public, personally appeared Q.T. Slaw, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sandra K. Curran
Notary Public

(SEAL)



My commission expires: March 9, 2009

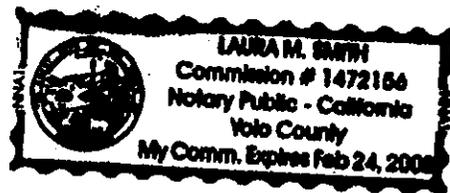
State of California
County of Yolo

On 11/18/05, before me, Laura M. Smith Notary Public, personally appeared Dale J. Mitchell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Laura M. Smith
Notary Public

(SEAL)



My commission expires: Feb. 24, 2008

EXHIBIT A-1

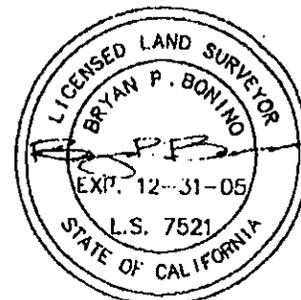
LEGAL DESCRIPTION
for
WINTERS INVESTORS, LLC

That real property situate in the City of Winters, County of Yolo, State of California, being a portion of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, and being a portion of Lot 3, Bank of Yolo Subdivision, Book 3, Maps and Surveys, Page 23, as said Lot is described in Document Number 2004-0007937-00, and Lot B, as said Lot is described in that certain Certificate of Compliance for Lot Line Adjustment, Document Number 2004-0005956-00, Yolo County Records, and being more particularly described as follows:

BEGINNING at the Northeast corner of said Lot B; thence, from said POINT OF BEGINNING, South $00^{\circ}04'55''$ East 80.56 feet to the Southeast corner of said Lot B, said point also being the Northeast corner of that Parcel described in Document Number 2004-0007937-00; thence, continuing along the exterior boundary of said Parcel, South $00^{\circ}00'23''$ West 1595.59 feet to a point on the Northerly right-of-way of State Highway 128; thence, along said right-of-way, South $65^{\circ}17'42''$ West 109.53 feet; thence, leaving said right-of-way, North $24^{\circ}42'18''$ West 115.98 feet; thence South $65^{\circ}17'42''$ West 15.00 feet; thence North $00^{\circ}03'41''$ 764.98 feet; thence South $89^{\circ}56'19''$ 343.77 feet; thence South $00^{\circ}03'41''$ East 53.00 feet; thence South $89^{\circ}56'19''$ West 99.99 feet to a point on the Easterly right-of-way of Taylor Street; thence, along said right-of-way, North $00^{\circ}03'41''$ East 307.64 feet; thence, leaving said right-of-way, North $90^{\circ}00'00''$ West 28.00 feet to a point on the Southeasterly line of said Lot B; said point also being the Northwesterly corner of said Parcel described in Document Number 2004-0007937-00; thence, along said line, South $50^{\circ}30'05''$ 42.38 feet to the Southwest corner of said Lot B; thence, along the Westerly line of said Lot B, North $00^{\circ}04'55''$ West 626.53 feet to the Northwestern corner of said Lot B; thence, along Northerly line of said Lot B, North $89^{\circ}38'50''$ 668.13 feet to the POINT OF BEGINNING.

Containing 15.97 acres, more or less.

End of description.



N89°38'50"E 668.13'

S00°04'55"E
80.56'

N00°04'55"W 626.53'

DOC. NO. 2004-0003955-00
LOT 8

S50°30'05"W
42.38'

N90°00'00"W
28.00'

DOC. NO. 2004-0007937-00

S00°03'41"E
53.00'

S89°56'19"W

343.77'

S89°56'19"W
99.99'

N00°03'41"W 764.98'

S00°00'23"W

1595.59'

WEST MAIN STREET

TAYLER STREET

S65°17'42"W
15.00'

N24°42'18"W
115.98'

S65°17'42"W
109.53'

GRANT AVENUE
(STATE HIGHWAY 128)

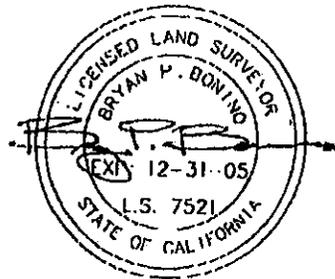
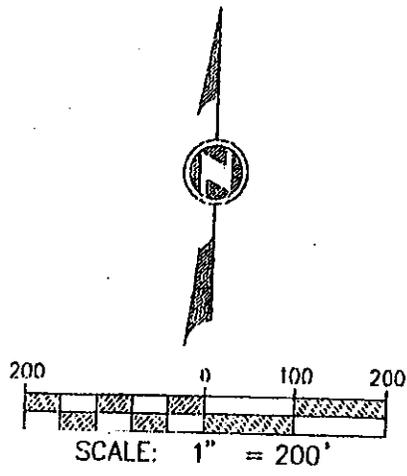


EXHIBIT A-2
 TO ACCOMPANY LLGAL DLSCRIPTION FOR
SUBDIVISION NO. 4684
 LOCATED IN A PORTION SECTION 21
 TOWNSHIP 8 NORTH, RANGE 1 WEST
 MOUNT DIABLO MERIDIAN
 CITY OF WINILKS, YOLO COUNTY,
 CALIFORNIA

LM CIVIL ENGINEERING
 LAND SURVEYING
 PLANNING
LAUGENOUR AND MEIKLE
 608 COURT STREET, WOODLAND, CA 95605
 PHONE: (530) 662-1755
 FAX: (530) 662-4602

SHEET 1 OF 1 NOVEMBER 14, 2005

X:\Land Projects\2265-5\dwg\HUDSON_GGANDO_LEGAL

When Recorded, Return to:

Winters Joint Union School District
909 West Grant Avenue
Winters, CA 96594

Exempt: Government Code §5103



YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2005-0060153-00

Check Number 2618
REQD BY PARHAM & ASSOCIATES INC
Friday, DEC 02, 2005 13:30:00
Ttl Pd \$19.00 Nbr-0000610538
CAG/R5/1-5

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT
BETWEEN WINTERS INVESTORS, LLC., AND
WINTERS JOINT UNIFIED SCHOOL DISTRICT

This Memorandum of Mutual Benefit Agreement is entered into on this 24 day of OCT, 2005, by and between Winters Joint Unified School District, of Yolo County, California, a body politic, with an office at 909 West Grant Avenue, Winters, California, (hereinafter referred to as "District"), and Winters Investors, LLC, ("Developer") the owner and developer of certain real property hereinafter referred to as the Hudson-Ogando Parcel (Yolo County APN 030-230-29 & 030-430-13) and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

1. District and Developer entered into a Mutual Benefit Agreement ("Agreement") on the 24 day of OCT, 2005, for the purpose of reaching an agreement covering developer-mitigation impact fees necessitated by the expected impact on the District by the proposed construction and occupancy occurring on, in or about the property described on Exhibit "A." All of the foregoing is set forth in the Agreement.
2. The term of the Agreement is indefinite with no termination date.
3. The Property which is the subject of the Agreement is described in Exhibit "A" attached hereto.
4. The duties, promises and covenants set forth in the Agreement are binding upon and inure to the benefit of the parties and their heirs, successors, assigns and personal representatives and shall constitute covenants which shall run with the land.

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

Winters Joint Union School District

Winters Investors, LLC

10/21/2005

7

060153 DEC-2005

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360

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

By: A. J. Shaw
Name: A. J. SHAW
Title: MANAGING MEMBER

10/21/2005

8

060153 DEC-2 2005

2
361

MEMORANDUM OF MUTUAL BENEFIT AGREEMENT

Page 2 of 2

State of California
County of Contra Costa

On Oct. 24, 2005, before me, Sandra K. Curran, Notary Public, personally appeared Q.T. Shaw, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sandra K. Curran
Notary Public

(SEAL)



My commission expires: March 9, 2009

State of California
County of Yolo

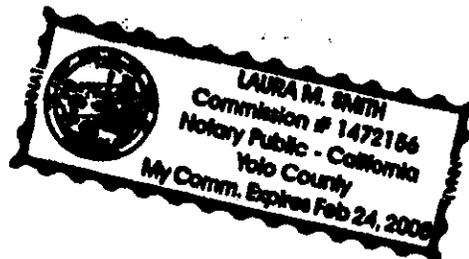
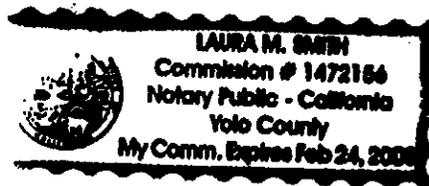
On 11/18/05, before me, Laura M. Smith, Notary Public, personally appeared Dale J. Mitchell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Laura M. Smith
Notary Public

(SEAL)

My commission expires: Feb 24, 2008



10/21/2005

9

060153 DEC-2 08

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362

EXHIBIT A-1
LEGAL DESCRIPTION
for
WINTERS INVESTORS, LLC

That real property situate in the City of Winters, County of Yolo, State of California, being a portion of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, and being a portion of Lot 3, Bank of Yolo Subdivision, Book 3, Maps and Surveys, Page 23, as said Lot is described in Document Number 2004-0007937-00, and Lot B, as said Lot is described in that certain Certificate of Compliance for Lot Line Adjustment, Document Number 2004-0005956-00, Yolo County Records, and being more particularly described as follows:

BEGINNING at the Northeast corner of said Lot B; thence, from said POINT OF BEGINNING, South 00°04'55" East 80.56 feet to the Southeast corner of said Lot B, said point also being the Northeast corner of that Parcel described in Document Number 2004-0007937-00; thence, continuing along the exterior boundary of said Parcel, South 00°00'23" West 1595.59 feet to a point on the Northerly right-of-way of State Highway 128; thence, along said right-of-way, South 65°17'42" West 109.53 feet; thence, leaving said right-of-way, North 24°42'18" West 115.98 feet; thence South 65°17'42" West 15.00 feet; thence North 00°03'41" 764.98 feet; thence South 89°56'19" 343.77 feet; thence South 00°03'41" East 53.00 feet; thence South 89°56'19" West 99.99 feet to a point on the Easterly right-of-way of Taylor Street; thence, along said right-of-way, North 00°03'41" East 307.64 feet; thence, leaving said right-of-way, North 90°00'00" West 28.00 feet to a point on the Southeasterly line of said Lot B; said point also being the Northwesterly corner of said Parcel described in Document Number 2004-0007937-00; thence, along said line, South 50°30'05" 42.38 feet to the Southwest corner of said Lot B; thence, along the Westerly line of said Lot B, North 00°04'55" West 626.53 feet to the Northwestern corner of said Lot B; thence, along Northerly line of said Lot B, North 89°38'50" 668.13 feet to the POINT OF BEGINNING.

Containing 15.97 acres, more or less.

End of description.



N89°38'50"E 668.13'

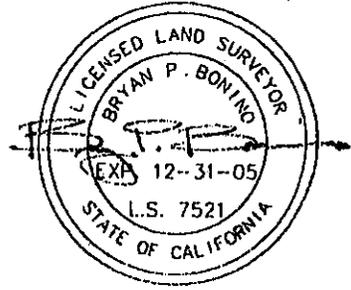
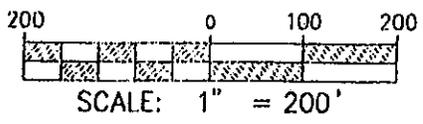
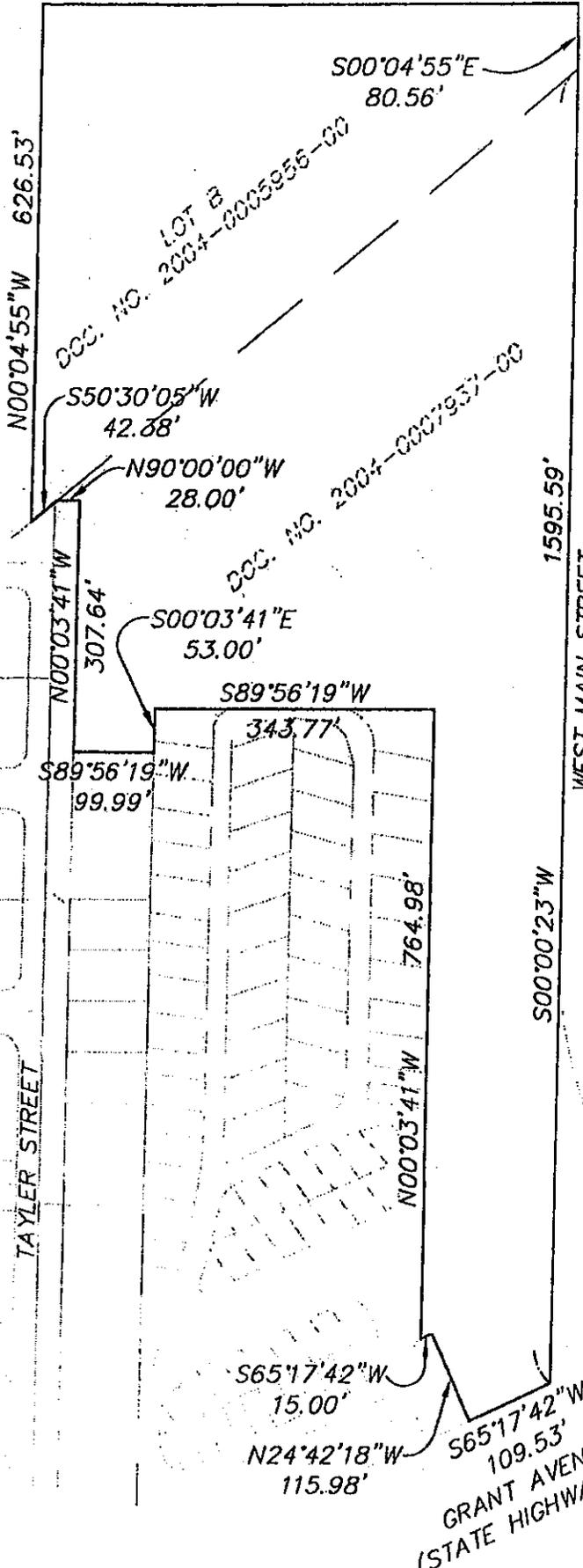


EXHIBIT A-2
 TO ACCOMPANY LEGAL DESCRIPTION FOR
SUBDIVISION NO. 4684
 LOCATED IN A PORTION SECTION 21
 TOWNSHIP 8 NORTH, RANGE 1 WEST
 MOUNT DIABLO MERIDIAN
 CITY OF WINTERS, YOLO COUNTY,
 CALIFORNIA

LM
 CIVIL ENGINEERING
 LAND SURVEYING
 PLANNING
LAUGENOUR AND MEIKLE

608 COURT STREET, WOODLAND, CA 95695
 PHONE: (530) 662-1755
 FAX: (530) 662-4602

SHEET 1 OF 1 NOVEMBER 14, 2005

X:\Land Projects\2260-5\dwg\HUDSON OGANDO LEGAL

END OF DOCUMENT

060153 DEC-28

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364

EXHIBIT E-2

FIRST AMENDMENT TO MUTUAL BENEFIT AGREEMENT BETWEEN
WINTERS INVESTORS, LLC

AND

WINTERS JOINT UNIFIED SCHOOL DISTRICT

THIS FIRST AMENDMENT TO MUTUAL BENEFIT AGREEMENT ("Amendment Agreement") is entered into this 6th day of _____ January, 2006, by and between,

WINTERS INVESTORS, LLC, a California limited liability company,
hereinafter referred to as "*Developer*"

whose address is
1380 Galaxy Way, Concord, California 94522

and

WINTERS JOINT UNIFIED SCHOOL DISTRICT

Yolo County, California, hereinafter
referred to as "the District"
whose address is
909 West Grant Avenue, Winters, CA 96594.

RECITALS:

A. WHEREAS, On October 24, 2005, the District and *Developer* entered into a certain Mutual Benefit Agreement ("Mutual Benefit Agreement") regarding fees to be paid by the *Developer* to the District in conjunction with the development of a certain subdivision referred to in the Mutual Benefit Agreement as the Hudson-Ogando Parcel; and

B. WHEREAS, the parties to the Mutual Benefit Agreement wish to amend that agreement to fix the amount of the payments to be made at a specified amount rather than by reference to the index of Level II and Level III fees;

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

1. Paragraph 1 of the Mutual Benefit Agreement shall be amended to strike the phrase, "the equivalent of Level III fees in effect as of the date of payment as specifically

Exhibit B

described herein...," and substitute the phrase, "the sum of Six and 20/100 Dollars (\$6.20) per square foot ..."

2. Paragraph 1 A. shall be amended to strike the phrase, "the equivalent of," and substitute the phrase, "the sum of Three and 10/100 Dollars (\$3.10) per square foot, in lieu of any ..."

3. Paragraph 1 B. shall be amended to strike the phrase, "to be calculated as the difference between the first installment of Level II fees previously paid pursuant to Paragraph A above, and the current ...," and substitute the phrase, "the sum of Three and 10/100 Dollars (\$3.10) per square foot, in lieu of any ..."

4. This First Amendment to Mutual Benefit Agreement shall apply to and be binding upon and inure to the benefit of the parties and their heirs, successors, assigns and personal representatives and shall constitute covenants which shall run with the land as reflected in the Memorandum of Mutual Benefit Agreement between the Parties recorded on December 2, 2005, as Document No. 2005-0060153-00 in the Office of the County Recorder for Yolo County, California.

5. Other than as amended herein, the Mutual Benefit Agreement shall remain in full force and effect.

6. This First Amendment to Mutual Benefit Agreement shall be effective on the same date as the Development Agreement between *Developer* and the City is recorded in the Office of the County Recorder of Yolo County.

Winters Joint Union
School District

Winters Investors, LLC

By: [Signature]
Name: Dale J. Mitchell
Title: Superintendent

By: [Signature]
Name: Thomas A. Whalen
Title: Managing Partner

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa } ss.

On December 19, 2005 before me, Sandra K. Curran, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Thomas A. Whalen
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sandra K. Curran
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



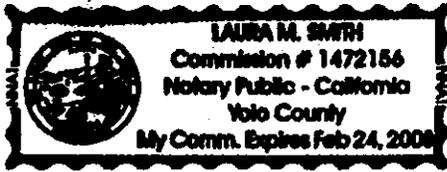
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Yolo } ss.

On 12/20/05 before me, Laura M Smith, Notary Public
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)
personally appeared Dale J Mitchell
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Laura M Smith
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: First Amendment, Mutual Benefit Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer is Representing: _____



EXHIBIT E-3

FIRST AMENDMENT TO MUTUAL BENEFIT AGREEMENT BETWEEN WINTERS INVESTORS, LLC

AND

WINTERS JOINT UNIFIED SCHOOL DISTRICT

THIS FIRST AMENDMENT TO MUTUAL BENEFIT AGREEMENT ("Amendment Agreement") is entered into this 6th day of _____ January, 2006, by and between,

WINTERS INVESTORS, LLC, a California limited liability company,
hereinafter referred to as "*Developer*"

whose address is
1380 Galaxy Way, Concord, California 94522

and

WINTERS JOINT UNIFIED SCHOOL DISTRICT

Yolo County, California, hereinafter
referred to as "the District"
whose address is
909 West Grant Avenue, Winters, CA 96594.

RECITALS:

A. WHEREAS, On April 20, 2005, the District and *Developer* entered into a certain Mutual Benefit Agreement ("Mutual Benefit Agreement") regarding fees to be paid by the *Developer* to the District in conjunction with the development of a certain subdivision referred to in the Mutual Benefit Agreement as the Callahan Estates Parcel; and

B. WHEREAS, the parties to the Mutual Benefit Agreement wish to amend that agreement to fix the amount of the payments to be made at a specified amount rather than by reference to the index of Level II and Level III fees;

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

1. Paragraph 1 of the Mutual Benefit Agreement shall be amended to strike the phrase, "the equivalent of Level III fees in effect as of the date of payment as specifically

Exhibit B

described herein...," and substitute the phrase, "the sum of Six and 20/100 Dollars (\$6.20) per square foot"

2. Paragraph 1 A. shall be amended to strike the phrase, "the equivalent of," and substitute the phrase, "the sum of Three and 10/100 Dollars (\$3.10) per square foot, in lieu of any"

3. Paragraph 1 B. shall be amended to strike the phrase, "to be calculated as the difference between the first installment of Level II fees previously paid pursuant to Paragraph A above, and the current ...," and substitute the phrase, "the sum of Three and 10/100 Dollars (\$3.10) per square foot, in lieu of any"

4. This First Amendment to Mutual Benefit Agreement shall apply to and be binding upon and inure to the benefit of the parties and their heirs, successors, assigns and personal representatives and shall constitute covenants which shall run with the land as reflected in the Memorandum of Mutual Benefit Agreement between the Parties recorded on August 15, 2005, as Document No. 2005-0039876-00 in the Office of the County Recorder for Yolo County, California.

5. Other than as amended herein, the Mutual Benefit Agreement shall remain in full force and effect.

6. This First Amendment to Mutual Benefit Agreement shall be effective on the same date as the Development Agreement between *Developer* and the City is recorded in the Office of the County Recorder of Yolo County.

Winters Joint Union
School District

Winters Investors, LLC

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

By: *Thomas A. Whalen*
Name: *Thomas A. Whalen*
Title: *Managing Partner*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Contra Costa } ss.

On December 19, 2005 before me, Sandra K. Curran, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Thomas A. Whalen
Name(s) of Signer(s)

Personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~~~they~~ executed the same in his/~~her~~~~their~~ authorized capacity(ies), and that by his/~~her~~~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sandra K. Curran
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: First Amendment to Mutual Benefit Agreement -
Whitens Investors LLC and Whitens Joint Unified School District

Document Date: _____ Number of Pages: _____

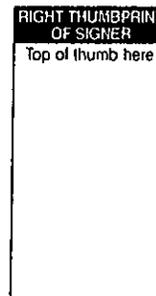
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

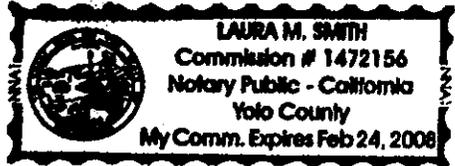
County of Yolo } ss.

On 12/20/05 before me, Laura M. Smith, Notary Public

personally appeared Dale J. Mitchell
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Laura M. Smith
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

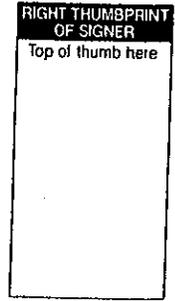


EXHIBIT F

EXHIBIT A-1

LEGAL DESCRIPTION
for
PARCEL "A"
DEDICATION TO THE CITY OF WINTERS
for
HOFFMAN LAND DEVELOPMENT COMPANY

That real property situate in the City of Winters, Yolo County, State of California, lying in the South half of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, being a portion of that Parcel described in Doc-2004-0007937-00, Yolo County Records, also being a portion of Lot 3, Bank of Yolo Subdivision, Book 3 of Maps and Surveys, at Page 23, more particularly described as follows:

BEGINNING at a point on the Eastern line of said Parcel described in Doc-2004-0007937-00, said point bears North $00^{\circ}00'23''$ East 159.85 feet from the Southwest corner of Lot A, as said Lot appears on Subdivision Map No. 4284 "CARTER RANCH PHASE 1", filed for record in the Yolo County Recorder's Office, in Book 2000 of Maps, at Page 170; thence, from said POINT OF BEGINNING, leaving said Eastern line, North $89^{\circ}59'37''$ West 161.78 feet to the Westerly line of said Parcel; thence North $00^{\circ}03'41''$ East 374.65 feet; thence South $89^{\circ}59'37''$ East 162.22 feet to a point on the Eastern line of said Parcel, said point also being the Western line of Main Street, as shown on said Subdivision Map No. 4284; thence, along said line and the Western line of said Lot A, South $00^{\circ}00'23''$ West 374.65 feet, more or less, to the POINT OF BEGINNING.

The parcel of land described above contains 1.39 acres, more or less.

End of description.



EXHIBIT A-2
LEGAL DESCRIPTION
for
PARCEL "B"
DEDICATION TO THE CITY OF WINTERS
for
HOFFMAN LAND DEVELOPMENT COMPANY

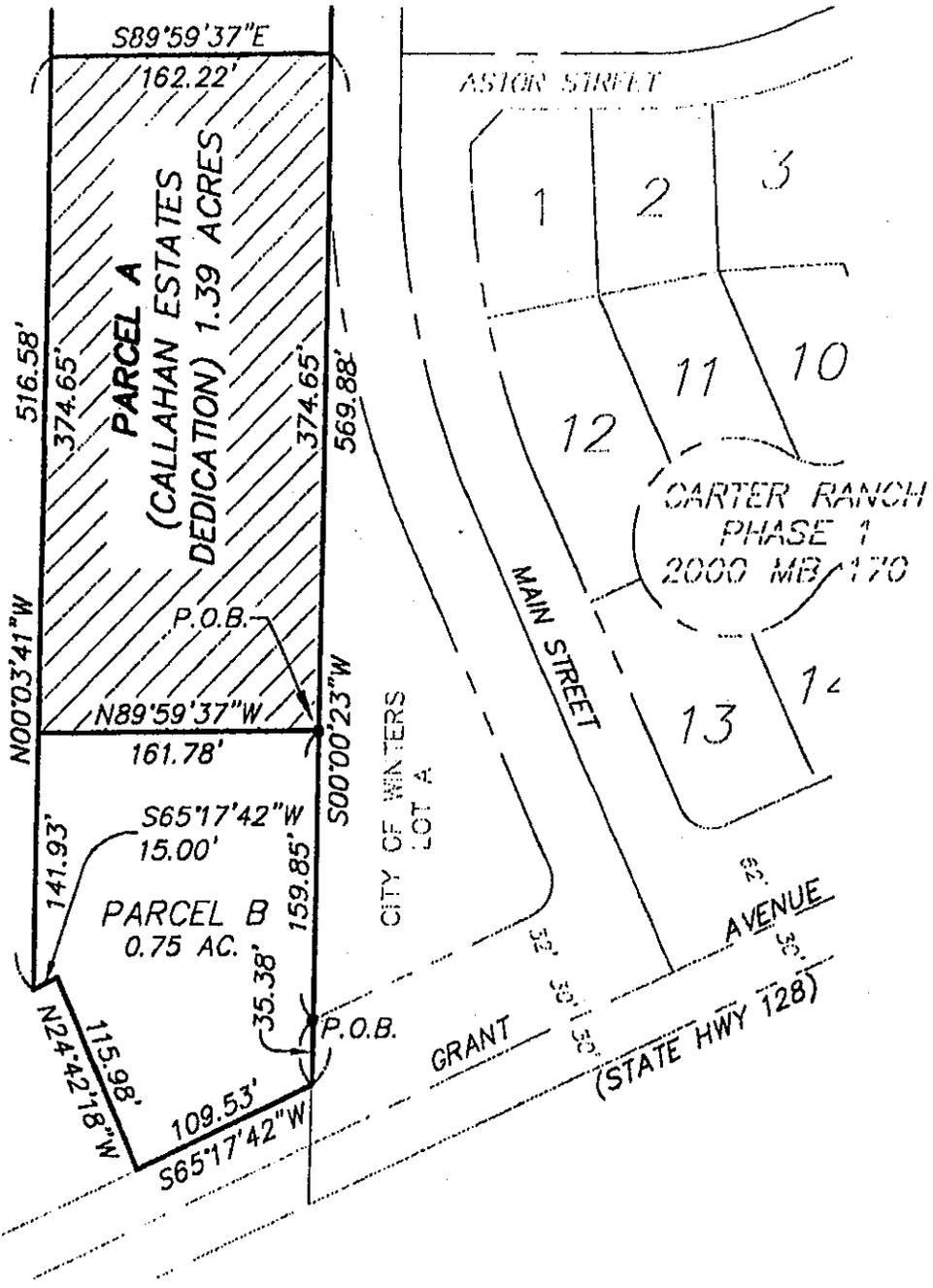
That real property situate in the City of Winters, Yolo County, State of California, lying in the South half of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, being a portion of that Parcel described in Doc-2004-0007937-00, Yolo County Records, also being a portion of Lot 3, Bank of Yolo Subdivision, Book 3 of Maps and Surveys, at Page 23, more particularly described as follows:

BEGINNING at a point on the Eastern line of said Parcel described in Doc-204-0007937-00, said point also being the Southwest corner of Lot A, as said Lot appears on Subdivision Map No. 4284 "CARTER RANCH PHASE 1", filed for record in the Yolo County Recorder's Office, in Book 2000 of Maps, at Page 170; thence, along said Eastern line, South 00°00'23" West 35.38 feet to the Southeast corner of said Parcel; thence, along the boundary line of said Parcel, South 65°17'42" West 109.53 feet; thence North 24°42'18" West 115.98 feet; thence South 65°17'42" West 15.00 feet; thence North 00°03'41" West 141.93 feet; thence, leaving said boundary line, South 89°59'37" East 161.78 feet to the Easterly boundary line of said parcel; thence, along said line, South 00°00'23" West 159.85 feet, more or less, to the POINT OF BEGINNING.

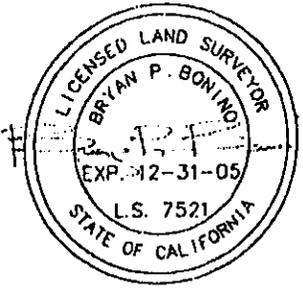
The parcel of land described above contains 0.75 acres, more or less.

End of description.





SCALE: 1" = 100'



LM
 CIVIL ENGINEERING
 LAND SURVEYING
 PLANNING
LAUGENOUR AND MEIKLE
 608 COURT STREET, WOODLAND, CA 95695
 PHONE: (530) 662-1755
 FAX: (530) 662-4602

EXHIBIT A-3
DEDICATION TO THE CITY OF WINTERS

A PORTION OF LOT 3, BANK OF YOLO
 SUBDIVISION, BOOK 3, MAPS & SURVEYS,
 PAGE 23 BEING A PORTION OF SECTION 21,
 TOWNSHIP 8 NORTH, RANGE 1 WEST, M.D.M.
 YOLO COUNTY, CALIFORNIA

SHEET 1 OF 1

NOVEMBER 22, 2005

DEDICATION EXHIBIT

City of Winters
 Formula for Calculating Adjustment to annuity -Hudson/Ogando

	Projected Average Assessed Value per Unit	Projected Property Tax Per Unit	Projected Transfer Tax Per Unit	Total Projected Revenue per unit	Sales Price	Property Tax per Unit	Transfer Tax per unit	Total Revenue per unit
Single Family Low Density	600,000	1,036.20	330.00	1,366.20		-	-	-
Single Family Medium Density	500,000	863.50	275.00	1,138.50		-	-	-
Single Family Very Low	129,000	222.78	70.95	293.73		-	-	-
Single Family Low to Mod	258,000	445.57	141.90	587.47		-	-	-
Total Revenues		89,551.86	28,519.70	118,071.56		-	-	-

Average Revenue per Unit (Property Tax & Transfer Tax) 1,639.88

Projected Per unit cost for services 2,000.00

Increase per State of California 100%

Division of Labor Statistics and Research
 Consumer Price Index Calculator for San Francisco Bay CPI
 All Urban Consumers, April 1-April 1 of each year

Projected Shortfall from Property & Property transfer tax 360.12

Increase/(Decrease) in Annuity Contribution

1,639.88

2,000.00

**EXHIBIT
 6**

(A) (0.02277)	Average projected Revenue
less fiscal analysis projected revenues	1,639.88
Increase(decrease) in average projected revenues	<u>XXXX</u>

(1980) (B)	Increase in Service Cost per Unit
(Increase) Decrease in Annuity Contribution	<u>XXXX</u>
(Calculated change in average projected revenues less increase in Service cost per unit)	<u>XXXX</u>

A=Average sales price of homes sold April 1-March 31 each year (copies of escrow information must be submitted as documentation to City of Winters
 B=Division of Labor Statistics and Research Consumer Price Index Calculator for San Francisco Bay Area CPI All Urban Consumers 4/1-3/31 each year

CITY OF WINTERS

ORDINANCE NO. 2008-14

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF WINTERS ADOPTING A FIRST AMENDMENT TO THE DEVELOPMENT
AGREEMENT FOR THE HUDSON-OGANDO SUBDIVISION**

The City Council of the City of Winters hereby ordains as follows:

Section 1: Recitals

- A. To strengthen the public planning process and encourage private participation in comprehensive planning, the Legislature of the State of California adopted Section 65864 *et seq.*, of the Government Code ("Development Agreement Statute"), which authorizes the City of Winters and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in property subject to a development agreement.
- B. On December 19, 2005, the City of Winters and Winters Investors, LLC, a California limited liability company ("the Developer"), executed a development agreement ("Development Agreement") providing for the residential development of certain real property commonly referred to as the Hudson-Ogando property (the "Project") located at Yolo County Assessor's Parcels No. 030-430-29 and No. 030-430-13 within the boundaries of the City of Winters (the "Property").
- C. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement by the City and Developer has threatened the economic viability of the Project.
- D. In an effort to restore the economic viability of the Project, encourage Developer to invest in the City of Winters, and provide new housing, the City of Winters, and the Developer desire to enter into an amendment to the Development Agreement ("First Amendment") to make certain modifications to the Development Agreement, pursuant to Section 65868 of the Government Code and Chapter 15.72.210 of the City of Winters Municipal Code.
- E. The City of Winters Planning Commission conducted a noticed public hearing on the First Amendment on _____, and has recommended the approval of the First Amendment.
- F. The City Council of the City of Winters has given the required notice of its intention to adopt the First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867.

- G. In accordance with Section 65867.5 of the Government Code, the City Council finds that the provisions of the First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.
- H. The First Amendment has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

Section 2: Approval

Pursuant to the provisions of Government Code §65864 *et seq.* and Chapter 15.72 of Title 15 of the Winters Municipal Code, the City Council of the City of Winters hereby:

- 1. Adopts and approves that certain document entitled, "First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC" relating to the development of the Property commonly know as the "Hudson-Ogando Subdivision," attached hereto as Exhibit A and incorporated herein by reference.
- 2. Authorizes and directs the Mayor to sign the document on behalf of the City after the effective date of this Ordinance and after it has first been signed by the duly authorized representatives of Winters Investors, LLC.
- 3. Authorizes and directs the City Clerk to record the document, after it is signed by both parties, in the Office of the Recorder of Yolo County.

Section 3. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Winters hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 4. Effective Date.

This Ordinance shall be in full force and effect 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this Ordinance to be posted and published in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on _____, 2009 and was passed and adopted at a regular meeting of the City Council held on _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

1168348.2



NOTICE OF PUBLIC HEARING

TO: Interested Parties

FROM: Winters Community Development Department

DATE: November 13, 2008

SUBJECT: *Notice Of Public Hearing To Take Action On Proposed Ordinance 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33).*

Applicant: City of Winters

Description of the Project: Given the extraordinary economic climate, the City of Winters desires to amend the January 2006 Hudson-Ogando Development Agreement (DA). The proposed Amendment includes:

1. Extending term of DA to 12/31/2016.
2. Updating the subject property's Assessor Parcel Numbers
3. Correcting error in reference to City of Winters Municipal Code for DAs.
4. Correcting error in reference to Rights Retained by the City.
5. Shifting filing of final map from December 10, 2006 to the discretion of the developer. All development is to occur under the provisions of a DA.
6. Changing building permit allocation from 30 units in year two to 31 units.
7. Affirmation that issuance of building permits shall be governed by the DA.
8. Tying the construction of the required number of affordable dwelling units to one affordable unit per the construction of every six market rate units.
9. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
10. Deferred payment of impact fees for building permits issued on or before June 30, 2010 to payment of 50% at issuance of building permit and 50% at issuance of certificate of occupancy.
11. Shifting conveyance of land for Public Safety Center from filing of final map to within 30 days of effective date of the First Amendment of the DA.
12. Shifting payment of park fees from filing of final map to a pro-rata basis at building permit and the valuation date for the park land appraisal from recording of DA to recording date of the First Amendment DA.
13. Shifting payment of police, fire and general municipal facilities fees from filing of final map to either concurrently with issuance of first building permit for all 72 residential units or payment with each building permit at the then current fees.
14. Shifting payment to library and pool funds from final map to issuance of the first building permit.
15. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 50th market rate building permit.
16. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer to the City of the well design documents, the potential funding by the City for the completion of the well, and the reimbursement of costs for the completion of the well.
17. Provision for the City's construction and reimbursement of the required masonry wall and landscaping.

Project Location: Northwest side of Grant Avenue and Main Street, Assessor Parcel Numbers 003-430-13

Environmental Determination: A Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-56) was adopted on November 15, 2005 for the Hudson Ogando Development Agreement. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement.

Public Hearing: A public hearing will be held to consider action on the project on **Tuesday, November 25th, 2008 before the Planning Commission.** This meeting will start at 7:30 p.m. at the City Council Chambers located on the first floor of City Hall at 318 First Street, Winters, California.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact City Clerk Nanci Mills at (530) 795-4910, ext. 101. Please make your request as early as possible and at least one-full business day before the start of the hearing.

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

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

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

For more information regarding this project, please contact Kate Kelly at (530) 902-1615.

PROOF OF PUBLICATION
(2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF YOLO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of THE WINTERS EXPRESS, a newspaper of general circulation, printed and published in the City of Winters, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of December 24, 1951, Case Number 12461; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit: November 13, 2008. I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Winters, California, this 13th day of November, 2008.


Signature

This space is for the County Clerk's Filing Stamp

Proof of Publication

Notice of Public Hearing

Notice of Public Hearing

Notice Of Public Hearing To Take Action On Proposed Ordinance 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33).

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Published Nov. 13, 2008



**PLANNING COMMISSION
STAFF REPORT**

TO: Chairman and Planning Commissioners
DATE : November 25, 2008 
FROM: Kate Kelly, Contract Planner
SUBJECT: Public Hearing To Take Action On Proposed Resolution 2008 - 46 Rescinding Resolution No. 2006 - 03 Establishing A Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program.

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

- 1) Receive the staff report;
- 2) Conduct the public hearing;
- 3) Recommend to the City Council approval of proposed Resolution 2008 - 46 rescinding Resolution No. 2006 - 03 establishing a Citywide Habitat Mitigation Program and adopting the Amended Citywide Habitat Mitigation Program.

BACKGROUND: On May 2, 2006 the City adopted the Citywide Habitat Mitigation Program. Since then efforts have been made to implement the program's required easements. Those efforts have ceased due to the economy and the development projects coming to a halt. The initial work identified two areas in the Citywide Habitat Mitigation Program which warrant amendment:

- Area of Qualifying Land
- Review of Qualifying Conservation Entities

Qualifying Land

Currently the Citywide Habitat Mitigation Program requires mitigation to occur on lands generally located within 7 miles of Winters in Yolo County and if mitigation is not possible in Yolo County then in an approved mitigation bank in Solano County that is within 7 miles of Winters. At this time there are no approved mitigation banks in Solano County within 7 miles of Winters.

When the Citywide Habitat Mitigation Program was originally proposed, Qualifying Land included those lands located within a seven mile radius of Winters in both Yolo and Solano County. Maria Wong of the Yolo Natural Heritage Program expressed concern that mitigation for Winters projects located in Solano County would not be credited to the Yolo Natural Heritage Program and that this would create a burden for that Program. Based upon Ms. Wong's concerns, the general boundary for Qualifying Lands was directed to Yolo County.

The City of Winters is a member of the Joint Powers Authority which manages the Yolo Natural Heritage Program and looks forward to continued participation in that Program. The Yolo Natural Heritage Program is currently working on a large mitigation receiving site near Winters that will potentially provide an excellent mitigation and conservation opportunities. Projects such as this provide incentive for mitigation to occur in Yolo County and the City looks forward to required

mitigation being met with such projects whenever feasible.

The past two years of work on implementing mitigation easements for recently approved Winters projects has shown that it is essential to have wide range of opportunities for mitigation. The current limitation directing mitigation to Yolo County has hindered the City's Program. As a result several otherwise excellent mitigation sites located very close to Winters in Solano County were disallowed. This has proved to be a challenge in establishing mitigation for the development projects.

The biological resources that may be impacted by development projects in Winters are part of a larger biological community that occupies both Yolo and Solano Counties. On a human scale, Solano County is also strongly a part of the Winters community. Mitigation located near Winters in Solano County would benefit both the biological and human communities. For that reason staff recommends including Solano County in the 7 mile radius for Qualifying Lands.

Qualifying Conservation Entity

One of the requirements of the Habitat Mitigation Program is that the entity or organization that holds the mitigation easement/land must be acceptable to the City. As the City has begun to implement the Habitat Mitigation Program, it has become apparent that it would be beneficial to clarify how potential conservation entities are reviewed and accepted by the City.

Mitigation is the most demanding form of conservation because it must fulfill regulatory requirements and uphold the public trust of a community in perpetuity. Because of these demands and responsibilities the conservation entities that hold mitigation easements/lands must have a long-term proven track record of holding and administering easements/lands. The proposed amendments to the Habitat Mitigation Program are to clarify for applicants and potential conservation entities how the City reviews and considers potential conservation entities.

The list of required information outlined in "*Required Information for Proposed Conservation Easement Holders*" is intended to assist the City in determining if the proposed entity is legitimate, has an established track record in holding and managing conservation easements/lands, and has the organizational structure to carry out the proposed mitigation in a legally defensible, perpetually sustainable manner.

The criteria listed in the Qualifying Conservation Entity section of the Habitat Mitigation Program is based upon criteria utilized by adopted by Yolo County LAFCO in their Agricultural Mitigation Program and the membership screening process used by the California Council of Land Trusts.

FISCAL IMPACT: None

ATTACHMENTS:

- 1) Resolution 2008 - 46 Rescinding Resolution No. 2006 - 03 Establishing A Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program.
- 2) Amended Habitat Mitigation Program
- 3) Public Notice

RESOLUTION NO. 2008 - 46

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
RESCINDING RESOLUTION NO. 2006 - 03 ESTABLISHING A CITYWIDE HABITAT
MITIGATION PROGRAM AND ADOPTING THE AMENDED CITYWIDE HABITAT
MITIGATION PROGRAM**

WHEREAS, Resolution 2006-03 established the Citywide Habitat Mitigation Program; and

WHEREAS, the Citywide Habitat Mitigation Program is critical to maximizing community benefit from coordinated implementation of project-level habitat mitigation requirements;

WHEREAS, the City is desirous of amending the Citywide Habitat Mitigation Program to include Solano County within the 7 mile radius for Qualifying Lands and to clarify the qualifications and review process for the selection of Qualified Conservation Entities; and

WHEREAS, the attached City of Winters Habitat Mitigation Program is consistent with the direction of the City Council and with the City General Plan.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winters that:

- 1) Resolution 2006-03 establishing the Citywide Habitat Mitigation Program is rescinded.
- 2) The City of Winters Habitat Mitigation Program, as amended, is hereby adopted as official policy of the City of Winters.
- 3) The staff is directed to ensure that this program is fully implemented in the course of implementing development approvals.

I HEREBY CERTIFY THAT the foregoing resolution was duly and regularly adopted by the City Council of the City of Winters, County of Yolo, State of California, on the _____ day of December 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Michael Martin, Mayor

ATTEST:

Nanci G. Mills, City Clerk

CITY OF WINTERS HABITAT MITIGATION PROGRAM

The City currently faces oversight of the implementation of various habitat mitigation requirements associated with recently approved and pending development project approvals. The purpose of this program is to establish a framework for acceptable satisfaction of these requirements.

The program is formatted as follows:

State and Federal Framework	page 1
Swainson's Hawk	
Other Raptors	
Burrowing Owls	
Valley Elderberry Longhorn Beetle (VELB)	
Seasonal Wetlands Habitat and Species	
General Plan Policy Framework	page 5
Approved Projects	page 7
Callahan Estates	
Creekside Estates	
Hudson/Ogando Subdivision	
Winters Highlands Subdivision	
Summary of Habitat Preservation Acreage Requirements	
Statement of Guiding Values	page 10
Mitigation Strategy by Resource	page 11
Swainson's Hawk	
Other Raptors	
Burrowing Owls	
Valley Elderberry Longhorn Beetle (VELB)	
Seasonal Wetlands Habitat and Species	
Framework for Mitigation	page 13
Qualifying Land	
Qualifying Conservation Entity	
Minimum Standards for the Agreement	
Requirements for the Submittal	

STATE AND FEDERAL FRAMEWORK

Swainson's Hawk -- The Swainson's Hawk is listed as a "threatened" species under the California Endangered Species Act (CESA) and is also protected pursuant to Section 3503.5 of the State Fish and Game Code and the Federal Migratory Bird Treaty Act. Swainson's Hawk impacts are generally distinguished as nesting impacts and foraging impacts. Nesting impacts are those that remove or disturb occupied nesting habitat, including native or nonnative trees along riparian corridors, roadside trees, or isolated trees or groups of trees. Foraging habitat impacts are those that remove suitable foraging habitat, such as open grasslands and agricultural lands that are

compatible with their foraging behavior (i.e., hay, grain, and row crops and pasturelands with low vegetative height).

To mitigate impacts to Swainson's Hawk nesting and foraging habitat, mitigation strategies are generally imposed in accordance with California Department of Fish and Game (CDFG) guidelines set forth in the "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California" (CDFG, 1994). Pre-construction nesting surveys are required to be conducted during the nesting season. If an active nest is located, or if previously active nests are documented by CDFG, mitigation measures may include delineation of no-construction buffer zones around the active nest site and/or a delay of construction until nestlings have fledged. CDFG guidelines require mitigation for losses of Swainson's hawk foraging habitat within ten miles of an active nest, and indicate that such losses can be mitigated by providing suitable habitat management (HM) lands (i.e., foraging habitat) based on the following ratios:

- a) Projects within one mile of an active nest shall provide one acre of HM land for each acre of development authorized (1:1 ratio);
- b) Projects within five miles of an active nest tree but greater than one mile from the nest tree shall provide 0.75 acre of HM land for each acre of development authorized (0.75:1 ratio);
- c) Projects within 10 miles of an active nest tree but greater than five miles from an active nest tree shall provide 0.5 acre of HM land for each acre of development authorized (0.5:1 ratio).

Other Raptors – Other raptors are also protected pursuant to Section 3503.5 of the State Fish and Game Code and the Federal Migratory Bird Treaty Act. In the local area, both nesting and foraging impacts are considered mitigated by the same measures that apply to the Swainson's Hawk. Pre-construction surveys for the Swainson's Hawk include identification of nests for other raptor species and Swainson's Hawk foraging mitigation provides mitigation for other raptor foraging impacts.

Burrowing Owls – The Burrowing Owl is designated by the CDFG as a "species of special concern" and is also protected pursuant to Section 3503.5 of the State Fish and Game Code and the Federal Migratory Bird Treaty Act. The Burrowing Owl nests and finds cover in subterranean burrows, typically those made by ground squirrels; however, man-made structures, such as culverts, pipes, and debris piles are also used. It forages primarily in open grasslands, but also uses agricultural types with low vegetative cover.

The Burrowing Owl is not a state or federally listed species; however, its status as a species of special concern indicates that populations are declining or the species is otherwise imperiled in California. Impacts to Burrowing Owls and other non-listed special-status species are typically addressed during CEQA review. To mitigate impacts to Burrowing Owl habitat, mitigation strategies are generally imposed in accordance with CDFG guidelines set forth in the "Staff Report on Burrowing Owl Mitigation" (CDFG, 1995). Surveys are required to be conducted for California Environmental Quality Act (CEQA) review to verify potential habitat and/or the existence of occupied habitat. If an active nest

is located, mitigation measures may include delineation of no-construction buffer zones around the active nest site and/or a delay of construction until nestlings have fledged. Where potential habitat exists pre-construction surveys are also required.

CDFG guidelines require mitigation for losses of Burrowing Owl nesting or foraging habitat based on acquisition and permanent protection of a minimum ratio of 6.5 acres of foraging habitat per pair or unpaired resident bird. Enhancement or creation of new burrows on the protected habitat is required at a ratio of 2:1. Avoidance buffers during the breeding and nesting season may also be required.

Valley Elderberry Longhorn Beetle (VELB) – The VELB is listed as a “threatened” species under the Federal Endangered Species Act (FESA). It is a wood boring beetle that depends entirely on its host plant, the elderberry shrub, for habitat. Elderberry shrubs are generally found in riparian and upland habitats throughout the Central Valley, including the City of Winters. Potentially occupied shrubs are defined as having stems greater than one inch in diameter regardless of the presence of emergence holes (an indicator of VELB use). Shrubs that do not support stems greater than one inch are not considered potential habitat. To mitigate impacts to the VELB, mitigation strategies are generally imposed in accordance with United States Fish and Wildlife Service (USFWS) “Conservation Guidelines for the Valley Elderberry Longhorn Beetle” (USFWS, 1999). Surveys are required to identify potentially occupied elderberry shrubs.

The USFWS has issued a programmatic consultation that requires mitigation as summarized below. The actual mitigation ratio applied depends on several factors including whether the host plant is located in a riparian or non-riparian area, the actual size of the branches that meet the one-inch minimum threshold, and presence of emergence (exit) holes. The guidelines provide a table to determine the appropriate mitigation ratio.

- a) Avoidance with a minimum buffer zone of 100-feet around each plant. Protection, restoration, and maintenance are required; or,
- b) Transplantation to a conservation area; new plantings at a mitigation ratio ranging from 1:1 to 8:1 (new planting to affected one-inch stems); over-story and under-story native species plantings at a mitigation ratio ranging from 1:1 to 2:1 (native tree or plant to new elderberry planting)
- c) The size of the conservation area depends on the number of plantings – approximately 1,800 square feet for every ten plantings (combined elderberry and/or natives).

Seasonal Wetlands Habitat and Species – A variety of state and federal regulations affect aquatic habitat and species, including the Federal Clean Water Act, the FESA, the Fish and Wildlife Coordination Act, the State Porter-Cologne Water Quality Control Act, the CESA, the California Native Plant Protection Act, the State Fish and Game Code, and State Wetlands Conservation Policy (Executive Order). Relevant agencies, depending on the circumstances, include the US Army Corps of Engineers, USFWS, CDFG, and the Central Valley Regional Water Quality Control Board (CVRWQCB).

The impact analysis and mitigation determination process for aquatic resources starts with a biological assessment of on-site features, in particular wetlands. Wetlands are defined differently at the federal and State level, with federal agencies requiring all three wetland indicators (hydrology, soils, and vegetation) and the State requiring only one of the three. Furthermore, wetlands policy differs as well. State policy is generally no net loss of wetlands acreage and values; federal policy is general no net loss of wetlands acreage or values.

If wetlands are present a delineation must be prepared and a determination must be made as to whether they are jurisdictional (meaning they fall under the jurisdiction of the US Army Corps of Engineers (ACOE) pursuant to Section 404 of the federal Clean Water Act) or "isolated" meaning they are not adjacent to navigable waters and therefore fall outside of the regulation of the ACOE pursuant to the Supreme Court's ruling in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001) ("SWANCC").

For avoided wetlands occupied or potentially occupied by federally listed invertebrates, the USFWS generally requires a 250 foot buffer. If the wetlands are jurisdictional, impacts to them will trigger either a general permit under Section 404 or an individual permit. General Permits have already received National Environmental Policy Act (NEPA) clearance. The most commonly applicable general permit that would apply to projects in Winters is Nationwide Permit #39 which covers projects that impact less than or equal to one half acre of wetlands and less than or equal to 300 linear feet of streambed. Whether or not a project can qualify for a general permit is ultimately a determination made by the ACOE. "Minimal impact" standards and compliance with general permit conditions factor into their decision. If the impacts from a project do not fall under a general permit, then an individual permit is required and separate NEPA clearance would be triggered as well.

Impacts to wetlands that contain or provide suitable habitat for federally listed species trigger a consultation requirement under FESA, before a federal Incidental Take Permit (ITP) can be issued to allow the project to move forward. If the wetlands are jurisdictional, the consultation must satisfy FESA Section 7 and requires the USFWS to render a formal Biological Opinion. If the wetlands are non-jurisdictional, the consultation must satisfy FESA Section 10 and requires the preparation of a project-level HCP.

The USFWS has issued a programmatic consultation for impacts to small areas (less than one acre) of vernal pool habitat containing invertebrates. Projects with larger impacts would not be covered by this consultation and may be subject to different mitigation requirements.

- a) a "preservation" requirement of 2:1 for mitigation at a mitigation bank or 3:1 for mitigation on-site or at a non-bank location; and
- b) a "creation" requirement of 1:1 for mitigation at a mitigation bank or 2:1 for mitigation on-site or at a non-bank location.

For jurisdictional wetlands, Section 401 of the Clean Water Act triggers a requirement for Water Quality Certification from the Central Valley Regional Water Quality Control Board. For isolated wetlands similar regulatory authority is provided to the Regional Board through Porter-Cologne Water Quality Control Act. The Water Quality Certification is needed for both individual and general permits from the Corps and the Certification is required before any such permit issued or authorized by the Corps can be acted upon.

It should be noted that invertebrates in general, and "rare" listed plants under the California Native Plant Protection Act, are not regulated under CESA. Therefore, unless the wetlands lie within a stream bed or channel, CDFG has no direct permitting authority except through CEQA. Through their CEQA authority, CDFG generally requires that permanent wetlands be protected by no less than 100-foot setback buffer areas, and intermittent streams and swales be protected by no less than a 50-foot non-building setback buffer established on each side of the stream. They generally advise that buffers be extended to protect riparian habitats. Where impacts to these resources will result CDFG relies on the State policy of no net loss of wetlands acreage and values for establishing mitigation. Section 1600 of the State Fish and Game Code triggers the requirement for a Lake or Streambed Alteration Agreement if activities are proposed within the bed or bank of a river, stream, or lake including wetlands or riparian vegetation associated with that stream.

At the local level, the City of Winters has separate relevant policies which are discussed below.

GENERAL PLAN POLICY FRAMEWORK

The Winters General Plan adopted May 19, 1992, includes a Natural Resources Element with the following goal and policies relevant to habitat values:

Goal VI.C: To protect sensitive native vegetation and wildlife communities and habitat.

Policies:

- VI.C.1. Prior to approving public or private development projects in areas containing or adjacent to areas containing large trees, riparian vegetation, wetlands, or other significant wildlife habitat, the City shall require the project area and its environs be field surveyed for the presence of special-status plant and animal taxa. Such field surveys shall be conducted by a qualified biologist. If special-status taxa are encountered during the field surveys, appropriate measures shall be developed to minimize disturbance and protect identified populations where feasible.

- VI.C.2. In regulating private development and constructing public improvements, the City shall ensure that there is no net loss of riparian or wetland habitat acreage and value and shall promote projects that avoid sensitive areas. Where habitat loss is unavoidable, the City shall

require replacement 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 should consist of locally-occurring, native species and be located as close as possible to the project site. Implementation of this policy should be based on baseline data concerning existing native species. Study expenses shall be borne by development.

- VI.C.3. Unless there are overriding considerations as defined in the California Environmental Quality Act, the City shall not approve any project that would cause significant unmitigatable impacts on rare, threatened, or endangered wildlife or plant species.
- VI.C.4. The City shall support and participate in local and regional attempts to restore and maintain viable habitat for endangered or threatened plant and animal species. To this end, the City shall work with surrounding jurisdictions and state and federal agencies in developing a regional *Habitat Management Plan*. Such plan shall provide baseline data for the Winters area on special-status plant and animal taxa, including Swainson hawk and the valley elderberry longhorn beetle, and provide guidelines and standards for mitigation of impacts on special-status taxa.
- VI.C.5. The City shall require mitigation of potential impacts on special-status plant and animal taxa based on a policy of no-net-loss of habitat value. Mitigation measures shall incorporate as the City deems appropriate, the guidelines and recommendations of the U.S. Fish and Wildlife Service and the California Department of Fish and Game. Implementation of this policy may include a requirement that project proponents enter into an agreement with the City satisfactory to the City Attorney to ensure that the proposed projects will be subject to a City fee ordinance to be adopted consistent with the regional *Habitat Management Plan*.
- VI.C.6. The City shall undertake a feasibility study for the establishment of an Open Space Preserve between the Urban Limit Line and Grant Avenue west of I-505. Such preserve should be designed to provide for a combination of uses including agriculture, habitat protection, groundwater recharge, and educational and recreational activities. The Open Space Preserve should, to the maximum extent possible, be designed to function as part of the City's flood control and wastewater discharge system. The City should consider requiring developments that cannot mitigate wetlands or riparian habitat impacts on-site to make in-lieu contributions to the establishment, development, and maintenance of the Open Space Preserve or other mitigations consistent with the regional *Habitat Management Plan*.

- VI.C.7. The City shall promote the use of drought-tolerant and native plants, especially valley oaks, for landscaping roadsides, parks, schools, and private properties.
- VI.C.8. Parks, the drainage detention areas, and golf course development shall incorporate areas of native vegetation and wildlife habitat.
- VI.C.9. Large, older and historically-significant trees should not be removed unless they are diseased or represent an unavoidable obstacle to development. Development should be designed and constructed to avoid adverse impacts on such trees.
- VI.C.10. The City shall encourage and support development projects and programs that enhance public appreciation and awareness of the natural environment.

Policy VI.C.2 is most directly relevant and was used as the basis for local compensatory replacement habitat requirements applied to recent project approvals, which are discussed further herein.

APPROVED PROJECTS

The City has recently approved four significant residential projects (Callahan Estates, Creekside Estates, Hudson/Ogando, and Winters Highlands) that required discretionary approvals and CEQA clearance. A brief summary of the habitat mitigation requirements of each is provided below.

Callahan Estates Subdivision (approved April 5, 2005) -- The project is a residential subdivision of 26.4 acres to create 120 single-family lots; Parcels A and D (exchange lots); Parcels E, F, and G (open space lots); and Parcel X (detention pond/well site).

Habitat mitigation summary (full text of mitigation measures attached):

Other Raptors (MM #3) – Nest survey required. Avoidance required.

Burrowing Owl (MM #4) – Nest survey required. Preservation area required per nest per DFG.

Swainson's Hawk (MM #5) – 1:1 preservation of foraging land required for 26.4 acres. Payment of MOU fee allowed.

Wetlands Invertebrates (MM #5.1) – 0.25 acres seasonal wetlands in SE corner. Avoid or do protocol surveys. Mitigation required pursuant to USFWS and DFG requirements.

Seasonal Wetlands (MM #5.2) – 0.25 acres seasonal wetlands in SE corner plus unknown acreage for Highlands Canal onsite. Local 1:1 mitigation required per

GP Policy VI.C.2 located either at the City's Community Sports Park site north of Moody Slough Road or at the wetlands site in the northeast corner of the Winters Highlands property.

Creekside Estates Subdivision (approved May 17, 2005) -- The project is a residential subdivision of 13.7 acres to create 40 single-family lots.

Habitat mitigation summary (full text of mitigation measures attached):

Valley Elderberry Longhorn Beetle (VELB) (MM #4) – Species survey required. Preservation area required per bush per USFWS.

Other Raptors (MM #5) – Nest survey required. Avoidance required.

Burrowing Owl (MM #6) – Nest survey required. Preservation area required per nest per DFG.

Swainson's Hawk (MM #7) – 1:1 preservation of foraging land required for 13.7 acres. Payment of MOU fee allowed.

Seasonal Wetlands – None. Not applicable.

Hudson/Ogando Subdivision (approved December 13, 2005) -- The project is a residential subdivision of 15.97 acres to create 72 single-family lots (47 R-1 lots on 10.06 acres; plus 25 R-3 lots on 3.63 acres), Parcel A (5,360 sf) for a small open space or well site, and Parcel Y (93,608 sf) for a proposed City Public Safety Center .

Habitat mitigation summary (full text of mitigation measures attached):

Burrowing Owl (MM #4) – Nest survey required. Preservation area required per nest per DFG.

Swainson's Hawk (MM #5) – 1:1 preservation of foraging land required for 15.97 acres. Payment of MOU fee allowed if MOU is in effect, otherwise land required.

Other Raptors (MM #6) – Nest survey required. Avoidance required.

Wetlands Invertebrates (MM #7) – 0.78 acre seasonal wetlands in the center of the northern portion of the site. Avoid or do protocol surveys. Mitigation required pursuant to USFWS, DFG, and RWQCB requirements, as applicable.

Seasonal Wetlands (MM #8 – 0.78 acre seasonal wetlands in the center of the northern portion of the site. Local 1:1 mitigation required per GP Policy VI.C.2 located either at the City's Community Sports Park site north of Moody Slough Road, at the wetlands site in the northeast corner of the Winters Highlands property, or elsewhere as directed/approved by the City Council.

Winters Highlands Subdivision (approved April 4, 2006) -- 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), 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.

Habitat mitigation summary (full text of mitigation measures attached):

Wetlands Invertebrates (MM #4.3-1a) – Protocol surveys identified 0.67 acre of populated seasonal wetlands (vernal pools) on-site. Mitigation is required pursuant to USFWS requirements.

Seasonal Wetlands On-Site Preserve (MM #4.3.2a) – Preserve and manage in perpetuity 7.43 acres in northeast corner comprised of 0.99 acres wetlands/vernal pools, 2.10 acres open space grasslands, and 4.33 acres of open space buffer.

Swainson's Hawk and Other Foraging Raptors (MM #4.3-3a) – 1:1 preservation of foraging land required for 102.6 acres. Payment of MOU fee allowed if MOU is in effect, otherwise land required.

Burrowing Owl (MM #4.3-4a/b) – Three owl pair/individuals identified. Pre-construction nest survey required. 19.5 acres of habitat required to be preserved and enhanced per DFG.

Seasonal Wetlands (MM #4.3-5a) – Local 1:1 mitigation required per GP Policy VI.C.2 for the 0.54 acre of seasonal wetlands that occur in the Highlands Canal. Local 2:1 mitigation required per GP Policy VI.C.2 for the 0.81 acre of wetlands that occur outside the Highlands Canal. Total mitigation requirement 2.16 acres. See specified performance criteria.

Other Raptors (MM #4.3-6a) – Nest survey required. Avoidance required.

Riparian Corridor Adjoining Dry Creek (MM #4.3-9a) – Restoration plan required for 50 foot section on either side of Highlands Canal outlet (0.05 acre).

Summary of Habitat Preservation Acreage Requirements

Based on the information provided above by project, aggregate preservation requirements by resources (as currently known) are as follows:

Burrowing Owl – 19.5 acres for Highlands (additional acreage may be required depending on results from site surveys to be completed).

VELB -- 0 acres (additional acreage may be required depending on results from site surveys to be completed).

Swainson's Hawk – 158.7 acres (Callahan 26.4, Creekside 13.7, Hudson 15.97, Highlands 102.6).

Wetlands Invertebrates – 0.67 acre for Highlands (additional acreage may be required depending on results from protocol surveys to be completed at Callahan project sites).

Seasonal Wetlands – 3.19 acres (Callahan 0.25 + for Canal, Creekside 0.0, Hudson 0.78, Highlands 2.16 comprised of 0.54 at 1:1 and 0.81 at 2:1) (additional acreage may be required depending on results from delineation of Highlands Canal on Callahan site to be completed).

Total – 182.1 acres (additional acreage may be required depending on results from site surveys to be completed as noted above).

STATEMENT OF GUIDING VALUES

It is the goal of the City to achieve the greatest possible social and habitat value from the implementation of the City's habitat mitigation requirements. This is another way to achieve community gains from the various projects, in exchange for the right to develop and the approval to convert these properties to new neighborhoods. Although these development approvals have been planned in the General Plan to convert to residential uses, there are still important community values to be gained in maximizing the mitigation. The General Plan goal and policies listed above support this concept. In light of this, the City will oversee the implementation of mitigation requirements based on the following guiding values:

- Consolidate single-project mitigation into a large and biologically meaningful preserve.
- Maximize open space and habitat value for Winters' community.
- Coordinate with other cities and agencies to maximize land preservation opportunities. This shall include coordination with the JPA to maximize opportunities for joint benefit. It is the intent of the City to remain a partner and participant in the JPA and that this program be consistent with the efforts of the JPA.
- Be flexible, practical, and efficient with resources and opportunities.
- Ensure that this Habitat Mitigation Program (HMP) has been satisfied as early as possible and no later than prior to issuance of building permits. Require mitigation implementation to be consistent with this program.
- Require land dedications generally, but allow use of established mitigation banks under specified circumstances, where the habitat and monitoring requirements are particularly complicated, regulated, or technical.

- Where Swainson's Hawk mitigation for less than 40 acres is a requirement of a project, as a last resort where the developer has made a compelling case to demonstrate their inability to purchase land or easements pursuant to the program, the City retains the authority to allow that developer to pay in-lieu fees through the JPA.

MITIGATION STRATEGY BY RESOURCE

Overall Vision -- Strategies for each impacted biological resource are provided below. If properly implemented, it is the intent that these strategies will result in contiguous acreage of preserved land in proximity to the City comprised of open space and/or cropland adjoining a local creek or slough with significant riparian values. The open space or crop land would be used for Swainson's Hawk mitigation. Mitigation for Burrowing Owl, VELB, and/or seasonal wetlands would be incorporated into the open space or located between the open space/cropland (depending on the presence of existing resources and physical characteristics) and the slough or creek area which would be accepted as mitigation under General Plan Policy VI.C.2. Furthermore, this land would be managed in a manner allowing for controlled open space recreational value to be gained for Winters residents and children, in the form of education programs, trails, viewing points, event gathering areas, etc.

In all cases, the mitigation land must not only be acquired and put under a conservation easement, but the applicant must provide an appropriate endowment to cover management of the land in perpetuity. The applicant must, therefore, provide a management plan acceptable to the agencies and City that identifies the management actions required for the land being set aside.

Swainson's Hawk and Other Raptors – Swainson's Hawk foraging land is easily located throughout the local area and in proximity of the City. As such where mitigation for Swainson's Hawk is triggered, the City will generally not allow it to occur through a mitigation bank, but rather require that it occur on land placed under easement by the applicant, under the management of a local established land trust approved by the City and acceptable to CDFG. In addition, preservation of Swainson's Hawk land generally has the dual effect of preservation of agricultural land in those cases where the foraging land is agricultural row crop land.

The County and all cities within the County have a Memorandum of Understanding executed with CDFG that allows for the payment of in-lieu fees to the Yolo County Habitat Joint Powers Agency (JPA) as mitigation for the Swainson's Hawk. These fees are to be used to make purchases of Swainson's Hawk foraging land and/or easements on such land, for permanent conservation as a precursor to adoption of the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). To date no purchases of mitigation land have been made by the JPA and the MOU has expired.

As written, the City approvals for the Callahan and Creekside projects defer to payment of the in-lieu fees to the JPA for mitigation of Swainson's Hawk. Whereas, the City's approval of the Hudson and Highlands projects indicate that unless the MOU and/or the countywide HCP/NCCP are approved and in effect, the applicants must directly secure land dedications, and can not rely on payment of the in-lieu fee.

Therefore, for all four projects the City position is that the applicants will purchase and set aside in perpetuity the appropriate acreage of Swainson's Hawk foraging land consistent with the parameters of this report, through the purchase of the underlying land and/or the development rights and execution of an irreversible conservation easement to be managed by a local established land trust approved by the City.

Burrowing Owl – It is possible to successfully create Burrowing Owl habitat and encourage use by Burrowing Owls. Additionally, this species shares some of the same habitat requirements as the Swainson's Hawk, primarily open grasslands. As such, where mitigation for Burrowing Owls is required, the City will not generally allow it to occur through a mitigation bank, but rather require that it occur on land placed under easement by the applicant, adjacent to Swainson's Hawk mitigation land (see discussion above), and under the management of a local established land trust approved by the City and acceptable to CDFG. "Stacking" of Burrowing Owl and Swainson's Hawk habitat on the same acreage is not supported by the City.

Valley Elderberry Longhorn Beetle – A similar situation exists for the VELB. The host plant for this beetle is fairly easy to transplant. Similarly, the success rate for new plantings is high. As such, where mitigation for VELB is triggered, the City will not generally allow it to occur through a mitigation bank, but rather require that it occur on land placed under easement by the applicant, adjacent to and on the fringes of Swainson's Hawk mitigation land (see discussion above), and under the management of a local established land trust approved by the City and acceptable to the USFWS.

Seasonal Wetlands Habitat/Species – The technology for preservation and creation of riparian and wetlands habitat is fairly standard and well understood but in many cases poorly implemented, managed and monitored. Where permitting approval from State or federal agencies is required (as is the case for example where protected invertebrates would be impacted) the mitigation requirements generally become no more technically difficult, however the regulatory requirements seem to increase significantly in the form of bureaucratic oversight. For this reason the City sees a logical distinction between mitigating riparian and wetlands habitat losses pursuant solely to local General Plan Policy VI.C.2 verses satisfaction of State and federal agencies requirements for mitigation of impacts to jurisdictional wetlands and/or protected species.

Pursuant to the General Plan requirements, projects with impacts to riparian or wetland features must mitigate those impacts with land acquisition in the same fashion described above for the Swainson's Hawk. There then needs to be new habitat created on this land that replaces the habitat that was lost due to the project. This General Plan mitigation will not be allowed to occur in a mitigation bank as that removes it from City proximity and does not fully take advantage of the potential to permanently preserve open space around the city.

To the extent that State or federal mitigation is also triggered for jurisdictional wetlands and/or protected species, this may be allowed to be satisfied within the same land acquisition but on separate acreage, but not to the extent that it limits or impairs full satisfaction of the City's General Plan requirements and not to the extent that it might limit the ability of the City and its residents to gain open space recreational value from the dedicated lands and have management autonomy over them. The City recognizes that at both the State and federal level, agencies generally do not support "multi-use" management due to concerns regarding incompatibilities between human activities (even passive) and habitat preservation. Should this be the case, then mitigation for State and federal purposes must occur on separate land.

The mitigation text for the Callahan and Hudson projects specify that mitigation under City General Plan Policy VI.C.2 is to take place at the City's community sports park site north of Moody Slough Road or at the preserved wetlands in the northwest corner of the Highlands project site. However all non-mounded land at the community sports park site will be needed for sports fields and the mounded areas will likely not be suitable for surface wetlands creation due to the underlying landfill cells and hazardous materials concerns. As part of the recent approval of the Highlands project a decision was made not to preserve the wetlands in the northwest corner of the project. Therefore, the City will exercise its discretion to direct that the wetlands mitigation for Callahan and Hudson be satisfied pursuant to this program in the same manner as will be required of the Highlands project.

FRAMEWORK FOR MITIGATION

The City hereby establishes the following framework for habitat mitigation in Winters:

Qualifying Land

- Establish mitigation areas as close to town as practicable without detrimentally affecting likely direction of future growth. The precise acceptability of a particular mitigation property shall be decided on a case-by-case basis to avoid manipulating the market. Generally favorable areas are those that occur in Yolo County within a seven-mile radius of the current City limits (see Exhibit A). Priority shall be given to mitigation sites in Yolo County.
- Isolated mitigation areas should be avoided. They should be contiguous to one another or to other existing preserved land, or as a part of a larger conservation strategy.
- Preserved areas must have equal or better habitat values for the subject species, or must be restored and maintained in perpetuity to such level as part of the mitigation. This shall be demonstrated through the submittal of an assessment of biological value prepared by a qualified biologist acceptable to the City.

- Agricultural land may not be taken out of production for the purposes of qualifying land for this program.
- The property may be zoned or designated for any use but must be redesignated to Agriculture, Open Space, or equivalent designation at the applicant's expense.
- The mitigation area shall be comprised of units of land that meet minimum size (40 acres) and shape requirements (grossly irregular parcels that preclude efficient operation are not acceptable) so as to ensure efficient management. Whether or not particular parcels of land proposed for mitigation are acceptable under these requirements shall be evaluated by the City based on geographic and soil characteristics, natural features (including topography, hydrology, and vegetation), habitat values, adjacent property ownership and land use, etc.
- Existing rural development on mitigation parcels is not acceptable and shall be rejected or discounted from the calculation of net mitigation credit. Planned or proposed rural residential development on mitigation land shall render it unacceptable for this program.
- The mitigation land shall have adequate water supply to support the agricultural use and the water supply shall be protected in the conservation easement.
- Proposed mitigation land shall be examined through a title search for easements or other prior encumbrances and the City and conservation entity shall be satisfied that any such encumbrances will not adversely affect the intended use and management of the parcel for habitat mitigation purposes.

Qualifying Conservation Entity

- The applicant shall identify an appropriate and qualified "conservation entity" to hold and manage the conservation easement.
- The conservation entity and the inclusion of any other signatories on the agreement must be acceptable to the City. The conservation entity is expected to have an established track record in holding and managing conservation easements for the purposes of conserving and maintaining lands habitat values.
- The City favors the use of a local non-profit habitat conservation entity or the regional branch of a nationally recognized non-profit habitat conservation entity as the easement holder.
- This entity must satisfy the definition of a "qualified organization" under Internal Revenue Code Section 170(h) related to conservation easements and their treatment in the federal tax laws.

- The proposed entity shall submit the information outlined in the "Required Information for Proposed Conservation Entity" (Exhibit A), along with any other information requested by the City, to assist the City in their review of the proposed entity's qualifications.
- The City will use the following criteria when approving the non-profit habitat conservation entity for these purposes:
 - a. Whether the entity is a non-profit organization that is either based locally or is a regional branch of a national non-profit organization whose principal purpose is holding and administering habitat conservation easements for the purposes of conserving and maintaining habitat values;
 - b. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands habitat values;
 - c. Whether the entity has a history of holding and administering easements in Yolo County for the foregoing purposes;
 - d. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards;
 - e. Whether the entity is a member in good standing of the California Council of Land Trusts;
 - f. Whether the entity has been accredited by the Land Trust's Alliance's Land Trust Accreditation Commission; and
 - g. Any other information that the City finds relevant under the circumstances.
- The City retains the discretion to determine whether the habitat conservation entity identified by the applicant has met the criteria delineated above.

Minimum Standards for the Agreement

- The method of preservation must ensure permanent protection of the mitigation land for the habitat uses.
- Control of the land shall be established either through outright purchase (fee title) or through acquisition of development rights.
- As a courtesy, notice of the transaction shall be provided by the applicant to the City or County with land use jurisdiction and the Yolo Natural Heritage Program. Evidence of this shall be provided to the City of Winters.

- Preservation shall be ensured through the use of a conservation easement, deed restriction, or other equivalent mechanism, for specified habitat purposes in perpetuity.
- Develop a standard conservation easement agreement to serve as a template throughout the program.
- The agreement shall address funding for ongoing management fees for stewardship, property-specific management, record keeping, transfers, and legal defense. This shall be in the form of a long-term “non-wasting” endowment that comprises a minimum of five percent of the value of the easement, unless a lesser amount is acceptable to the conservation entity.
- All ownership interests in the land must execute the instrument.
- The agreement must be recorded and contain an accurate legal description of the mitigation property.
- The agreement must prohibit any activity which adversely affects the habitat value of the mitigation land.
- The City shall be named as a beneficiary under any instrument conveying the interest in the mitigation land to a management entity.
- The interest in the mitigation land shall be held in trust by the conservation entity in perpetuity.
- The conservation entity may not sell, lease, or convey any interest in the mitigation land except for fully compatible agricultural or open space uses.
- If the conservation entity ceases to exist, the duty to hold, administer, monitor, and enforce the interest shall be reassigned to another qualified conservation entity.
- The agreement shall specifically address the monitoring requirements of the property including specific performance criteria for the species or habitats being mitigated, contingencies and short-term adaptive management measures (e.g. replanting riparian trees that die in the first three years), monitoring time periods, etc.
- “Stacked easements” refer to the concept of allowing mitigation for one species to occur on the same land (or portion thereof) as mitigation for another species. For example, Swainson’s Hawk and Burrowing Owl. While adjacency and contiguity of mitigation property is required as noted elsewhere, it is the City’s position that the greatest social and habitat value of the mitigation is achieved by having each impacted species/habitat mitigated through separate acreage. Similarly stacking of the General Plan wetlands mitigation with other State/federal wetlands mitigation

requirements is not allowed. Though it may be located within the same land acquisition, it must be located on separate acreage.

- Other specific requirements of the approved project mitigation measures shall be implemented unless otherwise modified herein.

Required Submittals

In order to satisfy the mitigation requirements of the City, the developer must submit appropriate evidence that all requirements of this program have been satisfied. This information will be used by the City to determine whether or not the proposed mitigation property is located strategically to allow maximum benefit from the preservation program. This shall include the following:

- A legal description of the property including water rights and water supply.
- Evidence of control of the land (e.g. title report) and documentation regarding any outstanding loans.
- Disclosure of any easement (including mineral rights), physical condition, or other material fact that would preclude or substantially impair the intended use.
- Required Information for Proposed Conservation Easement Holders (Exhibit B)
- A letter from the proposed conservation entity confirming their qualifications to manage the property, their interest in the property, and agreement to accept the conservation easement.
- A draft conservation easement or other proposed mechanism. The draft easement shall be provided to the City for review prior to being circulated to any other responsible agencies.
- The agreement must contain language that requires outstanding loans and mineral rights to be subordinated to the mitigation interests.
- A letter of acceptance from the State Department of Fish and Game if necessary to satisfy State mitigation requirements.
- Letters of acceptance from other responsible agencies if appropriate.
- Information on soils, topography, hydrology, and vegetation prepared by a qualified professional, as determined by the City.
- A history of use and practices on the property included as part of a Phase I Environmental Site Assessment that meets applicable standards in the industry.
- A map of the property and surrounding area depicting the following:

- Lands in the vicinity of the proposed mitigation property that have restricted development rights such as a conservation or habitat easement, flowage or flood easement, etc., already in place.
- A delineation of the proposed mitigation property
- Parcel numbers, ownership, zoning, and acreage.
- Soils, topography, hydrology, and vegetation for the mitigation property and surrounding parcels in the vicinity.
- 100-year floodplain, landfills, or other such limiting features.
- Known areas of special status species habitat.
- Structures and residences.
- Any other information required by the City.

EXHIBITS

A – 7-Mile Radius Map

B – Required Information for Proposed Conservation Easement Holders

C – Habitat-Related Mitigation Measures For Recent New Development

Seven-Mile Radius CITY OF WINTERS

Date: 4/3/2006

Customer(s): YOLO LAND TRUST

District: Yolo County RCD

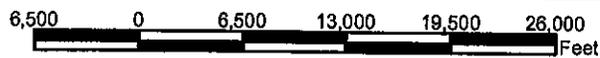
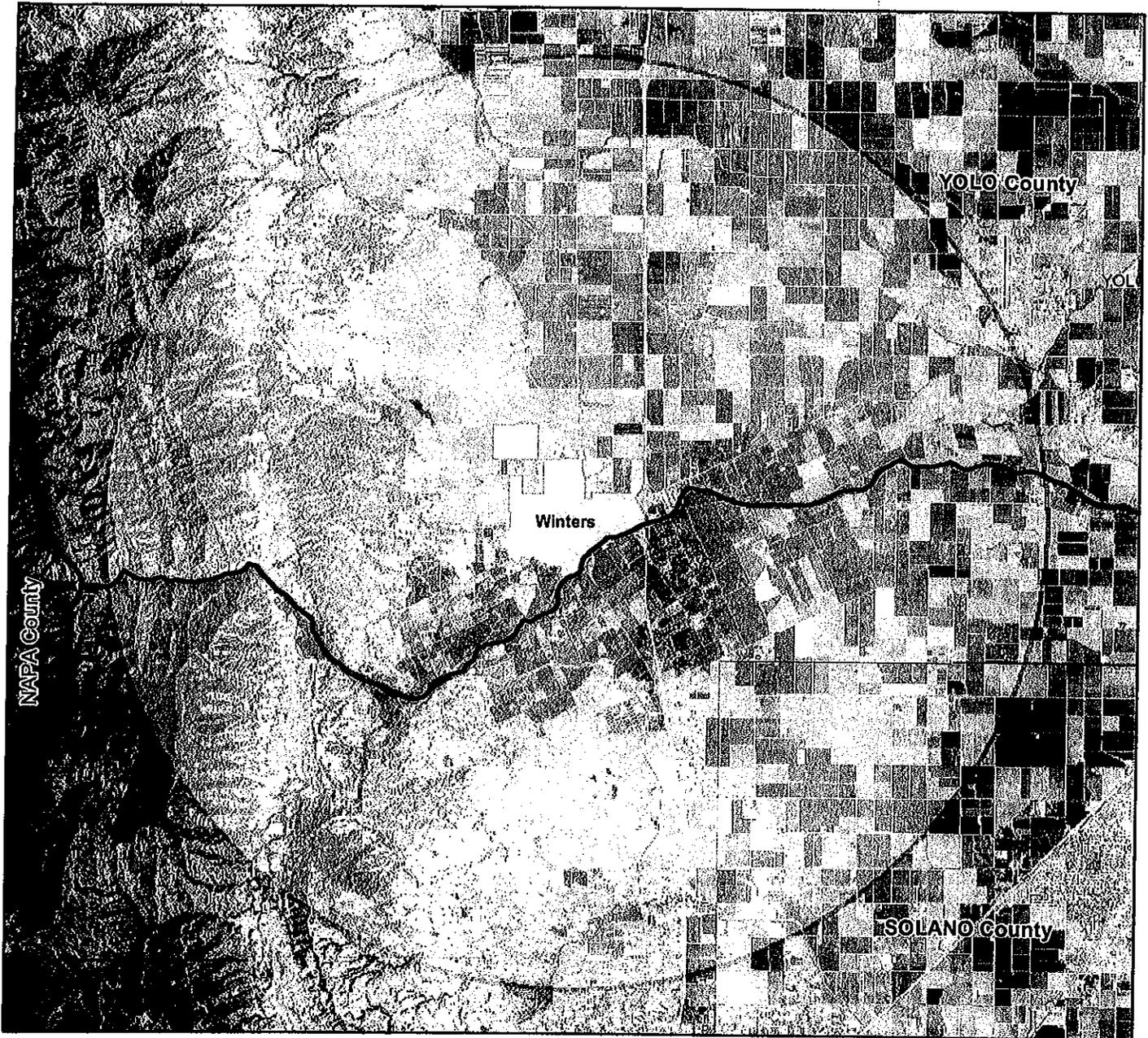
Approximate Acres: 93,432.6

42.83 Mile Perimeter

Field Office: WOODLAND SERVICE CENTER

Agency: USDA NRCS

Assisted By: PHIL HOGAN



Legend

-  County Boundary
-  Seven-mile Radius - 93,432.6 ac
-  City of Winters



Image: 2005 Aerial Yolo Co. & Solano Co.





EXHIBIT B

Required Information for Proposed Conservation Easement Holders

Please submit the following information about your organization and its experience in acquiring, holding, and managing conservation easements. This information will be used to evaluate your organization's qualifications to hold conservation easements intended to fulfill mitigation requirements for projects approved by the City of Winters.

Board Composition Please provide biographical information for board of directors and executive officer or director. Specifically, this must include a (1) list of all board members and staff, (2) biographical statement for each including a list of other key affiliations for each, and (3) identification of all officers of the organization.

Organizational Structure Please identify and describe the structure and composition of the organization, such as officer positions, committees, staff (titles and percentage time, committee members who are not board members, number of volunteers, groups of volunteers (such as monitoring volunteers; if applicable), and so forth.

Financial Please provide your IRS 990 statements for the last three years. If your land trust holds land or conservation easements, please describe how their immediate and long-term management and defense are funded, the approximate amount available and how those funds are managed. Please provide copies of financial policies, the dates of adoption and dates of any amendments to these policies.

Key Legal and Policy Documents Legal documents: (1) IRS letter, (2) articles of incorporation, (3) by-laws, and (4) most recent filing with the California Attorney General. Please provide copies of policies related to board membership, board participation and decision-making, and transactional matters. Examples include: board member job description, conflict of interest policy, land protection criteria, and transaction approval process. Please provide the dates of adoption and dates of any amendments to these policies.

Geographic Area of Operations and Resource Focus List geographic area of land

protection activities and all counties in which the land trust has worked or would consider working. Also identify any particular resource(s) (e.g., oak woodlands) in which the land trust focuses upon.

Activities Please describe your organization's activities and relative percentages of *time spent* (e.g., land/easement transactions 75%, land management 10%, education and community outreach 10%, restoration 60%, administration 5%, land use or policy advocacy 25%).

Conservation Accomplishments Please describe specifically (1) acres protected and the protection mechanism (e.g., "X" acres in fee title), (2) acres of land, easement or currently held, (3) acres for which the land trust holds a responsibility (e.g., stewardship) although it may not hold a property interest, (4) miles of trails constructed, and (5) acres held that originated through the mitigation process. These figures should include lands that you may have protected even if ownership was subsequently transferred to another. Please share any other accomplishments of note, e.g., assisting with transactions, annual educational program for local 3rd graders, etc.

Model Conservation Easement Please provide copy or copies of the model conservation easement(s) which your organization is currently using as a basis for your easement negotiations and easement drafting. Model easement should be relevant to proposed mitigation easement (e.g. model Swainson's Hawk easement)

Conservation Easement Management Please provide a list of conservation easements held by your organization including: (1) location, (2) purpose, (3) acreage, (4) date acquired, (5) how acquired (e.g. purchase, donated, mitigation), (6) funding sources (e.g. grant sources, in lieu fees). Please provide example monitoring report(s) prepared by your organization for easement(s) similar to the proposed easement. Also provide your amendment policy for conservation easements, and enforcement policy for conservation easements. Please provide the dates of adoption and dates of any amendments to these policies.

Community Support For the past year, please provide (1) number in each category that have contributed funds (e.g., individuals, organizations and public "agencies"), (2) number of volunteers, (3) number on your mailing list, and (4) any other examples of community support you would like to share. Is there any particular way that you "market" or describe your organization to others? Please provide examples of your key communication materials, e.g., brochures, website, newsletters, annual appeal.

EXHIBIT C HABITAT-RELATED MITIGATION MEASURES FOR RECENT NEW DEVELOPMENT

CALLAHAN ESTATES SUBDIVISION:

Mitigation Measure #3: The project proponent shall mitigate for potential project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests (e.g. Swainson's hawk or white-tailed kite) are found during the preconstruction survey, a 0.25-mile (1,320-feet) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

Mitigation Measure #4: The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving 6.5 acres of suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

Mitigation Measure #5: The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat. The MOU requires the project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. A fee shall be collected by the City of Winters for impacts to 26.4 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 annually and the project proponent shall be charged at the rate per acre at the time of project approval. 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.

Mitigation Measure #5.1: (a) If the project can avoid ground disturbing activities that would affect the hydrology of the wetland or avoid fill into the wetland, then no mitigation for impacts to special status invertebrates is required. A buffer around the seasonal wetland would be required to ensure that any possibility of take is avoided. The amount of this buffer would be determined by a qualified biologist based on a site-specific determination of hydrology and shall not be less than 20-feet. If impacts to the wetland will not be avoided, then consultation and on-site inspection with USFWS shall determine whether the Service will require protocol surveys to be conducted to determine presence or absence of the listed species. If as a result of the consultation or protocol level surveys it is determined that the species are absent, then no mitigation is required. If the species are present, or if the project proponent

decides to assume presence by not conducting the surveys if such surveys are required by USFWS, then compensatory mitigation will be required. If compensatory mitigation is required and there is no federal regulatory lead agency (as is the case with this project), the project proponent, through coordination with the USFWS, would prepare a project-level Habitat Conservation Plan under Section 10 of the federal Endangered Species Act. The project-level HCP will identify specific actions including the amount of compensation that is required. Typically, impacts on these species require replacement of the habitat acreage at a 3:1 ratio (1:1 preservation and 2:1 creation). The City of Winters shall confirm implementation of this mitigation measure prior to the issuance of a grading permit.

(b) Notwithstanding the Corps' determination, the California Department of Fish and Game (CDFG) retains jurisdiction over State biological resources including wetlands, and should be contacted regarding any separate regulatory authority or requirement they may have for vernal pool species. Prior to the commencement of work on the Callahan Estates project site, the applicant shall contact the CDFG regarding their potential jurisdiction over wetlands that exist on the project site and comply with all requirements, if any, established by CDFG arising from this consultation with the Department.

Mitigation Measure #5.2: (a) Pursuant to General Plan Policy VI.C.2, the applicant must replace loss of riparian and wetland habitat acreage and/or 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 at the wetlands site in the northeast corner of the Winters Highlands property. Implementation of this condition shall be based on baseline data concerning existing native species. Study expenses shall be borne by development.

(b) Additional field investigation shall be undertaken by a qualified wetlands specialist to establish the condition of the Highland Canal and to determine the potential for it to be subject to CDFG jurisdiction. The following information shall be provided: the source and terminus of the drainage, whether the feature is natural or artificial, and what its current and historical purpose is relative to water delivery. Prior to the commencement of work on the Callahan Estates project site, the applicant shall contact the CDFG regarding their potential jurisdiction over habitat or species within the Highland Canal and comply with all requirements, if any, established by CDFG arising from this consultation with the Department. If the Highland Canal is found to be subject to CDFG jurisdiction, it shall also be included in the calculation of total loss of habitat for which City General Plan Policy VI.C.2 requires 1:1 mitigation.

CREEKSIDE ESTATES SUBDIVISION:

Mitigation Measure #4: Focused surveys for Valley Longhorn Elderberry Beetles (VELB) shall be conducted by a qualified biologist to determine presence of the species. The surveys shall be conducted, data collected, and mitigation required according to the USFWS' guidance document Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USFWS 1999). If no plants are found then no further mitigation is required. If plants are found they shall be avoided and a 20-foot buffer from the dripline is required. If the plants can not be avoided then consultation with the USFWS is required and a mitigation plan should be prepared for approval by the Service. At a minimum the mitigation plan should include acquisition of credits at an approved mitigation bank or implementation of onsite mitigation and monitoring plan that includes transplantation of plants and planting elderberry seedlings. If the potential for take is identified following surveys, the project proponent will implement the referenced guidelines through coordination with the USFWS under Section 10 of the federal Endangered Species Act.

Mitigation Measure #5: The project proponent shall mitigate for potential project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests (e.g. Swainson's hawk or white-tailed kite) are found during the preconstruction survey, a 0.25-mile (1,320-feet) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines

that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

Mitigation Measure #6: The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving 6.5 acres of suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

Mitigation Measure #7: The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat. The MOU requires the project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. The City shall review the MOU with DFG to determine whether or not the portion of the project area that was planted in orchard is subject to the mitigation fee. A fee shall be collected by the City of Winters for impacts to up to 13.7 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 annually and the project proponent shall be charged at the rate per acre at the time of project approval. 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.

HUDSON/OGANDO SUBDIVISION:

Mitigation Measure #4 -- The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving equivalent suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

Mitigation Measure #5 -- The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with one of the following:

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 project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. A fee is collected by the City of Winters for impacts to 15.97 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 annually and the project proponent shall be charged at the rate per acre 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.

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.

If the MOU is not in full force and effect, and if the NCCP/HCP has not yet been adopted, the project applicant shall purchase and set aside in perpetuity, 15.97 acres of Swainson's hawk foraging land in proximity to the City of Winters (as approved by the City) through the purchase of development rights and execution of an irreversible conservation easement to be managed by a qualified party (e.g. Yolo Land Trust). Mitigation shall include an annuity or other mechanism to pay for permanent maintenance and management by the managing entity. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit.

Mitigation Measure #6 -- The project proponent shall mitigate for potential project-related impacts to nesting raptors (White-tailed Kite, Northern Harrier, and Loggerhead Shrike) by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests are found during the preconstruction survey, a 0.25-mile (1,320-feet) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

Mitigation Measure #7 -- If special-status vernal pool invertebrates are not found at the completion of a full protocol-level survey conducted by qualified biologists, and the USFWS agrees with the findings of the survey, then no further mitigation would be required. If special-status vernal pool invertebrates are found onsite, or if the USFWS disagrees then the mitigation specified below would still be required. The City of Winters shall confirm implementation of this mitigation measure prior to the issuance of a grading permit. The project proponent shall mitigate for potential project-related impacts to federally listed vernal pool invertebrates by complying with U.S. Fish and Wildlife Service (USFWS) guidelines regarding mitigation for project-related impacts to vernal pool invertebrate habitat. The USFWS typically requires a 250-foot setback from the edge of vernal pools to be avoided, however, this setback may be reduced if pools are degraded or no potential adverse effects to the habitat are anticipated with a decreased setback. If vernal pools onsite cannot be avoided, a mitigation plan shall be developed in conjunction with the USFWS to ensure no net negative effect to these species occurs. Likely mitigation measures include onsite or offsite preservation and creation of vernal pools at a ratio acceptable to the USFWS or purchase of credits at a qualified proximate vernal pool mitigation bank as specified by the USFWS and agreed to by the City. Typically, the USFWS in coordination with the Corps requires a 3:1 combination ratio (1:1 preservation and 2:1 creation) of vernal pools that potentially, or are known to support listed invertebrates.

Notwithstanding other federal jurisdiction, the Regional Water Quality Control Board may have jurisdiction over the wetlands, and shall be contacted regarding any separate regulatory authority or requirement they may have. Prior to the commencement of work on the project site, the applicant shall contact the RWCQB regarding their potential jurisdiction over wetlands that exist on the project site and comply with all applicable requirements, if any, established by that agency.

The California Department of Fish and Game (CDFG) retains jurisdiction over State biological resources including wetlands, and shall be contacted regarding any separate regulatory authority or requirement they may have for vernal pool species. Prior to the commencement of work on the project site, the applicant shall contact the CDFG regarding their potential jurisdiction over wetlands that exist on the project site and comply with all requirements, if any, established by CDFG arising from this consultation with the Department.

Mitigation Measure #8 -- (a) Pursuant to General Plan Policy VI.C.2, the applicant must replace loss of riparian and wetland habitat acreage and/or 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, at the wetlands site in the northeast corner of the Winters Highlands property, or elsewhere as directed/approved by the City Council. Implementation of this condition shall be based on baseline data concerning existing native species. Study expenses shall be borne by development.

WINTERS HIGHLANDS SUBDIVISION:

Mitigation Measure 4.3-1(a). The applicant shall mitigate for Project-related impacts to 0.67 acre of habitat for federally listed vernal pool invertebrates by complying with U.S. Fish and Wildlife Service (USFWS) guidelines regarding mitigation for Project-related impacts to vernal pool invertebrate habitat. A mitigation plan shall be developed in conjunction with the USFWS to ensure no net negative effect to these species occurs.

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 habitats within the Preserve core zone are maintained in perpetuity at their present condition or better, and ensuring that any activities or structures authorized within 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 ("wetlands area") and a buffer zone ("open space area"). The Preserve core zone shall be approximately 3.10 acres and include the 0.99 acre 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 an upland buffer to protect the Preserve core zone from adjacent land uses.

The Management Plan shall be consistent with the terms proposed by the applicant as outlined in the EIR, 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 U.S. Army Corps of Engineers does not need to be involved in the decision-making for removal of problematic non-native plant 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 U.S. Fish and Wildlife Service but need not go through the U.S. Army Corps of Engineers.

6. "Low impact" activities shall be defined and guidance on activities not allowed shall be provided. The U.S. 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 U.S. Fish and Wildlife Service rather than the U.S. 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.

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 not yet been adopted, the project applicant shall purchase 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) through the purchase of the underlying land and/or the development rights and execution of an irreversible conservation easement to be managed by a qualified party (e.g. Yolo Land Trust). Mitigation shall include an endowment or other mechanism to pay for permanent maintenance and management by the managing entity. Compliance shall occur and be confirmed by the City of Winters prior to the issuance of a grading permit. To the extent feasible as determined by the City, identification of acceptable mitigation land shall be coordinated with the Yolo County Habitat Conservation Joint Powers Agency.

Mitigation Measure 4.3-4(a). The applicant shall conduct pre-construction surveys of suitable habitat at the Project site and buffer zone(s) within 30 days prior to initiation of construction activity. If ground disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the Project site shall be resurveyed.

Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the California Department of Fish and Game verifies through non-invasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

If owls must be moved away from the Project site, passive relocation techniques shall be used rather than trapping. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows.

Mitigation Measure 4.3-4(b). The loss of 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 (calculated on a 100 m {approx. 300 ft.} 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.

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 born 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.

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.

Mitigation Measure 4.3-6(a). The applicant shall mitigate for potential Project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the Project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active raptor nests are found during the preconstruction survey, a 500-foot buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

If an active Swainson's hawk nest is encountered during the pre-construction surveys, the buffer zone shall be 0.25 miles (1,320 feet) and it shall be fenced. This exclusion zone shall remain active until fledglings have left the nest or until such time that the biologist determines that the nest is no longer active.

Mitigation Measure 4.3-7(a). Implement Mitigation Measure 4.3-3(a).

Mitigation Measure 4.3-8(a). Implement Mitigation Measure 4.3-3(a).

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 modifications to Dry Creek shall be coordinated with representatives of 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.

PROOF OF PUBLICATION
(2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF YOLO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of THE WINTERS EXPRESS, a newspaper of general circulation, printed and published in the City of Winters, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of December 24, 1951, Case Number 12461; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit: November 13, 2008. I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Winters, California, this 13th day of November, 2008.



Signature

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

For more information regarding this project, please contact Kate Kelly at (530) 902-1615.

Published Nov. 13, 2008

This space is for the County Clerk's Filing Stamp

Proof of Publication

Notice of Public Hearing

Notice of Public Hearing

Notice Of Public Hearing To Take Action On Proposed Resolution 2008 - 46 Rescinding Resolution No. 2006 - 03 Establishing A Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program.

Applicant: City of Winters

Description: Amend City of Winters' Habitat Mitigation program (Resolution No. 2006 - 03) to clarify the review and acceptance process for qualified conservation entities and to revise the potential mitigation area to include the land in both Yolo and Solano Counties within a seven-mile radius from the City of Winters.

Location: Citywide.

Public Hearing: A public hearing will be held to consider action on the item on Tuesday, November 25th, 2008 before the Planning Commission. This meeting will start at 7:30 p.m. at the City Council Chambers located on the first floor of City Hall at 318 First Street, Winters, California.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact City Clerk Nanci Mills at (530) 795-4910, ext. 101. Please make your request as early as possible and at least one full business day before the start of the hearing.

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

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



**PLANNING COMMISSION STAFF REPORT
November 25, 2008**

TO: Chairman and Planning Commissioners

BY: Nelia Dyer – Community Development Director

SUBJECT: Public Hearing to Take Action on Proposed Resolution 2008-47
Establishing Fees for Sidewalk Cafes

RECOMMENDATION:

Staff recommends that the Planning Commission take the following actions: 1) Receive the staff report; and 2) Recommend to the Winters City Council approval of the proposed resolution establishing fees for sidewalk cafes.

BACKGROUND:

On October 25, 2008, the Planning Commission recommended approval to the City Council of an ordinance adding Chapter 17.116 to the Winters Municipal Code pertaining to sidewalk cafes. The purpose of the ordinance is to accommodate and regulate the operation of sidewalk cafes in the public rights-of-way in the City of Winters. The Ordinance language includes a requirement for a payment of a fee to compensate for the commercial use of public rights-of-way areas. The Ordinance specifies that the fee would be set by [separate] resolution of the City Council.

The purpose of this agenda item is to introduce the draft resolution for adoption of a Sidewalk Café Fee. The intent of the fee is to compensate the City for the commercial use of public areas. The fee is distinguished from the separate application fee that would be charged for the administrative costs of processing an application for a Sidewalk Café Permit. The application fee is proposed to be a one-time fee of \$150.00.

Research of Methods Used by Other Jurisdictions

Staff reviewed the processes employed by a number of other jurisdictions that allow use of public rights-of-way for Sidewalk Cafes. That information is contained in Attachment 2. A review of the information shows that some of the jurisdictions do not charge a fee for the commercial use of the right-of-way area. Other jurisdictions charge a flat, yearly fee and others charge a fee based on the size (square footage) of the portion of the right-of-way used for the Sidewalk Café. Others charge a fee based on the number of seats at a Sidewalk Café, and one jurisdiction charges based on a combination of a flat

fee and an area-used calculation.

Based on the research, the following options were considered:

- 1) Flat fee charged on a yearly basis, per Sidewalk Café operation.
- 2) Flat Fee charged once, at a time of issuance of a three-year Sidewalk Café Permit, and charged at the time of subsequent three-year Sidewalk Café Permit Renewal Permits.
- 3) Yearly fee charged based on square footage of a Sidewalk Café area with calculation of the square footage based on the entirety of the demarked Sidewalk Café as such demarcation is required in the Sidewalk Café Ordinance.
- 4) One-time fee charged based on the square footage of the Sidewalk Café area.
- 5) Yearly fee charge based on a flat fee plus a charge based on the square footage of the Sidewalk Café area.
- 6) One-time fee charged based on a flat fee plus a charge based on square footage of the Sidewalk Café area.
- 7) A one-time or yearly fee charged based on the number of seats in the Sidewalk Café area. Staff has concern with this methodology because of the potential necessity of monitoring the number of seats in the multiply Sidewalk Cafes.

CONCLUSION:

After review of the methodologies used by other jurisdictions, staff recommends an annual Fee based on the square footage of the Sidewalk Café. In an attempt to encourage the use of Sidewalk Cafes, while recovering costs for use of the public right-of-way, staff further recommends that the annual rate be set at \$2 per square foot.

APPLICABLE REGULATIONS:

This course of action is subject to the following regulations:

- The California Environmental Quality Act (CEQA)
- State Planning and Zoning Law

PUBLIC NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Department's Administrative Assistant in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. A legal notice was published in the Winters Express on Thursday, November 13, 2008. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Tuesday, November 18, 2008.

ENVIRONMENTAL ASSESSMENT: The Resolution is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines, pursuant to Article 19, Section 15303.

RECOMMENDED FINDINGS FOR RESOLUTION ESTABLISHING A FORMAL PROCEDURE FOR PROCESSING GENERAL PLAN AMENDMENT PROPOSALS

General Findings:

1. Notice of Hearing has been given at the time and in the manner required by state law and city code.
2. The resolution is consistent with state planning and zoning law.

CEQA Findings:

1. The resolution qualifies for an exemption from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303.
2. The Planning Commission has considered comments received on the resolution during the public review process.
3. The exemption finding reflects the independent judgment and analysis of the City of Winters.

RECOMMENDATION

Staff recommends that the Planning Commission recommend approval of the subject resolution to the City Council by making an affirmative motion as follows:

I MOVE THAT THE WINTERS PLANNING COMMISSION RECOMMEND APPROVAL TO THE CITY COUNCIL OF A RESOLUTION ESTABLISHING SIDEWALK CAFÉ FEES.

ALTERNATIVES:

The Commission can recommend modifications to the resolution or recommend denial of the resolution to the City Council. If the Commission chooses to recommend denial of the resolution, the Commission would need to submit findings for the official record that would illustrate the reasoning behind the decision to recommend denial of the resolution.

ATTACHMENTS:

1. A Resolution Establishing a Formal Procedure for Processing General Plan Amendment Proposals
2. Summary of Methods Employed by Other Jurisdictions
3. Public Hearing Notice (published copy)

RESOLUTION NO. 2008-27

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
ESTABLISHING FEES FOR SIDEWALK CAFES**

WHEREAS, the City of Winters has adopted an ordinance adding Chapter 17.116 to the Winters Municipal Code pertaining to Sidewalk Cafes; and

WHEREAS, Chapter 17.116 provides in section 17.116.040 that an application fee for sidewalk cafes shall be established by resolution of the City Council; and

WHEREAS, Chapter 17.116 provides, in section 17.116.110 that a permit fee shall be established by resolution of the City Council; and

WHEREAS, Such fees are established by the city for the purpose of assuring that the city's current and ongoing costs of granting and regulating private access to, and the use of, public rights-of-way are fully compensated by the persons seeking such access and causing such costs. The fees are designed to secure fair and reasonable compensation to the city and its residents for permitting private use of the public right of way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winters, California, that the sidewalk café fees by formalized by this resolution as follows:

SECTION 1. The application fee for a permit to operate a sidewalk café shall be \$150. No application fee shall be charged for any renewal.

SECTION 2. The annual permit fee for a sidewalk cafe shall be \$2 per square foot. The square footage of the sidewalk café shall be based on the entirety of the demarked sidewalk café area as such demarcation is required by the Sidewalk Café Ordinance.

I HEREBY CERTIFY THAT the foregoing resolution was duly and regularly adopted to the City Council of the City of Winters, County of Yolo, State of California, on the XX day of XXXX, 2008 by the following vote:

AYES:

NOES:

ABSENT:

ABTAIN:

Michael Martin, Mayor

ATTEST:

Nanci G. Mills, City Clerk

Attachment 2 – Summary of Methods Employed by Other Jurisdictions

Annapolis, MD	Flat Rate - \$300 yearly
Athens, GA	Square Foot Rate - \$1 yearly
Cedar Rapids, Iowa	Square Foot Rate - \$5 yearly
Coronado, CA	Flat Rate - \$634 yearly
Corvallis, OR	Flat Rate - \$100 yearly PLUS Square Foot Rate
District of Columbia	Flat Rate - \$260 yearly
Encinitas, CA	No User Fee
Halifax, Nova Scotia	Flat Rate - \$100 yearly PLUS \$2.50 per Square Foot
Mountain View, CA	Square Foot Rate - \$3 yearly
San Francisco, CA	Per Seat Rate - \$36 yearly in range of: \$100 minimum/\$360 maximum
Santa Barbara, CA	Per Seat Rate - \$220 per seat
Santa Monica, CA	Square Foot Rate (fee unknown)
Sausalito, CA	Square Foot Rate - \$2 yearly
Solana Beach, CA	No User Fee
White Plains, NY	Square Foot Rate - \$3 yearly

PROOF OF PUBLICATION
(2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF YOLO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of THE WINTERS EXPRESS, a newspaper of general circulation, printed and published in the City of Winters, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of December 24, 1951, Case Number 12461; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit: November 13, 2008.
I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Winters, California, this 13th day of November, 2008.



Signature

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

For more information regarding this project, please contact Nellie Dyer at (530) 795-4910 ext. 114.

At the time and place noted above, all persons interested in the above matters may appear and be heard.
DATED: November 10, 2008.

CITY OF WINTERS PLANNING COMMISSION
Secretary

Published Nov., 13, 2008

This space is for the County Clerk's Filing Stamp

Proof of Publication

Notice of Public Hearing

Notice of Public Hearing

**NOTICE OF PUBLIC HEARING OF THE
PLANNING COMMISSION OF THE CITY OF WINTERS
ON PROPOSED RESOLUTION ESTABLISHING
FEES FOR SIDEWALK CAFES**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Winters ("Planning Commission") will hold a public hearing on Tuesday, November 25, 2008, at 7:30 p.m. in the City Council Chambers located at the City Hall, 318 First Street, Winters, California, to consider and act upon a resolution establishing fees for sidewalk cafes.

Staff proposes to establish fees for the construction and maintenance of sidewalk cafes for the purpose of assuring that the city's current and ongoing costs of granting and regulating private access to, and the use of, public rights-of-way are fully compensated by the persons seeking such access and causing such costs. The fees are designed to secure fair and reasonable compensation to the city and its residents for permitting private use of the public right of way.

Interested persons may inspect and, upon the payment of the costs of reproduction, obtain copies of the proposed Resolution Establishing Fees for Sidewalk Cafes, and any other information pertaining thereto at the Community Development Department at the City of Winters, City Hall, 318 First Street, Winters, California, or at the office of the City Clerk, City Hall, 318 First Street, Winters, California, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, exclusive of holidays. Copies of the Staff Report will be available on the City's website at www.cityofwinters.org.

Interested persons may submit written comments addressed to Nellie Dyer, City of Winters, 318 First Street, Winters, California, 95694 prior to the hour of 5:00 p.m. on October 28, 2008.

In compliance with the American with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact Nellie Dyer at (530) 795-4910 ext. 114. Please make your request as early as possible and at least one full business day before the start of the hearing.

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



PLANNING COMMISSION STAFF REPORT
November 25, 2008

TO: Chairman and Planning Commissioners

BY: Nelia Dyer – Community Development Director

SUBJECT: Public Hearing to Take Action on Proposed Resolution 2008-48
Establishing a Formal Procedure for Processing General Plan
Amendment Proposals

RECOMMENDATION:

Staff recommends that the Planning Commission take the following actions: 1) Receive the staff report; and 2) Recommend to the Winters City Council approval of the proposed resolution establishing a formal procedure for processing General Plan Amendment Proposals.

BACKGROUND:

According to Government Code Section 65358 (b), a mandatory element of the general plan may be amended only four times during any calendar year. However, more than one change can be made at a time and will be considered a single amendment to the general plan.

At the October 28, 2008 Planning Commission meeting, staff introduced a discussion item of proposing to establish a formal procedure for processing General Plan amendments. Staff explained to the Planning Commission that the intent of the formal procedure is to consider general plan amendments on a quarterly basis. While state law allows local municipalities to "batch" amendments into a single amendment to the general plan, the purpose of reviewing general plan amendments on a quarterly basis is to allow the City to evaluate the cumulative impacts of proposed general plan changes. By limiting amendments to four times a year, staff and, ultimately, planning commissioners and council members can review groups of amendments at one time, thus providing an opportunity for a more comprehensive assessment of the proposed revisions. After some discussion of the proposed procedure, the Planning Commission directed staff to draft the procedure for formal review.

DISCUSSION:

It is recommended that the procedure be established by resolution. This approach

would provide a basis for the City's review process, while providing for flexibility in its implementation. The attached resolution prepared by staff establishes the following general policies and procedures:

- Hearing dates for general plan amendments shall be limited to the Planning Commission meetings in January, April, July, and October.
- The following types of amendments shall not be limited to quarterly review and shall be accepted for any Planning Commission deadline:
 - New General Plan Elements and Specific Plans;
 - Specific Plan Amendments;
 - General Plan Amendments related to the annexation of property into the City

APPLICABLE REGULATIONS:

This course of action is subject to the following regulations:

- The California Environmental Quality Act (CEQA)
- State Planning and Zoning Law

PUBLIC NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Department's Administrative Assistant in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. A legal notice was published in the Winters Express on Thursday, November 13, 2008. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Tuesday, November 18, 2008.

ENVIRONMENTAL ASSESSMENT: The Ordinance is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3).

RECOMMENDED FINDINGS FOR RESOLUTION ESTABLISHING A FORMAL PROCEDURE FOR PROCESSING GENERAL PLAN AMENDMENT PROPOSALS

General Findings:

1. Notice of Hearing has been given at the time and in the manner required by state law and city code.
2. The resolution is consistent with state planning and zoning law.

CEQA Findings:

1. The resolution qualifies for an exemption from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3).

2. The Planning Commission has considered comments received on the resolution during the public review process.
3. The exemption finding reflects the independent judgment and analysis of the City of Winters.

RECOMMENDATION

Staff recommends that the Planning Commission recommend approval of the subject resolution to the City Council by making an affirmative motion as follows:

I MOVE THAT THE WINTERS PLANNING COMMISSION RECOMMEND APPROVAL TO THE CITY COUNCIL OF A RESOLUTION ESTABLISHING A FORMAL PROCEDURE FOR PROCESSING GENERAL PLAN AMENDMENT PROPOSALS

ALTERNATIVES:

The Commission can recommend modifications to the resolution or recommend denial of the resolution to the City Council. If the Commission chooses to recommend denial of the resolution, the Commission would need to submit findings for the official record that would illustrate the reasoning behind the decision to recommend denial of the resolution.

ATTACHMENTS:

1. A Resolution Establishing a Formal Procedure for Processing General Plan Amendment Proposals
2. Public Hearing Notice (published copy)

Planning Commission/GP Amendment Procedures

RESOLUTION NO. 2008-48

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
SETTING FORTH PROCEDURES FOR THE ADOPTION OF POLICIES AND
PROCEDURES FOR AMENDING THE CITY'S GENERAL PLAN**

WHEREAS, the City of Winters has amended the adopted General Plan four times during any calendar year as set forth in Government Code Section 65358(b); and

WHEREAS, it has been determined that processing more than one General Plan amendment on a quarterly basis would not unduly delay those seeking amendment, but would assist the City in evaluating any cumulative impacts and making a comprehensive assessment of the proposed amendments to the General Plan; and

WHEREAS, the City Planning Commission has recommended that this procedure, be considered for approval, and be adopted by the City Council; and

WHEREAS, the City Council has duly considered the staff report prepared for this proposed policy relating to amendments to the General Plan, and the oral and written information submitted during the public hearing process;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winters, California, that policies and procedures be formalized by this resolution for processing amendments to the adopted General Plan as follows:

Section 1. Applications for amendments to the City's General Plan may be accepted at any time, and hearing dates for said revisions to the General Plan shall be limited to the Planning Commission meetings in January, April, July, and October following a determination by the Community Development Director, or his or her designee that the application is complete.

Section 2. The following types of requested amendments to the General Plan are not limited to the quarterly schedule set forth in Section 1 above and shall be accepted for consideration by the Planning Commission in accordance with the established processing schedule for regular meetings of the Planning Commission:

- a. New General Plan Elements and Specific Plans;
- b. Specific Plan amendments; and
- c. General Plan amendments related to the annexation of property into the City.

I HEREBY CERTIFY THAT the foregoing resolution was duly and regularly adopted by the City Council of the City of Winters, County of Yolo, State of California, on the XX day of XXXX, 2008 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Michael Martin, Mayor

ATTEST:

Nanci G. Mills, City Clerk

PROOF OF PUBLICATION
(2015.5 C.C.P.)

This space is for the County Clerk's Filing Stamp

STATE OF CALIFORNIA
COUNTY OF YOLO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of THE WINTERS EXPRESS, a newspaper of general circulation, printed and published in the City of Winters, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of December 24, 1951, Case Number 12461; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit: November 13, 2008. I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Winters, California, this 13th day of November, 2008.


Signature

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

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

For more information regarding this project, please contact Nellie Dyer at (530) 795-4910 ext. 114.

At the time and place noted above, all persons interested in the above matters may appear and be heard. DATED: November 10, 2008.

CITY OF WINTERS PLANNING COMMISSION
Secretary

Published Nov. 13, 2008

Proof of Publication

Notice of Public Hearing

Notice of Public Hearing

NOTICE OF PUBLIC HEARING OF THE
PLANNING COMMISSION OF THE
CITY OF WINTERS ON PROPOSED
RESOLUTION ESTABLISHING A FORMAL
PROCEDURE FOR PROCESSING GENERAL
PLAN AMENDMENT PROPOSALS

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Winters ("Planning Commission") will hold a public hearing on Tuesday, November 25, 2008, at 7:30 p.m. in the City Council Chambers located at the City Hall, 318 First Street, Winters, California, to consider and act upon a resolution establishing a formal procedure for processing general plan amendment proposals.

The intent of establishing formal procedure for processing general plan amendments is to consider amendments on a quarterly basis. While state law allows local municipalities to "batch" amendments into a single amendment to the general plan, the purpose of reviewing amendments on a quarterly basis is to allow the city to evaluate the cumulative impacts of proposed general plan changes. By limiting amendments to four times a year, the city can review groups of amendments at one time, thus providing an opportunity for a more comprehensive assessment of the proposed revisions.

Interested persons may inspect and, upon the payment of the costs of reproduction, obtain copies of the proposed resolution, and any other information pertaining thereto at the Community Development Department at the City of Winters, City Hall, 318 First Street, Winters, California, or at the office of the City Clerk, City Hall, 318 First Street, Winters, California, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, exclusive of holidays. Copies of the Staff Report will be available on the City's website at www.cityofwinters.org.

Interested persons may submit written comments addressed to Nellie Dyer, City of Winters, 318 First Street, Winters, California, 95694 prior to the hour of 5:00 p.m. on October 28, 2008.

In compliance with the American with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact Nellie Dyer at (530) 795-4910 ext 114. Please make your request as early as possible and at least one-full business day before the start of the hearing.