

CONCURRENT MEETING
CITY COUNCIL/CRA/RCFC

Monday, November 16, 2009

5:30 p.m. – Regular Meeting



Dan Skoglund, Mayor

Ken Cooley, Vice Mayor

Robert J. McGarvey, Council Member

David Sander, Council Member

Linda Budge, Council Member

Rancho Cordova City Council/CRA/RCFC – AGENDA
Regular Meeting of November 16, 2009

2009

NOTE: PROPOSED REGULAR CITY COUNCIL MEETING DATES ARE SCHEDULED ON THE 1ST AND 3RD MONDAY'S OF EACH MONTH, UNLESS WHEN FALLING ON A HOLIDAY, THE MEETING WILL BE SCHEDULED ON THE FOLLOWING TUESDAY (THESE DATES ARE SHADED GREY AND ARE SUBJECT TO CHANGE). REFER TO HOLIDAY SCHEDULES BELOW.

S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
JANUARY							FEBRUARY							MARCH						
					1	2	1	2	3	4	5	6	7	1	2	3	4	5	6	7
4	5	6	7	8	9	10	8	9	10	11	12	13	14	8	9	10	11	12	13	14
11	12	13	14	15	16	17	15	16	17	18	19	20	21	15	16	17	18	19	20	21
18	19	20	21	22	23	24	22	23	24	25	26	27	28	22	23	24	25	26	27	28
25	26	27	28	29	30	31								29	30	31				
MAY							JUNE							JULY						
					1	2											1	2	3	4
3	4	5	6	7	8	9	1	2	3	4	5	6		5	6	7	8	9	10	11
10	11	12	13	14	15	16	7	8	9	10	11	12	13	12	13	14	15	16	17	18
17	18	19	20	21	22	23	14	15	16	17	18	19	20	19	20	21	22	23	24	25
24	25	26	27	28	29	30	21	22	23	24	25	26	27	26	27	28	29	30	31	
31							28	29	30					28	29	30	31			
SEPTEMBER							OCTOBER							NOVEMBER						
			1	2	3	4					1	2	3							
6	7	8	9	10	11	12	4	5	6	7	8	9	10	8	9	10	11	12	13	14
13	14	15	16	17	18	19	11	12	13	14	15	16	17	15	16	17	18	19	20	21
20	21	22	23	24	25	26	18	19	20	21	22	23	24	22	23	24	25	26	27	28
27	28	29	30				25	26	27	28	29	30	31	29	30					
DECEMBER							2009 PROPOSED HOLIDAY SCHEDULE – CITY HALL CLOSED (SHOWN ITALICIZED)							2009 PROPOSED HOLIDAY SCHEDULE – CITY HALL CLOSED (SHOWN ITALICIZED)						
							INDEPENDENCE DAY (FRI, JUL 3) [OBSERVED?]							DAY AFTER THANKSGIVING (FRI, NOV 27)						
							LABOR DAY (MON, SEP 7)							CHRISTMAS EVE (THURS, DEC 24)						
							VETERAN'S DAY (WED, NOV 11)							CHRISTMAS DAY (FRI, DEC 25)						
							THANKSGIVING DAY (THUR, NOV 26)													

NEW YEAR'S DAY (THURS, JAN 1)
MARTIN LUTHER KING JR. DAY (MON, JAN 19)
PRESIDENT'S DAY (MON, FEB 16)
MEMORIAL DAY (MON, MAY 25)

INDEPENDENCE DAY (FRI, JUL 3) [OBSERVED?]
LABOR DAY (MON, SEP 7)
VETERAN'S DAY (WED, NOV 11)
THANKSGIVING DAY (THUR, NOV 26)

DAY AFTER THANKSGIVING (FRI, NOV 27)
CHRISTMAS EVE (THURS, DEC 24)
CHRISTMAS DAY (FRI, DEC 25)

2010

S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
JANUARY							FEBRUARY							MARCH						
					1	2														
3	4	5	6	7	8	9	1	2	3	4	5	6		1	2	3	4	5	6	
10	11	12	13	14	15	16	7	8	9	10	11	12	13	7	8	9	10	11	12	13
17	18	19	20	21	22	23	14	15	16	17	18	19	20	14	15	16	17	18	19	20
24	25	26	27	28	29	30	21	22	23	24	25	26	27	21	22	23	24	25	26	27
31							28							28	29	30	31			
MAY							JUNE							JULY						
						1											1	2	3	
2	3	4	5	6	7	8	6	7	8	9	10	11	12	4	5	6	7	8	9	10
9	10	11	12	13	14	15	13	14	15	16	17	18	19	11	12	13	14	15	16	17
16	17	18	19	20	21	22	20	21	22	23	24	25	26	18	19	20	21	22	23	24
23	24	25	26	27	28	29	27	28	29	30				25	26	27	28	29	30	31
30	31																			
SEPTEMBER							OCTOBER							NOVEMBER						
											1	2								
5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27
26	27	28	29	30			24	25	26	27	28	29	30	28	29	30				
DECEMBER							2010 PROPOSED HOLIDAY SCHEDULE – CITY HALL CLOSED (SHOWN ITALICIZED)							2010 PROPOSED HOLIDAY SCHEDULE – CITY HALL CLOSED (SHOWN ITALICIZED)						
							INDEPENDENCE DAY (SUN, JUL 4)							DAY AFTER THANKSGIVING (FRI, NOV 26)						
							LABOR DAY (MON, SEP 6)							CHRISTMAS EVE (FRI, DEC 24)						
							VETERAN'S DAY (THUR, NOV 11)							CHRISTMAS DAY (SAT, DEC 25)						
							THANKSGIVING DAY (THUR, NOV 25)													

NEW YEAR'S DAY (FRI, JAN 1)
MARTIN LUTHER KING JR. DAY (MON, JAN 18)
PRESIDENT'S DAY (MON, FEB 15)
MEMORIAL DAY (MON, MAY 31)

INDEPENDENCE DAY (SUN, JUL 4)
LABOR DAY (MON, SEP 6)
VETERAN'S DAY (THUR, NOV 11)
THANKSGIVING DAY (THUR, NOV 25)

DAY AFTER THANKSGIVING (FRI, NOV 26)
CHRISTMAS EVE (FRI, DEC 24)
CHRISTMAS DAY (SAT, DEC 25)

2011

S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S							
JANUARY							FEBRUARY							MARCH							APRIL						
						1																					
2	3	4	5	6	7	8																					
9	10	11	12	13	14	15	6	7	8	9	10	11	12														
16	17	18	19	20	21	22	13	14	15	16	17	18	19	3	4	5	6	7	8	9							
23	24	25	26	27	28	29	20	21	22	23	24	25	26	10	11	12	13	14	15	16							
30	31						27	28						17	18	19	20	21	22	23							
MAY							JUNE							JULY							AUGUST						
1	2	3	4	5	6	7																					
8	9	10	11	12	13	14	5	6	7	8	9	10	11	3	4	5	6	7	8	9							
15	16	17	18	19	20	21	12	13	14	15	16	17	18	10	11	12	13	14	15	16							
22	23	24	25	26	27	28	19	20	21	22	23	24	25	17	18	19	20	21	22	23							
29	30	31					26	27	28	29	30			24	25	26	27	28	29	30							
SEPTEMBER							OCTOBER							NOVEMBER							DECEMBER						
4	5	6	7	8	9	10	2	3	4	5	6	7	8														
11	12	13	14	15	16	17	9	10	11	12	13	14	15	6	7	8	9	10	11	12							
18	19	20	21	22	23	24	16	17	18	19	20	21	22	13	14	15	16	17	18	19							
25	26	27	28	29	30		23	24	25	26	27	28	29	20	21	22	23	24	25	26							
</																											



**CONCURRENT MEETING
CITY COUNCIL/COMMUNITY REDEVELOPMENT AGENCY (CRA)/
RANCHO CORDOVA FINANCING CORPORATION (RCFC)**

City Hall
2729 Prospect Park Drive, Rancho Cordova

Monday, November 16, 2009

5:30 P.M. – Regular Meeting
David B. Roberts Council Chambers

AGENDA

1. REGULAR MEETING – CALL TO ORDER / ROLL CALL

Council Members Budge, Sander, McGarvey, Cooley, and Mayor Skoglund

2. METRO CABLE TV TELEVISION ANNOUNCEMENT

The City Clerk will announce the meetings video recording and playback schedules.

3. PLEDGE OF ALLEGIANCE

The Mayor will call on Boy Scout Troop 363 to Perform Flag Ceremony and Lead the Pledge of Allegiance.

4. INVOCATION

Larry Stafford, Cordova Church of Christ, will give the invocation.

5. PRESENTATIONS

- 5.1 Presentation of Introduction of Chief Don Meyer, Sacramento County Probation Department.
- 5.2 Presentation of Proclamation to Rob Wells in Honor of Boy Scout Troop 363's 50th Anniversary.
- 5.3 Introduction of New City Employee: Facilities Services Representative Laurel Bane by Facilities Manager Todd Humphrey.
- 5.4 Presentation by Council Member Budge on Visit to Japan.
- 5.5 Recognition of Council Member Sander's Birthday on November 25th.

BREAK FOR CAKE IN RECOGNITION OF COUNCIL MEMBER SANDER'S BIRTHDAY

6. PUBLIC COMMENT

Citizens wishing to address the Council for any matter on the Consent Calendar or not on the agenda may do so at this time by completing and submitting a (blue) Speaker Card to the City Clerk. **For items on the agenda, speakers will be called up to the podium by the Mayor at the point on the agenda when the item will be heard.** Speakers are encouraged to keep comments to three minutes or less and to state name and community of residence.

Note, under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any unagendized item unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

7. COUNCIL REPORTS

8. CONSENT CALENDAR ITEMS

- 8.1 **Subject:** Meeting Minutes of Regular Meeting of November 2, 2009
Recommendation: Adopt Minutes.
- 8.2 **Subject:** Ordinance Amending Section 4.22.155(a) of the Rancho Cordova Municipal Code to Increase the Number of Card Tables that a Licensed Cardroom May Operate or Maintain Within the City from Nine to Thirteen (**Continued from November 2, 2009**)
Recommendation: Continue 2nd reading of Ordinance No. 21-2009 to a date not yet determined in the future.
Result of Recommended Action: Adoption of this Ordinance will amend Section 4.22.115(a) of the Rancho Cordova Municipal Code. The ordinance will increase the number of card tables that a licensed cardroom may operate or maintain within the City from nine (9) card tables to a maximum of thirteen (13) card tables. If table demands meet the operators projections, the increase will generate at least twelve thousand dollars (\$12,000) in additional revenue for the City annually.
Staff Report: Ted Gaebler, City Manager's Office and Adam U. Lindgren, City Attorney's Office
Advances Goals: 11
- 8.3 **Subject:** Resolution Authorizing the City Manager to Execute Contract No. 124-2009 between the City of Rancho Cordova and EDAW, Inc. for Consulting Services for the Sunrise Douglas Community Plan/Sunridge Specific Plan Environmental Impact Report (EIR) in the Amount of \$143,933
Recommendation: Adopt Resolution No. 98-2009.
Result of Recommended Action: Adoption of this resolution will authorize the City Manager to execute a contract with EDAW, Inc. to complete amendments to the Sunrise Douglas Community Plan/Sunridge Specific Plan Environmental Impact Report. This effort will resolve certain obligations of the City as determined in the Vineyards litigation. Funding for this work project will be provided by owners of underdeveloped land within the Sunridge Douglas Community Plan area.
Staff Report: Paul Junker, Planning Department
Advances Goals: 1, 6, 8, and 13

- 8.4 **Subject:** Resolution Authorizing the City Manager to Execute Second Contract Amendment No. 131-2009 between the City of Rancho Cordova and Mark Thomas & Company for Engineering Design Services for Folsom Boulevard Streetscape Enhancement Project in the Amount of \$950,000
Recommendation: Adopt Resolution No. 103-2009.
Result of Recommended Action: Adoption of this resolution will increase the total contract amount from \$1,361,186 to a not to exceed amount of \$2,311,186. The contract amendment will provide additional design services for the completion of the next two phases of the Folsom Boulevard Streetscape Enhancement Project. The next phase extends from Mather Field Road to 1000' west of Sunrise Boulevard. The final phase will be from Rod Beaudry Drive to Mather Field Road. Construction of the preliminary phase of the project was completed in early 2008 and consisted of landscaped medians, new traffic signals, new pavement striping, and bicycle and pedestrian improvements along Folsom Boulevard from Coloma Road to Cordova Lane.
Staff Report: Cyrus Abhar, Public Works Department
Advances Goals: 1, 2, 6, and 8
- 8.5 **Subject:** Resolution Declaring the Results of Mail Ballot Election for Rancho Cordova Transit-Related Services Special Tax Area Zone 16 (11301 Dismantle Court)
Recommendation: Adopt Resolution No. 111-2009.
Result of Recommended Action: Adoption of this resolution will declare the results of the transit-related services tax election concerning Transit-Related Services Special Tax Area Zone 16 that will assist the City in meeting the costs of providing City transit-related services by establishing a special tax for transit services for the 11301 Dismantle Court project.
Staff Report: Cyrus Abhar, Public Works Department
Advances Goals: 2 and 11
- 8.6 **Subject:** Resolution Approving Annexation of 11301 Dismantle Court Project to the City of Rancho Cordova Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance)
Recommendation: Adopt Resolution No. 112-2009.
Result of Recommended Action: Adoption of this resolution declares the results of the special mailed-ballot election for the 11301 Dismantle Court Project Annexation to Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance, orders the annexation, authorizes the special tax levy on that project, and directs the recording of the Amended Notice of Special Tax Lien. There is no financial impact to existing residents.
Staff Report: Cyrus Abhar, Public Works Department
Advances Goal: 11
- 8.7 **Subject:** Quarterly Treasurer's Report
Recommendation: Receive and file report.
Result of Recommended Action: This report provides Council with information concerning the City's investment portfolio. This report will meet requirements as provided by state law.
Staff Report: Donna Silva, Finance Department
Advances Goal: 10

9. CONSENT PUBLIC HEARING ITEMS

NONE

10. PUBLIC HEARING ITEMS

- 10.1 **Subject:** Community Redevelopment Agency Resolution of Necessity for Eminent Domain Proceedings to Determine that the Public Interest and Necessity Require the Acquisition of 10447 Folsom Boulevard for the Rancho Cordova Redevelopment Project

Recommendation: Adopt Resolution No. CRA-9-2009.

Result of Recommended Action: Adoption of this Community Redevelopment Agency Resolution of Necessity will authorize the Agency Executive Director to direct the filing of an action in eminent domain to acquire the subject property for the Rancho Cordova Redevelopment Project.

Staff Report: Reed Flory, Economic Development Department, Housing Administration

Advances Goal: 1, 4, 5, 6, 7, 8, 9, 10, 11, and 13

GROWING STRONG NEIGHBORHOODS

COUNCIL ACTING AS COMMUNITY REDEVELOPMENT AGENCY

11. REGULAR CALENDAR ITEMS

- 11.1 **Subject:** 2010 City Council Meeting Schedule

Recommendation: Staff recommends Council discuss and confirm its meeting schedule for 2010.

Result of Recommended Action: Action on this item will confirm the 2010 meeting schedule for the members of the Rancho Cordova City Council.

Staff Report: Ted Gaebler, City Manager's Department

Advances Goals: 1 through 13

- 11.2 **Subject:** Resolution Rescinding, Setting Aside, and Vacating Resolution No. 105-2006, Certifying an Environmental Impact Report and Adopting Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring Plan for the Preserve at Sunridge Project, Ordinance No. 40-2006 Approving a Special Planning Area Rezone for the Preserve at Sunridge Project, Resolution No. 108-2006 Approving a Tentative Subdivision Map for the Preserve at Sunridge Project, and Ordinance No. 41-2006 Approving Department Agreement RC-03-052 for the Preserve at Sunridge Project in Order to Comply with Peremptory Writ of Mandate Issued by the Sacramento County Superior Court

Recommendation: Adopt Resolution No. 113-2009.

Result of Recommended Action: Adoption of this resolution will allow the City to file a required response to the decision issued by the Sacramento County Superior Court on September 28, 2009. This resolution will rescind, set aside, and vacate the described land use approvals for the Preserve at Sunridge Project.

Staff Report: Adam U. Lindgren, City Attorney's Office

Advances Goal: 4, 6, 7, and 8

12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

13. CITY MANAGER'S REPORT

Planning Department Update

14. ADJOURNMENT

ADDITIONAL INFORMATION

UNLESS THE COUNCIL ADOPTS A MOTION TO EXTEND THE MEETING, ANY ITEM THAT IS NOT INITIATED BEFORE 11 P.M. WILL BE CONTINUED TO THE NEXT DAY AT 5:30 P.M. OR SCHEDULED ON THE NEXT REGULAR MEETING AGENDA OF THE COUNCIL.

Public documents related to items on the open session portion of this agenda, which are distributed to the City Council less than 72 hours prior to the meeting, shall be available for public inspection at the time the documents are distributed to the Council. Documents are available for inspection at the City Clerk's office located in Rancho Cordova City Hall.

The agenda items are accessible on the City's website at www.cityofranhocordova.org on Thursdays prior to the Regular City Council Meeting.

CITYWIDE GOALS - (Adopted March 20, 2006)	
13.	Continue To Provide Regional Leadership
12.	Establish Logical (City) Boundaries
11.	Practice Sound Fiscal Management
10.	Foster Responsible Citizenship
9.	Drive Diverse Economic Opportunities
8.	Sustain a Livable Community
7.	Improve the Quality of Housing In Rancho Cordova
6.	Ensure a Safe Community
5.	Establish a Vibrant Downtown
4.	Ensure the Availability of the Best Public Services in the Region
3.	Champion Employee Development & High Performance Work Environment
2.	Improve Transportation & Connectivity
1.	Foster a Positive Image of Rancho Cordova

UPCOMING MEETINGS	
<i>Tuesday, November 17, 2009</i>	<i>5:30 p.m. Special Meeting – CLOSED SESSION - Annual Review and Development for City Manager and Departments</i>
Wednesday, November 25, 2009	FURLOUGH DAY – CITY HALL CLOSED
Thursday & Friday, November 26 and 27, 2009	THANKSGIVING DAY HOLIDAY – CITY HALL CLOSED
<i>Monday, December 7, 2009</i>	<i>4:00 p.m. Study Session on HCP Discussions - TENTATIVE</i> <i>5:30 p.m. Regular Meeting</i>
<i>Monday, December 21, 2009</i>	<i>5:30 p.m. Regular Meeting</i>
Wednesday, December 23, 2009	FURLOUGH DAY – CITY HALL CLOSED
Thursday and Friday, December 24 & 25, 2009	CHRISTMAS HOLIDAY – CITY HALL CLOSED
Thursday, December 31, 2009	FURLOUGH DAY – CITY HALL CLOSED

If you have any technical questions related to the agenda items, please contact the appropriate department as follows:

DEPARTMENTAL GENERAL TELEPHONE NUMBERS	
Building Department	(916) 851-8760
City Attorney's Office	(916) 556-1531
City Clerk's Department	(916) 851-8720
City Manager's Office	(916) 851-8800
Communications Department	(916) 851-8791
Economic Development Department	(916) 851-8780
Finance Department	(916) 851-8730
Human Resources Department	(916) 851-8740
IT Department	(916) 851-8700
Neighborhood Services – Animal Services	(916) 851-8770
Parks & Recreation (Cordova Recreation & Park District)	(916) 362-9602
Planning Department	(916) 851-8750
Public Works Department	(916) 851-8710
Rancho Cordova Police Department	(916) 875-9673
Redevelopment Department	(916) 851-8780
Sac Metro Fire District	(916) 566-4000

The Rancho Cordova City Council/CRA/RCFC will be videotaped in its entirety and will be cablecast without interruption on Metro Cable 14, the Government Affairs Channel on the Comcast and SureWest Cable Systems. Closed Captioning will be available on the playback cablecast. Tune to Metro Cable Channel 14, for playback times. A VHS copy is available for check out from any library branch, a DVD copy is available from the City Clerk's Department, and a webcast of this meeting will be available for viewing via Granicus Video Streaming from the City's website within 48 hours of adjournment of this meeting. The City does not control scheduling of this telecast and persons interested in watching the televised meeting should confirm this schedule with Metro Cable TV, Channel 14.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Mindy Cuppy, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the November 16, 2009 Regular Meeting of the Rancho Cordova City Council/CRA/RCFC was posted and available for review on November 13, 2009 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city web site at www.cityofranhocordova.org.

Signed this 13th day of November 2009 at Rancho Cordova, California.


Mindy Cuppy, City Clerk



**CONCURRENT MEETING
CITY COUNCIL/COMMUNITY REDEVELOPMENT AGENCY (CRA)/
RANCHO CORDOVA FINANCING CORPORATION (RCFC)**

City Hall
2729 Prospect Park Drive, Rancho Cordova

Monday, November 2, 2009

5:30 P.M. – Regular Meeting
David B. Roberts Council Chambers

MINUTES

1. REGULAR MEETING – CALL TO ORDER / ROLL CALL

Mayor Skoglund called the regular meeting to order in the David B. Roberts Council Chambers at 5:41 p.m.

Council Members Present: McGarvey, Sander, Cooley, and Mayor Skoglund

Council Members Absent: Budge

Staff Present: Gaebler, Lindgren, Chinn, Haven, Cuppy, Lehr, Oliver, Abhar, Junker, Blair, Loveless, Hadley, Harriman, Meeks, Silva, Pearl, and Flory

2. METRO CABLE TV TELEVISION ANNOUNCEMENT

The City Clerk announced the meetings video recording and playback schedules.

3. PLEDGE OF ALLEGIANCE

The Mayor called on Council Member Bob McGarvey to lead the Pledge.

4. INVOCATION

Tim Layfield, First Covenant Church, gave the invocation.

5. PRESENTATIONS

NONE

6. PUBLIC COMMENT

NONE

7. COUNCIL REPORTS

Council reported on events since the last meeting.

8. CONSENT CALENDAR ITEMS – ROLL CALL VOTE

ACTION: Motion by Cooley second by McGarvey and carried by a 4:0 roll call vote (Budge absent) Council approved the Consent Calendar and continued Agenda Item 8.2 to November 16, 2009.

8.1 **Subject:** Meeting Minutes:

a) Special and Regular Meeting Minutes of October 19, 2009; and

b) Special Meeting Minutes of October 27, 2009

Recommendation: Adopt Minutes.

8.2 **Subject:** Ordinance Amending Section 4.22.155(a) of the Rancho Cordova Municipal Code to Increase the Number of Card Tables that a Licensed Cardroom May Operate or Maintain Within the City from Nine to Thirteen

Recommendation: Waive second reading and adopt Ordinance No. 21-2009. **(Roll Call Vote)**

Result of Recommended Action: Adoption of this Ordinance will amend Section 4.22.115(a) of the Rancho Cordova Municipal Code. The ordinance will increase the number of card tables that a licensed cardroom may operate or maintain within the City from nine (9) card tables to a maximum of thirteen (13) card tables. If table demands meet the operators projections, the increase will generate at least twelve thousand dollars (\$12,000) in additional revenue for the City annually.

Staff Report: Ted Gaebler, City Manager's Office and Adam U. Lindgren, City Attorney's Office

8.3 **Subject:** Resolution Authorizing the City Manager to Execute Contract No. 70-2009 with Contract Sweeping Services for Street Sweeping Services.

Recommendation: Adopt Resolution No. 75-2009.

Result of Recommended Action: Adoption of this resolution will allow the City Manager to execute a contract with Contract Sweeping Services for street sweeping services.

Staff Report: Cyrus Abhar and Steve Harriman, Public Works Department

8.4 **Subject:** Resolution Authorizing the City Manager to Execute a Purchase Agreement with RFS Electronics for Property Located at 2880 Gold Tailing Court

Recommendation: Adopt Resolution No. 108-2009.

Result of Recommended Action: Adoption of this resolution will authorize the City Manager to execute a purchase agreement with RFS Electronics to purchase property located at 2880 Gold Tailings Court adjacent to City-owned property at 2897 Kilgore Road.

Staff Report: Cyrus Abhar, Public Works Department

8.5 **Subject:** Resolution Approving the Substitution of Developer for the Subdivision Improvement Agreement Related to Subdivision No. RC-03-001.02A Sunridge Park Village No. 2A and Authorizing the City Manager to Execute a New Development Agreement with Denver Pacific Limited Partnership, a California Limited Partnership

Recommendation: Adopt Resolution No. 109-2009.

Result of Recommended Action: Adoption of this resolution will transfer development agreement obligations from Sunridge Park Limited Partnership, a California Limited Partnership to Denver Pacific Limited Partnership, a California Limited Partnership.

Staff Report: Cyrus Abhar, Public Works Department

- 8.6 **Subject:** Sphere of Influence Annexation – Adoption of Resolution Authorizing the City Manager to Execute an Agreement Between the City of Rancho Cordova and the County of Sacramento Regarding Regional Housing Needs Allocation Upon Annexation
Recommendation: Adopt Resolution No. 142-2009.
Result of Recommended Action: Adoption of this resolution, with the County's concurrence, along with the previously executed agreements related to property tax exchange and revenue sharing will allow Sacramento Local Agency Formation Commission (LAFCO) to move forward with processing the annexation request.
Staff Report: Joe Chinn, City Manager's Office and Adam U. Lindgren, City Attorney's Office

9. CONSENT PUBLIC HEARING ITEMS

Mayor Skoglund opened the public comment period. There were no speakers. Mayor Skoglund closed the public comment period.

ACTION: Motion by Sander second by McGarvey and carried by a 4:0 vote (Budge absent) Council approved the Consent Public Hearing Items and adopting Resolution No. 106-2009 and Resolution No. 107-2009.

- 9.1 **Subject:** Resolution Approving Design Review for Mather Office Campus Building B (Project No. RC-08-368) Located on the North Side of Peter A. McCuen Boulevard, West of Schriever Avenue
Recommendation: That Council:
a) Accept the Planning Commission recommendation to find that the adopted Environmental Impact Report prepared for the Mather Field Specific Plan adequately addresses the environmental impacts for the project; and
b) Adopt Resolution No. 107-2009.
Result of Recommended Action: Adoption of this resolution will approve the design review and allow the applicant to construct a new, approximately 114,000 square foot office building in the Mather Field Special Planning Area (MFSPA). The project is the second of two two-story office buildings planned for this site on Peter A. McCuen Boulevard, and will continue the build-out of the MFSPA with large scale office uses.
Staff Report: Shannan Loveless, Planning Department
- 9.2 **Subject:** Resolution Approving Design Review for Taco Bell (Project No. DD6621) Located at 3411 Bradshaw Road
Recommendation: That Council:
a) Accept the Planning Commission recommendation to determine the project is exempt from the provisions of the California Environmental Quality Act (CEQA) Guidelines, Section 15302, Replacement or Reconstruction; and
b) Adopt Resolution No. 106-2009.
Result of Recommended Action: Adoption of this resolution will approve design review and allow the applicant to demolish the existing Taco Bell restaurant and the subsequent reconstruction of the new restaurant in its place. The new building and landscaping will enhance the character of the Bradshaw Road vicinity.
Staff Report: Shannan Loveless, Planning Department

10. PUBLIC HEARING ITEMS

NONE

11. REGULAR CALENDAR ITEMS

- 11.1 **Subject:** Report on the Potential Winter Homeless Shelter Adjoining the Mather Community Campus at Mather Commerce Center Operated by the County of Sacramento in the City of Rancho Cordova

Recommendation:

- a) Continue to partner with the county in the possible development of a emergency winter shelter facility within the Mather Field Special Planning Area; and
- b) Consider the creation of a more effective and public forum for the discussion of issues involving City incorporated area within the County's Mather Field Special Plan Area including the formation of a Joint Powers Authority (JPA).

Result of Recommended Action: Receive direction from Council to provide to County and City staff.

Staff Report: Curt Haven, Economic Development Department and Reed Flory, Housing Services

Mayor Skoglund opened the public comment period. The following individuals addressed the Council:

- Eugene Morris in opposition to the item
- Roger Harris in opposition to the item
- Conrade Mayer neutral to the item
- Rod Borba in opposition to the item
- Alan Withers in support of the item
- Scottie Moore neutral to the item

Mayor Skoglund closed the public comment period.

AT THIS POINT the Council took a brief recess.

ACTION: Discussion item only; no action taken. By consensus, Council tabled this item to allow County and City staff more time to research and determine best solutions for project implantation, and then to bring back to Council at a date not yet determined in the future for further discussion.

12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

NONE

13. CITY MANAGER'S REPORT

City Manager Ted Gaebler called the Rancho Cordova Police Department to provide updates. Chief of Police Reuben Meeks reported on updates with the Rancho Cordova Police Department and presented a thirteen minute video explaining status of activities in 2009.

14. ADJOURNMENT OF REGULAR MEETING

Mayor Skoglund adjourn the regular meeting to closed session in the Community Board Room at 8:46 p.m.

15. CLOSED SESSION

Mayor Skoglund called the closed session to order in the Community Board Room at 9:00 p.m.

Council Members Present: McGarvey, Sander, Cooley, and Mayor Skoglund

Council Members Absent: Budge

Staff Present: Gaebler, Chinn, Lindgren

Council adjourned to Closed Session to discuss the following item:

Conference with Legal Counsel – Existing Litigation – Government Code Section 54956.9(a) – (one case) – Name of case: California Native Plant Society v. City of Rancho Cordova et al; Case No. 07CS01311.

16. OPEN SESSION – REPORT OUT FROM CLOSED SESSION

City Attorney Adam Lindgren reported there was no reportable action taken in Closed Session.

17. ADJOURNMENT

Mayor Skoglund adjourned the closed session at 9:12 p.m.

Mindy Cuppy, City Clerk

CITY OF RANCHO CORDOVA

ORDINANCE NO. 21-2009

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
AMENDING MUNICIPAL CODE SECTION 4.22.115(A) OF CHAPTER 4.22 ENTITLED,
"CARDROOMS," TO INCREASE THE NUMBER OF CARD TABLES THAT A LICENSED
CARDROOM MAY OPERATE OR MAINTAIN WITHIN THE CITY FROM NINE TO THIRTEEN**

RECITALS

WHEREAS, Section 3.1 of Contract No. 53-2009 entitled, "Revenue Agreement between the City of Rancho Cordova and Cal Pac Rancho, LLC dba Cordova Restaurant and Casino" entered into on April 29, 2009 ("Revenue Agreement") provides that the City Manager will propose that the City Council introduce an ordinance amending Section 4.22.115(A) of the Rancho Cordova Municipal Code to increase the number of card tables that a licensed cardroom may operate and maintain within the City from nine (9) to thirteen (13) prior to November 1, 2009; and

WHEREAS, adoption of this ordinance would amend Section 4.22.115(A) of the Rancho Cordova Municipal Code to increase the number of card tables that a licensed cardroom may operate and maintain within the City from nine (9) to a maximum of thirteen (13), as authorized by Section 19965 of the California Business and Professions Code; and

WHEREAS, increasing the number of card tables allowed at licensed cardrooms within the City to thirteen (13) will benefit the City by increasing revenue to the City in form of card table operating fees and revenue derived from the gross gaming revenue received by Cordova Restaurant and Casino pursuant to the terms of the Revenue Agreement.

**THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS
FOLLOWS:**

Section 1. Amendment of Code. Section 4.22.115(A) of the Rancho Cordova Municipal Code entitled, "Equipment – Separation," is hereby amended to read as follows:

A. No cardroom shall maintain or operate more than thirteen card tables at any one time. Tables used during tournaments or free special events shall count toward this maximum table limit. Chairs shall be provided for all card players. No more than 12 players shall be permitted to play at any time at any one table. Authorized games shall not utilize dominoes, tiles, dice, spinning wheels, electronic player-controlled machines or any other device other than the standard decks of playing cards traditionally used for playing such games, poker chips, and the optional dealer shoes, except, to the extent such equipment is allowed by applicable state law and/or state regulations, such equipment shall also be allowed in the city.

Section 2. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or

phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

Section 3. Effective Date

Within fifteen (15) days after adoption, a Summary of this Ordinance shall be published once in the Grapevine Independent or the Sacramento Bee, a newspaper of general circulation printed and published in Sacramento County and circulated in the City of Rancho Cordova, in accordance with Government Code section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its inception.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

MEMORANDUM



DATE: November 16, 2009

TO: Honorable Mayor and Council Members

FROM: Paul Junker, Planning Director

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT NO. 124-2009 BETWEEN THE CITY OF RANCHO CORDOVA AND EDAW, INC. FOR CONSULTING SERVICES FOR THE SUNRISE DOUGLAS COMMUNITY PLAN/SUNRIDGE SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT (EIR) IN THE AMOUNT OF \$143,933

APPLICANT/DEVELOPER:

Sunrise Douglas Property Owners Group
John Hodgson - Project Manager
1640 Lead Hill Blvd. Suite 220
Roseville, CA 95661

PROJECT: Sunrise Douglas Community Plan/Sunridge Specific Plan EIR

FILE: N/A

LOCATION: East of Sunrise Blvd, south of Douglas Road

APN: N/A

PLANNER: Paul Junker, Planning Director

RECOMMENDATION

Adopt Resolution No. 98-2009.

RESULT OF RECOMMENDED ACTION

Adoption of this resolution will authorize the City Manager to execute a contract with EDAW, Inc. to complete amendments to the Sunrise Douglas Community Plan/Sunridge Specific Plan Environmental Impact Report. This effort will resolve certain obligations of the City as determined in the Vineyards litigation. Funding for this work project will be provided by owners of underdeveloped land within the Sunridge Douglas Community Plan area.

BACKGROUND

The Sunrise Douglas Community Plan/Sunridge Specific Plan was approved by Sacramento County prior to incorporation of the City of Rancho Cordova. Following incorporation, the projects approvals were challenged in the Vineyards litigation. As the land use agency with current authority over the Community Plan area, the City of Rancho Cordova is now required to recertify the EIR for the Sunrise Douglas Community Plan/Sunridge Specific Plan according to court order to resolve certain obligations of the City, as determined in the Vineyards litigation.

This is working in conjunction with owners of undeveloped land within the Sunrise Douglas Community Plan area to complete the required amendments and recertification of the Community Plan/Specific Plan EIR. Until the City adopts the revised documents, the City is not able to approve projects that require discretionary or legislative actions to amend existing projects or approve new projects.

FISCAL IMPACTS

All costs associated with amending the Community Plan/Specific Plan EIR will be funded by property owners with the Community Plan Area; therefore, this effort will have no direct fiscal impact on the City.

RECOMMENDED MOTION

"I move the City Council adopt the resolution authorizing the City Manager to execute a consultant services agreement with EDAW, Inc. for the preparation of the Sunrise Douglas Community Plan/Sunridge Specific Plan EIR."

ATTACHMENT(S)

Resolution No. 98-2009 including **(Exhibit A)** Scope of Services.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 98-2009

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
AUTHORIZING THE EXECUTION OF A CONSULTANT SERVICES AGREEMENT BETWEEN
EDAW, INC. AND THE CITY OF RANCHO CORDOVA FOR PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT FOR SUNRISE DOUGLAS COMMUNITY
PLAN/SUNRIDGE SPECIFIC PLAN**

WHEREAS, the City of Rancho Cordova ("City") has determined that the preparation of an Environmental Impact Report ("EIR") for the Sunrise Douglas Community Plan/Sunridge Specific Plan is necessary in order to comply with the requirements of the California Environmental Quality Act ("CEQA") and National Environmental Protection Act (NEPA); and

WHEREAS, the City solicited proposals from environmental consultant firms for the preparation of an EIR for the Project; and

WHEREAS, following review of the proposals received, EDAW, Inc. ("Consultant") was determined to be the most appropriate consultant firm to prepare the EIR/EIS for the Project; and

WHEREAS, funding for preparation of the EIR shall be provided by the project applicants and shall not use money from the City's general fund.

NOW, THEREFORE, BE IT RESOLVED the City Council hereby authorizes the City Manager to execute a consultant services agreement between EDAW, Inc. and the City of Rancho Cordova, based on the scope of work attached, per **Exhibit A**. The form of the final contract shall be approved by the City Attorney and shall be for an amount not to exceed One hundred forty three thousand nine hundred thirty three dollars (\$143,933.00).

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of ____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

EDAW Inc
2022 J Street, Sacramento, California 95811
T 916.414.5800 F 916.414.5850 www.edaw.com

October 21, 2009

Mr. Paul Junker
City of Rancho Cordova
Planning Director
2729 Prospect Park Dr.
Rancho Cordova, CA 95670

Subject: Sunrise Douglas Community Plan/Sun Ridge Specific EIR Request for New Contract

Dear Mr. Junker:

EDAW is submitting this scope of work to complete the preparation of the EIR for the Revised Sunrise Douglas Community Plan/Sunridge Specific Plan (Project EIR). The attached scope of work responds to the issues that have been raised through past litigation and issues identified by City staff. EDAW will rely substantially on work previously completed for the original Sunrise Douglas Community Plan/Sunridge Specific Plan project, as well as subsequent analysis completed by EDAW in support of the Rio del Oro project and other City directed effort. The tasks outlined below describe the scope of the effort to prepare an ADEIR, produce a public DEIR document, and respond to a moderate number of comments to produce a Final EIR. A cost spreadsheet for the proposed tasks is included as Attachment A.

The tasks outlined below describe the scope of the effort required to complete the ADEIR, incorporate comments from the project team, produce a public DEIR document, and respond to a moderate number of comments to produce the Final EIR. A cost spreadsheet for the proposed tasks is included as Attachment A.

Task 1: Project Initiation/Organization

Substantial effort is required by the project team to gather all available regional water supply information, gather specific project-related information (e.g., land use data, status of water supply allocations). EDAW anticipates that the following would be required:

- meetings with representatives of SCWA regarding water supply availability and entitlements;
- Coordination with staff of Pacific Municipal Consultants regarding the identification of accurate data for approved land use maps within the SDCP/SRSP project area; and
- Coordination with the City regarding presentation of information as it relates to standards outlined by the courts.

EDAW's Vineyard team will also need to perform a detailed review of the water supply analysis prepared for the Rio Del Oro project to determine how these two projects could be better streamlined and synthesized to provide consistency in the presentation of similar data

and information for both projects. EDAW will prepare a detailed outline for the water supply chapter of the EIR. This outline will serve as the foundation of the subsequent work that will be performed to prepare the ADEIR.

Task 2: Preparation of ADEIR (New Task)

Subtask 1: Respond to Comments Received on the ADEIR

EDAW proposes to submit an outline of the EIR and water supply section to the City and the applicant for review and approval. EDAW will not prepare the EIR section until approval of the outline has been received.

Subtask 1a: Introduction/Project Description

EDAW will prepare Introduction and Project Description of the ADEIR. These sections will address the following:

- Update project approvals in accordance with declarations prepared for litigation;
- Update project water demand calculations to reflect changed land uses that have reduced demand. It is assumed that the City will provide a description of the changed land uses of concern.
- Update the discussion of the North Vineyard Wellfield to reflect current information regarding this facility. It is assumed that the City will provide current information regarding water allocations from this facility.
- Update the project objectives based on input received from the City and the courts.

Subtask 1b: Water Supply Section of ADEIR

EDAW will prepare the water supply section of the ADEIR. The analysis will focus on the project's long-term water supply and will emphasize this point to make it clear for the courts. Technical information related to Zone 40, Freeport Water Supply Project (FRWP), and the Replacement Water Supply Project (RWSP) will be removed from each individual technical resource section. Comments addressing the uncertainty analysis and curtailment of development will be addressed and, where appropriate, information from the Rio Del Oro EIR will be used in the analysis. The long-term water supply analysis will analyze alternative sources of water and the impacts of obtaining these alternative sources if the analysis shows the water supply is not "reasonably likely". EDAW will also coordinate with the project team to determine whether new or revised standards of significance are appropriate for this project and, if changed, will revise the analysis to reflect these changed standards. Finally, consistent with guidance received from the courts, EDAW will include an analysis of public trust resources as they relate to the Cosumnes River. Where appropriate, mitigation measures will be updated to reflect the mitigating policies of the City of Rancho Cordova's General Plan and Infrastructure Element.

Subtask 1c: Other Technical Sections of ADEIR

Some technical data and analyses will need to be expanded and enhanced based on information that will be provided by the City and applicant group or other new information that has come to light over the past year. EDAW will incorporate these technical issues as appropriate and directed by the City and applicant team. Where appropriate, EDAW will include an evaluation of public trust resources in individual resource sections.

Subtask 1d: Prepare Fisheries Analysis

As requested by the City, EDAW will prepare a Fisheries Resources chapter of the EIR to address Cosumnes River issues as well as issues associated with fishery resources within the Sacramento River. EDAW proposes to contract with Robertson-Bryan, Inc., who will prepare a technical memorandum describing the changed water supply/water management conditions in the region and the effect that such changed conditions have on fisheries resources impacts previously identified in other project-related EIRs, including the Zone 40 EIR, Eastern County Replacement Water Supply Project Draft EIR, and the Freeport Regional Water Supply project. A copy of their proposed scope of work is included as Attachment B.

The fishery resources chapter will document the latest data and information regarding fishery resources in the Sacramento River, the status of water diversions upstream and downstream of the Freeport Water Intake Structure, and the latest information available regarding the OCAP and potential changes in response to judicial decisions. Where appropriate, EDAW will use existing information contained within the Rio Del Oro analysis as it relates to fishery resources along the Sacramento River.

Subtask 1e: Cumulative Analysis

EDAW will prepare the cumulative impacts chapter of the EIR that comprehensively addresses the cumulative water supply actions that are ongoing within the region. This analysis will incorporate, as appropriate, analysis contained in the Zone 40 Water Supply Master Plan EIR, the Freeport Regional Water Supply Project EIR, and Eastern County Replacement Water Supply Project Draft EIR. EDAW will also provide a cumulative context for water supply deliveries in the Sacramento River and Sacramento-San Joaquin Delta. To the degree the project would have a cumulative contribution to water supply, fishery, or other operational impacts it will be analyzed in the cumulative impacts chapter.

Task 3: Preparation of Public DEIR

Once comments are received on the ADEIR, EDAW will attend one meeting/conference call to discuss comments and will incorporate those comments into the EIR. For purposes of this scope of work, 40 hours of technical staff time are allocated to this task. If the comments received on the ADEIR result in the substantial revision or expansions of the analysis in the document prior to publication, an additional scope amendment may be required.

Task 4: Review of Comments and Strategy to Respond to Comments

EDAW will review comments received on the DEIR and will prepare a summary table/matrix of the commenters and issues raised within the comment letter. EDAW will also attend a

meeting with the project team to develop a strategy (including assignments) to respond to comments received.

Task 5: Administrative Final EIR

After comments are received on the Draft EIR, the EDAW team will contact commenting agencies, as necessary, to obtain any needed clarification. The EDAW team will prepare an Administrative Final EIR that will be composed of an introductory chapter, enumerated comment letters and public hearing transcript comments on the Draft EIR, Administrative responses to all comments on the Draft EIR, a summary listing of all text revisions to the Draft EIR, and an Administrative Mitigation Monitoring Plan (MMP). The Final EIR will incorporate the Draft EIR by reference. It will document all changes made to the draft report, but it is assumed that the Draft EIR will not be reproduced as part of the final report. For purposes of this scope of work, it is assumed that 80 hours of technical staff time would be allocated to the preparation of responses to comments. If the number or complexity of comments received on the project would require substantially more effort than currently allocated to this task, EDAW will discuss this with the Client prior to initiating work and a scope amendment may be required.

Task 6: Final EIR and Mitigation Monitoring and Reporting Program

EDAW staff will meet with City staff to discuss the City's comments on the Administrative Final EIR and MMP. Based on comments from City staff, EDAW and the subconsultants will revise the Administrative Final EIR and prepare the Final EIR for public distribution. It is assumed the City will circulate the Final EIR to commenting agencies and will prepare any newspaper publications.

EDAW will update the previously approved Sacramento County (2002) MMP as part of the Final EIR. It is assumed that the City will provide EDAW and electronic copy of the previously approved MMP for modification. The MMP will be based on the impact analysis, and will conform to CEQA Section 21081.6. Where appropriate, obsolete mitigation will be removed and new mitigation described in the EIR will be incorporated. The draft MMP will be provided in tabular format.

Preparation of Findings and Statement of Overriding Considerations is required by Section 15091 and 15093 of the State CEQA Guidelines is not included in this scope of work. If the City would like EDAW to prepare the Findings and Statement of Overriding Consideration an amendment to scope and budget would be required.

Task 7: Public Hearings/Meetings

Key members of the EDAW team will attend up to four Planning Commission and/or City Council public hearings on the Final EIR (assumed to be no longer than four hours each plus preparation time). EDAW will provide an overview of the EIR conclusions, as needed. It is anticipated that Sydney Coatsworth and Amanda Olekszulín from EDAW will attend the hearings. It is assumed that the City will arrange for any needed court reporting/transcripts.

Task 8: Project Meetings

EDAW will attend or participate in 3 additional project team meetings/conference calls (in addition to meetings described in above tasks) to discuss other technical issues that arise. For

purposes of this scope of work it is assumed that these meetings would be 2 hours in length and would be attended by Sydney Coatsworth and Amanda Olekszulín.

Task 9: Project Management

EDAW will manage the preparation of the ADEIR and public DEIR including coordinating with City staff and project team members to ensure the completion of the public DEIR.

SCHEDULE

The following is EDAW's proposed schedule for completion of the above scope of work. This schedule assumes that comments on the administrative draft and final EIRs are received by the dates and durations described below.

Milestone	Weeks from Last Task	Approximate Time
Execute Contract and Receive Notice to Proceed	--	November 16, 2009, 2009
Prepare outline of EIR and submit for review	2 weeks	December 3, 2009
Receive comments on the EIR outline	2 weeks	December 17, 2009
Receive Fisheries Technical Memo from RBI	3 weeks	January 11, 2010
Submit ADEIR for review	7 weeks	March 2, 2010
Hold meeting to discuss comments on the ADEIR	1 week	Week of March 8, 2010
Receive final comments from client	1 week	March 19, 2010
Incorporate client comments and submit Public DEIR to City for Circulation	2 weeks	April 1, 2010
Circulate DEIR for 45-days	1 day	April 2, 2010
Hold public meeting on DEIR within 45-day public review period		TBD
Public review period closes	5 ½ weeks	May 17, 2010
Hold meeting to discuss strategy for response to comments	1 week	Week of May 24, 2010
Submit Administrative Final EIR for review	4 weeks	June 23, 2010
Receive comments on Administrative Final EIR	2 weeks	July 7, 2010
Incorporate comments and submit Final EIR to City for Circulation	2 weeks	July 21, 2010
Circulate FEIR for 10-day agency review period	1 day	July 22, 2010

ASSUMPTIONS

1. The personnel rates in the attached cost spreadsheet have been updated to reflect current 2009 billing rates.
2. This scope of work will be executed on a fixed fee basis with monthly invoices submitted to the Client.
3. The fee and cost amount in Attachment A is a not to exceed amount for this scope of work. EDAW reserves the right to reallocate budget among tasks as necessary to complete the project. However, the costs and fees shall not exceed the authorized amount in Attachment A without prior written authorization from the City.

We are looking forward to completing the work for this project. Please feel free to call us if you have any questions about our submittal.

Sincerely,



Sydney B. Coatsworth, AICP
Managing Principal



Amanda Olekszul
Senior Project Manager

ATTACHMENT A • Sunrise Douglas Community Plan and Sunridge Specific Plan Revised EIR

EDAW TASKS	Rate/Hour	Project Manager Olekszulini	Principal- in-Charge Coatsworth	Asst. Project Manager	Senior Env. Analyst	Sr. Fish Specialist	Env. Analyst	GIS	Graphics	Word Processing	Total Hours	Total Dollars
Task 2. Administrative Draft EIR (ADEIR)												
Water Supply Analysis												
Background research		20	12	26			16				74	\$11,610
Coordination with PMC re: Project Description		8	2	10					4	4	28	\$3,920
Meetings/Conf calls with Project Team on Analysis		8	8	8			4				28	\$4,720
Project Management/Coordination with Agencies		12		16			8				36	\$5,300
Coordination with Agencies		4	4	8							16	\$2,720
Project Management												
Task 2a. ADEIR												
Subtask 1. Respond to Comments on ADEIR										2	2	\$150
Subtask 1a. Intro/Project Description											0	\$0
Introduction		4	1		8						0	\$0
Project Description		6	3		16					2	15	\$2,105
Executive Summary		2	1	8				2	4	6	37	\$4,745
Subtask 1b. Water Supply Section		30	8	52				4		8	19	\$2,325
Subtask 1c. Other Technical Sections		6	12				48	4	8	12	114	\$16,450
Subtask 1d. Fisheries Analysis		8	4			24		4	8	6	72	\$9,360
Subtask 1e. Cumulative Analysis		16	8		40					12	60	\$7,680
										4	68	\$10,020
											0	\$0
Task 3. Public Draft EIR		10	4	24	6			2	8	12	66	\$8,630
		134	67	152	70	24	76	12	32	68	635	\$89,735
Subtotal												
Task 4. Administrative Final EIR		28	16	36				6	12	40	138	\$18,120
Task 5. Review Comments/Strategy to Respond		16	8							2	26	\$4,670
Task 6. Final EIR and MMP		12	8	16				2	2	87	127	\$13,015
Task 7. Public Hearings/Meetings (4 @ 4 hours plus prep)		24	16	16					8	8	72	\$11,240
Task 8. Project Meetings (3 @ 2hrs plus prep)		10	10								20	\$3,900
Task 8. Project Management		36	24	24							84	\$14,940
		46	34	24	0	0	0	8	22	137	104	\$31,705
Subtotal												
Total EDAW Labor Hours		180	101	176	70	24	76	20	54	205	739	
Total EDAW Labor Dollars		\$31,500	\$21,715	\$26,620	\$9,100	\$3,480	\$8,360	\$1,800	\$4,590	\$15,375		\$121,440

ATTACHMENT A • Sunrise Douglas Community Plan and Sunridge Specific Plan Revised EIR

9/23/2009

COST ESTIMATE

DIRECT COSTS		
Subconsultants		
Robertson-Bryan, Inc		\$13,630
Admin Fee 10%		\$1,363
		\$14,993
Printing: (rounded to nearest whole \$)		
2nd ADEIR: 5 copies, 300 pages, \$40 each		\$200
DEIR: 50 copies, 300 pages, \$50 ea.		\$2,500
AFEIR: 5 copies, 100 pages, \$20 ea.		\$100
FEIR: 30 copies, 100 pages, \$20 ea.		\$600
Draft MMRP 5 copies, \$10 ea.		\$50
Final MMRP, 30 copies \$10 ea.		\$300
		\$3,750
Reproduction Subtotal		
Other Reproduction		
Mileage/Parking		\$250
Maps/Supplies/Photos		\$150
Postage/Delivery		\$300
Total Direct Costs		\$18,743
TOTAL ESTIMATED FEE		\$143,933



July 21, 2009

DELIVERED BY EMAIL

Amanda Olekszulín
Associate Principal
EDAW AECOM
2022 J Street
Sacramento, CA 95814

**Re: Proposal to Prepare a Technical Memorandum in Support of EDAW AECOM's
Vineyard EIR Fisheries Resource Section**

Dear Ms. Olekszulín:

Per your request, please accept this letter proposal for Robertson-Bryan, Inc. (RBI) to provide professional services to assist EDAW AECOM in the preparation of the Vineyard EIR Fisheries Resource section by preparing a Technical Memorandum (TM) that addresses changed water supply/water management conditions in the region, and the effect that such changed conditions have on fisheries resources impacts previously identified in project-related EIRs. RBI is pleased to provide technical support to EDAW AECOM for this project.

The Vineyard EIR will correct the deficiencies of the Sunrise Douglas Community Plan/Sun Ridge Specific Plan (SDCP/SRSP) EIR, which was litigated and resulted in the Vineyard Decision. The Vineyard Decision determined that potential fisheries impacts to the Cosumnes River were not properly analyzed in the SDGP/SRSP EIR. As part of their project scoping process, EDAW AECOM determined that subsequent to the completion of the SDGP/SRSP EIR, changed conditions relative to water management in the Sacramento-San Joaquin Delta (Delta) may have altered the existing environment of the project. These changed conditions include, but are not limited to implementation of the December 2008 United States Fish and Wildlife Service Biological Opinion on the effects of the Operations Criteria and Plan (OCAP) for the Central Valley Project (CVP) and State Water Project (SWP) on the Delta Smelt and the 2009 National Marine Fisheries Service Biological Opinion on the effects of the OCAP on Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central California Coast steelhead trout, Southern Distinct Population Segment of the North American green sturgeon, and Southern resident killer whales (collectively referred to as OCAP BOs). While EDAW AECOM has the charge of preparing the Vineyard EIR fisheries resources section in a manner that addresses the deficiencies of the SDGP/SRSP EIR, RBI will prepare a TM that will summarize the changes to the existing environment and will determine whether those changes alter the fisheries resources impacts previously identified in the SDGP/SRSP EIR and other

9888 Kent Street
Elk Grove CA 95624
Phone 916.714.1801
Fax 916.714.1804

1130 Iron Point Road Suite 170
Folsom CA 95630
Phone 916.235.7555
Fax 916.235.7550

881 Cumorah Court
Placerville CA 95667
Phone 530.295.1265
Fax 530.295.8174

1942 Broadway Suite 405
Boulder CO 80302
Phone 303.938.3088
Fax 303.938.6850

www.robertson-bryan.com

project-related EIRs (i.e., Zone 40 Master Plan EIR, Sacramento County's Replacement Water Supply Project EIR, and the Freeport Diversion EIR).

I. SCOPE OF WORK

RBI's scope of services for preparing a TM is provided below. RBI's services for each task will be limited to the scope defined and the budget allocated to the task as defined herein. If it is determined that changed conditions do, in fact, alter the previously identified project-related fisheries resources impacts to the Cosumnes and Sacramento rivers, RBI would notify EDAW AECOM immediately upon making this finding. Such discussion may lead to a modified scope and budget, which would be addressed accordingly through a supplemental proposal.

TASK 1: REVIEW PROJECT DESCRIPTION AND OTHER AVAILABLE PROJECT-RELATED AQUATIC RESOURCE SECTIONS

As an initial task, RBI staff will: (1) review the current project description; (2) review the aquatic resources section of the SDCP/SRSP EIR; (3) review the aquatic resources section of the Zone 40 Master Plan EIR, Replacement Water Supply Project EIR, and Freeport Diversion EIR with particular importance placed on identifying the project-related fisheries resources impacts to the Cosumnes and Sacramento rivers; and (4) review the data used in the preparation of the fisheries resources sections of the four EIRs and determine if all relevant data was compiled. If RBI determines that additional relevant data exists, a description of the additional relevant data and sources will be prepared for incorporation into the TM.

TASK 2: REVIEW RECENT RELEVANT DELTA WATER MANAGEMENT DOCUMENTS/DECISIONS

The Wanger decisions, completion of the OCAP BOs, and other recent actions in the Delta, have the potential to alter the existing environment of the project, relative to the status of water supplies, diversions, and deliveries along the Sacramento and Cosumnes rivers. RBI will review the Wanger decisions, the OCAP BOs, and other relevant documents released subsequent to the completion of the above mentioned project-related EIRs as a means to determine if there are new changed conditions relating to water supplies, diversions and deliveries along the Sacramento and Cosumnes rivers that would change impact findings identified in the Zone 40, Replacement Water Supply, and Freeport EIR project-related fisheries resource chapters/assessments (i.e., lead to conclusions that identified impacts would not be more severe than previously disclosed and/or that new impacts, not previously identified, would now occur, under the change conditions).

TASK 3: PREPARE A TECHNICAL MEMORANDUM

Based up the review of project-related documents in the two previous tasks, RBI will prepare a TM that: (1) analyzes how the changed conditions to water management in the Delta alter the previously identified project-related fisheries resources impacts to the Cosumnes and Sacramento rivers; and (2) characterizes the nature and extent of additional impact analyses that should be conducted to correct deficiencies in the previously identified impacts. In the event that RBI

Amanda Olekszulín
EDAW AECOM
July 21, 2009
Page 3



determines that the changed conditions significantly alter the previously identified impacts, RBI will contact EDAW AECOM staff prior to completion of the TM to determine next steps.

TASK 4: PROJECT MANAGEMENT

Project management activities include coordination by phone and fax with other project team members, scheduling meeting times, reviewing work products, budget and schedule tracking, and other duties to coordinate/administer the project.

If you have any questions regarding this scope of work and budget, please do not hesitate to contact me at (916) 714-1802. We look forward to working with you on this project.

Sincerely,

Robertson-Bryan, Inc.

A handwritten signature in dark ink, appearing to read 'Michael D. Bryan', is written over a light blue horizontal line.

Michael D. Bryan, Ph.D.
Partner/Principal Scientist

Attachment 1: RBI Budget
Attachment 2: RBI 2009 Fee Schedule



ROBERTSON - BRYAN, Inc.
Solutions for Progress

Attachment 1

Project Budget

EDAW AECOM - Vineyard Fisheries TM

Robertson-Bryan, Inc.						
	Principal Scientist Mike Bryan	Senior Project Scientist	Project Scientist	Staff Scientist	Admin. Assistant	RBI Subtotal
PROFESSIONAL SERVICES						
Task 1: Review Project-related Documents		2	12			\$ 2,090.00
Task 2: Review Relevant Delta Water Management Documents	2	8	24	2		\$ 5,560.00
Task 3: Prepare a Technical Memorandum	4	4	20	2		\$ 4,700.00
Task 7: Project Management	1	4	2		1	\$ 1,280.00
Total Hours:	7	18	58	4	1	
Rate:	\$ 210.00	\$ 175.00	\$ 145.00	\$ 130.00	\$ 80.00	
Labor Subtotal:	\$ 1,470.00	\$ 3,150.00	\$ 8,410.00	\$ 520.00	\$ 80.00	\$ 13,630
TOTAL BUDGET	\$ 13,630					



Attachment 2

2009 Fee Schedule

Charges for project work performed by Robertson-Bryan, Inc. (RBI) will be calculated and billed at the hourly rates shown below.

PROFESSIONAL SERVICES	RATE/HOUR
♦ Managing Partner	\$220.00
♦ Principal Engineer/Scientist	\$210.00
♦ Resource Director	\$195.00
♦ Senior Engineer/Scientist III	\$190.00
♦ Senior Engineer/Scientist II	\$185.00
♦ Senior Engineer/Scientist I	\$175.00
♦ Project Engineer/Scientist III	\$165.00
♦ Project Engineer/Scientist II	\$160.00
♦ Project Engineer/Scientist I	\$145.00
♦ Staff Engineer/Scientist II	\$135.00
♦ Staff Engineer/Scientist I	\$130.00
♦ Technical Analyst	\$120.00
♦ Graphics/GIS	\$115.00
♦ Administrative Assistant	\$80.00
♦ Intern	\$55.00

Up to ten percent (10%) of subcontractor charges will be added to cover administrative costs. Hourly rates will be increased by a minimum of fifty percent (50%) for depositions, trials, and hearings.

INVOICING AND PAYMENTS

Invoices will be issued on a monthly basis for all work performed on a project. Payment is due upon receipt of the invoice.

MEMORANDUM



DATE: November 16, 2009

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE SECOND CONTRACT AMENDMENT NO. 131-2009 BETWEEN THE CITY OF RANCHO CORDOVA AND MARK THOMAS & COMPANY FOR ENGINEERING DESIGN SERVICES FOR FOLSOM BOULEVARD STREETScape ENHANCEMENT PROJECT IN THE AMOUNT OF \$950,000

RECOMMENDATION

Adopt Resolution No. 103-2009.

RESULT OF RECOMMENDED ACTION

Adoption of this resolution will increase the total contract amount from \$1,361,186 to a not to exceed amount of \$2,311,186. The contract amendment will provide additional design services for the completion of the next two phases of the Folsom Boulevard Streetscape Enhancement Project. The next phase extends from Mather Field Road to 1000' west of Sunrise Boulevard. The final phase will be from Rod Beaudry Drive to Mather Field Road. Construction of the preliminary phase of the project was completed in early 2008 and consisted of landscaped medians, new traffic signals, new pavement striping, and bicycle and pedestrian improvements along Folsom Boulevard from Coloma Road to Cordova Lane.

BACKGROUND

The Folsom Boulevard Enhancement Project consists of improvements outlined in the Folsom Boulevard and Mather Road Streetscape Master Plan and the Folsom Boulevard Specific Plan. These improvements identify the need for improving pedestrian, bicycle, and motorist safety, as well as, improving the connectivity along Folsom Boulevard and beautification of the corridor.

In December 2007, City Council approved the award of a contract to Mark Thomas and Company for preliminary engineering of the next phase of the Folsom Boulevard Enhancements Project. That contract included surveying, utility infrastructure assessment, and preliminary engineering for enhancements along the Folsom Boulevard corridor.

Improvements on Folsom Boulevard have been divided into several phases. The preliminary phase of the project was from Coloma Road to Cordova Lane and construction was completed in 2008. The next phase extends from Mather Road to Sunrise Boulevard and will complete the street with pedestrian and bicycle improvements on the north and south side of Folsom Boulevard from Don Juan Drive to Sunrise Boulevard, as well as, landscape improvements along the same segment of the roadway.

Preliminary plans and specifications for the next phase of improvements, from Don Juan Drive to Sunrise Boulevard have been completed and the right-of-way acquisition for this section is also currently underway. Construction is anticipated to begin in the summer of 2010.

Resolution No. 103-2009 authorizes the amendment of the Mark Thomas and Company contract to include completion of the engineering design services; right-of-way support; preparation of construction bid documents; bid and construction assistance; as well as, additional related services for the next phase of improvements on Folsom Boulevard.

This contract amendment also includes design services for future improvements from Rod Beaudry Drive to Mather Road that will focus on median improvement, bike lanes, as well as, completing the sidewalk on the south side of Folsom Boulevard. Construction funding for these future improvements is not available at this time. The goal is to have a 'Shovel Ready' project to take advantage of possible funding opportunities should they become available.

PROJECT FUNDING

The total project cost including design services for the next phase of improvements on Folsom Boulevard is approximately \$13,000,000. Funding for this project consists of \$6,600,000 from SAFETEA-LU High Priority Projects earmark, \$3,000,000 from the SACOG Community Design Program, and \$680,000 from the State Safe Routes to School Program. The remaining balance will be funded from Measure A revenues.

This project is included in the City's current approved Capital Improvement Plan (CIP) and is included in the 2009/2010 Fiscal Year budget.

ATTACHMENT

Resolution 103-2009 including **(Exhibit A)** Contract 131-2009

CITY OF RANCHO CORDOVA

RESOLUTION NO. 103-2009

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH
MARK THOMAS & CO. INC. TO PROVIDE ENGINEERING SERVICES FOR THE FOLSOM
BOULEVARD ENHANCEMENT PROJECT**

WHEREAS, on January 21, 2008, the City of Rancho Cordova executed an agreement (Contract No. 23-2008) with Mark Thomas & Co. Inc. in the amount of \$835,165 to provide professional engineering services for the Folsom Boulevard Enhancement Project; and

WHEREAS, on June 2, 2008, the parties agreed that changes to the Scope of Work and Cost Estimates provided for the Consultant Services Agreement (CSA) (as those terms are defined in the CSA) were necessary; and

WHEREAS, the City has received a revised scope of work and cost estimate for specific services which would exceed the existing contract maximum; and

WHEREAS, the City wishes to extend the contracted amount to \$2,311,186; and

WHEREAS, those services will exceed the maximum amount the City Manager has the authorization to approve.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF RANCHO CORDOVA that the Council authorizes the City Manager to execute a contract amendment (**Exhibit A**) with Mark Thomas & Co., Inc. in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of ____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

**SECOND AMENDMENT TO THE CONSULTING SERVICES AGREEMENT
BETWEEN THE CITY OF RANCHO CORDOVA AND MARK THOMAS & COMPANY, INC. FOR
ENGINEERING DESIGN SERVICES FOR THE FOLSOM BLVD ENHANCEMENT PROJECT**

This Second Amendment to the Agreement for Consultant Services ("Amendment") is made by and between the City of Rancho Cordova ("City") and Mark Thomas & Company, Inc. ("Consultant") as of _____. City and Consultant are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Consultant Services Agreement ("CSA") dated January 21, 2008 for the purpose of providing engineering design services for the Folsom Blvd. Enhancement Project; and

WHEREAS, this Amendment will provide final plans, specifications and estimates for phase 2 of the project and for plans, specifications and estimates for phases 3a and 3b of the project, including engineering design, right of way services and geotechnical services.

WHEREAS, the Parties agree that changes to the term and services provided for in the CSA are necessary in order for the City to continue receiving services by Consultant.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. The Parties agree to modify the end date of the CSA from December 31, 2010, to December 31, 2011. The first sentence of Section 1.1 of the CSA, "Term of Service," is amended to read as follows:

"The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2011, and Consultant shall complete the work described in Exhibit A prior to that date; unless the term of the Agreement is otherwise terminated or extended, as provided in Section 8."

2. Section 2 of the CSA, "Compensation," provides for the City to pay Consultant a sum not to exceed \$2,311,186. The Parties agree to amend Section 2 of the CSA in order to increase the compensation amount to pay Consultant for additional services. The first sentence of Section 2 of the CSA is amended to read as follows:

"City hereby agrees to pay Consultant a sum not to exceed Two Million Three Hundred Eleven Thousand One Hundred and Eighty Six Dollars (\$2,311,186), notwithstanding any contrary indication that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

Exhibit "A"

Scope of Work for Amendment No. 2
Folsom Boulevard Complete Street Design Project
Phase 2A (Don Juan Drive to Sunrise Boulevard)
Phase 2B (Mather Road to Don Juan Drive)
Phase 3 (Rod Beaudry Drive to Mather Road)

The proposed improvements outlined in the Folsom Boulevard & Mather Field Road Streetscape Enhancement Master Plan and reinforced in the Folsom Blvd Specific Plan create a comprehensive, multi-modal plan that will beautify the corridor and encourage future development in the area. The Plans also identify a need for improving pedestrian, bicycle, and motorist safety as well as improving the connectivity from Folsom Boulevard (Boulevard) to the Sacramento Regional Transit (RT) facilities.

Mark Thomas & Company, Inc. (MTCO) and our team will assist the City of Rancho Cordova (City) to implement the next phases of improvements to the Boulevard. The project has been divided into 3 distinct segments that can be bid independently or comprehensively depending on available funding and anticipated schedule. The Phase 2A Project extends from Don Juan Drive to 1000' west of Sunrise Boulevard completing the street with pedestrian improvements on the north and south side as well as planted medians. The Phase 2B, Mather Road to Don Juan Drive, continues the pedestrian path on the south side of Folsom Blvd. The Phase 3 Project limits are from Rod Beaudry Dr to Mather Road focusing on median improvements, bike lanes, and new pedestrian improvements on the south side of Folsom Blvd.

Amendment No. 1 approved in early 2008 established the scope and fee for Phase 2 (Don Juan Drive to Sunrise). Since that time iterations to the project description have occurred and require scope modifications which are addressed below in this amendment. Additionally, PS&E services were requested for Phase 2B and 3.

MTCO proposes the following tasks for the Amendment No. 2 scope of work for the subject project:

PRELIMINARY ENGINEERING ADDITIONAL SERVICES

MTCO is proposing to amend two tasks in our original preliminary engineering scope to accommodate additional efforts defined by the City in the areas of SACOG Grant Application and Council Workshops.

1.5 SACOG Grant Application

MTCO will prepare the pre-submittal letter to SACOG for the 2009/2011 Community Design Funding Program to try to secure funding for the Folsom Blvd Phase 3 project (Rod Beaudry Dr. to Mather Rd). If SACOG verifies eligibility for the project MTCO will prepare a full application to be considered for funds. This task will assist the City with the preparation of this application. Tasks will include the following:

- The application format and contents will be as outlined in Section Q of the 2009-11 SACOG Community Design Grant Program Complete Streets Program Round 4. The division of responsibility between the City and MTCO is shown below.
 - Cover Memo-by City
 - Signed Statement-prepared by MTCO/signed by City
 - Federal aid eligibility letter- by City
 - Project Summary Table #1- prepared by MTCO
 - Narrative Project Description- By MTCO with input from City

- Project Maps/Graphics/Photos- By MTCO
- Project Timeline- By MTCO
- Project Budget- Table #2 – By MTCO with input from City
- Related Materials- City and MTCO
- Letters of support or commitment- by City

The need for a CMAQ air emissions benefit calculation will not be determined until it is found that the project may receive CMAQ funding. This work has not been included within this scope of work and if needed, we assume this would be handled by City Planning staff.

Task 1 Deliverables:

- SACOG Community Design Grant pre-submittal letter and application

2.2 Public Meetings/Outreach

This task will build upon the outreach performed in earlier phases though update the community through Council workshops.

2.2.2 Council Meeting Open House and Presentation (2 additional meetings) –

The project team will organize displays and presentations to inform the City Council of the Phase 2B and 3 improvements. We will have a Council Workshop describing the next set of proposed improvements. There will be opportunities to get comments from the public, but will not focus on information gathering and public input. Additionally a brief PowerPoint presentation will be created to inform the Council Members of the proposed improvements and get consensus before final design activities.

Task 2 Deliverables:

- Council Workshop materials and presentations (2 total)

FINAL ENGINEERING FOR PHASE 2A ADDITIONAL SERVICES

With the refinements to the project details for Phase 2A, additional work efforts have been identified. The retaining wall under the West Citrus Overhead has been added to the project along with unanticipated signal modifications. Additionally the iterations in the project footprint have required the legal descriptions and plat to be revised twice, once for the change to the assumed bike lane width after 65% Plan review and secondly with changes to the plans after Council and public input.

7.0 Final Design for Phase 2A (Don Juan Dr to Sunrise Blvd)

7.5 Caltrans Retaining Wall Design

A Retaining wall is anticipated at the northern slope paving of the West Citrus Overhead. MTCO will coordinate the review and approval of the retaining wall with Caltrans Department of Structures. An Advanced Planning Study will be prepared and submitted to Caltrans along with the foundation report prepared by BCI. Retaining wall plans will be prepared at a scale of 1"=20 feet. Aesthetics will be developed in conjunction with HLA's landscaping and hardscape plans. We will also prepare and process this work through Caltrans Encroachment Permit process.

7.6 Traffic Signal Design

Y&C will prepare traffic signal plans, specifications, and estimates (PS&E) for traffic signal installations and

modifications at the following intersections of Folsom Boulevard at:

- Don Juan Drive
- Cordova Lane/Olson Drive
- McGregor Drive
- Kilgore Drive

7.7 Kilgore to Sunrise Alternate Bid Package

MTCO will prepare final PS&E for the proposed improvements along the south side of Folsom Blvd between Kilgore Rd and Sunrise Blvd. The improvements will include sidewalk, landscaping, and utility relocations between Kilgore and Sunrise Blvd. The improvements will also require ADA upgrades to the Sunrise Blvd / Folsom Blvd intersections with associated signal modifications. Plans, specifications, and estimate will be prepared and submitted for review at 90% and 100% (revised, complete) intervals. The plans will be packaged separately from the Phase 2A improvements as an alternate bid package to take advantage of the current bidding environment.

Plans for the Alternate Bid Package will consist of the following sheets:

Description:	Scale	# of sheets Phase 2b
Typical Cross Sections/General Notes	None	1
Construction Details	Varies	2
Demolition Plans	1"=40'	5
Layouts & Profiles	1"=40'	5
Utility/Drainage Plans, Profiles, and Details	1"=40'	5
Signing and Striping	1"=40'	1
Construction Staging/Traffic Handling	1"=40'	1
Traffic Signal Plans	Varies	2
Landscape and Irrigation	1"=20'	10
Total # of sheets		32 sheets

Task 7 Deliverables:

- Advanced Planning Study for Retaining Wall
- Encroachment Permit Application
- PS&E for Retaining Wall (3 sheets)
- 1"=20' signal layout plan (4 sheets)
- Conductor and equipment schedules (4 sheets)
- Technical Specifications and Engineer's Estimate
- Alternate Bid Package (32 sheets)

8.0 Surveying and Right of Way

8.5 Prepare Overall Acquisition Map, Plats & Legal Descriptions

After the 65% plan review and prior to appraisals being completed all of the legal descriptions and plats were recreated to account for the change in the cross section of the roadway, by reducing the bike lane by one foot. (11 parcels were modified)

Subsequently, to meet City comments, public needs and address public comments, the City has requested that MTCO change the configuration of right of way acquisition. Some acquisition parcels have been eliminated and others have been reconfigured.

MTCO will revise the Overall Acquisition Exhibit and prepare new legal descriptions and plats for four parcels.

Task 8 Deliverables:

- One legal description and one exhibit drawing for each acquisition parcel that has changed. It is assumed that four (4) parcels have been re-configured.

9.0 Geotechnical Investigation

The original geotechnical scope of services only included pavement analysis and recommendation as well as investigation for a gateway monument foundation. The addition of the retaining wall requires a Foundations Memorandum.

9.1 Geotechnical Report

BCI will prepare a Foundation Memorandum for the proposed retaining wall located below US Highway 50 at the West Citrus Overhead with the following additional scope of services.

9.1.1 Coordination, Obtain Permits, and Mark for USA

BCI will coordinate with the client to discuss the project issues and schedule; review available as-built plans for the West Citrus Overhead; review preliminary project data; review the site for drill rig access; mark exploratory boring locations; and notify Underground Service Alert (USA).

BCI will obtain a City of Rancho Cordova encroachment permit for the above work and assume the City will waive permit fees.

9.1.2 Subsurface Exploration

To provide foundation recommendations for the West Citrus Overhead retaining wall, BCI will drill two additional borings to depths of 10-15 feet below existing Folsom Boulevard grade. BCI will also complete a boring at the minor retaining wall location, instead of at the monument near Sunrise Boulevard as originally scoped. Prior to drilling, BCI will mark the site for Underground Service Alert. The borings will be advanced using a truck mounted drill rig using auger drill methods.

BCI will obtain relatively undisturbed soil samples at various intervals using a Standard Penetration Test sampler. A BCI engineer or geologist will log the borings. BCI will retain a traffic control company to provide traffic control during drilling operations, which may require temporary lane closure. BCI will coordinate the drilling and pavement coring together to help limit traffic control costs.

BCI will also complete shallow (1 to 2 feet deep) hand-dug test pits at locations within the north embankment to evaluate existing fill materials and collect bulk samples for laboratory tests.

9.1.3 Laboratory Testing

BCI will perform moisture content and dry density tests on soil samples retrieved from the borings. We will also perform maximum dry density and remolded triaxial tests on bulk samples obtained from the existing embankment.

9.1.4 Analysis and Foundation Memorandum

BCI will perform engineering analysis, and prepare a Draft and Final Foundation Memorandum for the

proposed retaining wall. The memorandum will include: Scope of Services; Project Description; Field Exploration; Laboratory Testing; Site Conditions; Subsurface Conditions; Foundation Recommendations (bearing capacity); Construction Considerations; Risk Management; Limitations; Vicinity Map; Site Plan with boring, hand test pit and boring locations; Log of Test Borings; and Laboratory Test Results.

BCI will submit a Draft Foundation Memorandum for distribution to the project review team and Caltrans. Following receipt of all Draft Foundation Memorandum review comments, BCI will prepare and submit a Final Foundation Memorandum incorporating the comments as necessary.

The BCI services outlined above are for an L-shaped concrete retaining wall with spread footing support. These services do not include evaluation/analysis for a tie-back wall system or pile-bulkhead wall. BCI can provide an additional scope of services for a tie-back wall system or pile-bulkhead wall, if needed.

Task 9 Deliverables:

- Draft and Final Geotechnical Memorandum (5 copies)

PHASE 2B AND 3 FINAL DESIGN SCOPE OF SERVICES

Phase 2B and 3 Project Understanding

The City of Rancho Cordova is committed to redeveloping the Folsom Boulevard corridor as a vibrant transportation thoroughfare, business center, and pedestrian destination using the Complete Street Principles as discussed in the SACOG Blueprint. The focus of this portion of the project is to construct pedestrian improvements along 2.4 miles of Folsom Boulevard at the western end of the City of Rancho Cordova, from Rod Beaudry Drive to Don Juan Drive. The Phase 2B, Mather Road to Don Juan Drive, continues the pedestrian path on the south side of Folsom Blvd. The Phase 3 Project limits are from Rod Beaudry Dr to Mather Road focusing on median improvements, bike lanes, and new pedestrian improvements on the south side of Folsom Blvd.

Key Project Elements:

Based on our project understanding and field reviews of Phase 2B and 3, we anticipate that the project will consist of the following elements/key issues to be addressed:

- Maintain two through lanes in both directions.
- Maintain existing lane configurations at existing traffic signals. (Rod Beaudry Drive, West La Loma Drive, Bravado Drive, La Loma Drive, Paseo Drive, Dawes Street, Coloma Road, Mills Park Drive, Aramon Drive and Zinfandel Drive).
- Maintain existing lane configurations with a new traffic signal at Bravado Drive.
- Provide enhanced lighting along the corridor.
- Review possibility of including raised median/improved channelization between Rod Beaudry Drive and Coloma Road and maintain the existing medians between Coloma Road and Don Juan Drive.
- Provide enhanced aesthetics, including streetscape and landscape improvements in both the medians and parkway strips at detached sidewalks
- Preserve existing oak trees between Rod Beaudry Drive and Don Juan Drive on the south side of Folsom Boulevard.
- Provide enhanced pedestrian circulation and safety (including ADA compliance)
- Construct an on-street bike lane (i.e. Class 2)
- Maintain the existing attached curb, gutter and sidewalk on the North side of Folsom Boulevard.

- Modify and expand the existing storm drain system to meet the needs of the roadwork.
- Provide for the accommodation of traffic (pedestrian and vehicular) during construction.
- Provide a new monument located near Bradshaw Road.
- Underground the existing communication lines and 12kV electrical lines on the south side of Folsom Blvd, replace the existing wooden poles with metal poles with increased spacing.

12.0 Phase 2B and 3 Final Design - Plans, Specifications, and Estimate (PS&E)

This work will expand on the completed 30% designs for the project limits and complete the design to 100% stage for bidding and construction.

12.1 Final Plans

MTCO will prepare final PS&E for the proposed improvements identified in the Striping Plan, dated June 2009. Plans, specifications, and estimate will be prepared and submitted for review at 65%, 90% (complete, unchecked), and 100% (revised, complete) intervals. Allowance is made for minor revisions/cleanup prior to final City approval/signature.

Plans will consist of the following sheets:

Description:	Scale	# of sheets Phase 2B	# of sheets Phase 3
Title Sheet	1"=200'	1	-
Typical Cross Sections/General Notes	None	3	2
Project Control	None	1	1
Construction Details	Varies	5	4
Demolition Plans	1"=40'	7	6
Layouts & Profiles	1"=40'	12	11
Utility/Drainage Plans, Profiles, and Details	1"=40'	12	11
Joint Trench Plans and Details	1"=40'	16	16
Signing and Striping	1"=40'	7	6
Construction Staging/Traffic Handling	1"=40'	12	11
Lighting Plans	1"=40'	7	6
Traffic Signal Plans	Varies	14	14
Landscape and Irrigation	1"=20'	24	22
Monument structure details	Varies	1	-
Summary of Quantities	none	2	2
Total # of sheets		124 sheets	112 sheets

Plan Descriptions:

Descriptions of pertinent information regarding the above anticipated plan sheets are provided as follows:

12.1.1 Roadway Design

The plans will follow the City plan format. Roadway layouts will be shown in Plan & Profile format. Typical Cross Section, including structural section, will be provided. Construction details will be required for conforms, intersection grading, edge of pavement, etc. Roadway cross sections will also be provided.

12.1.2 Utility/Drainage Plans & Profiles, Details and Quantities

Drainage layouts and utility relocations (if required) will be included on the Drainage and Utility Plans. Drainage Details will follow the drainage profile sheets. Details will be required for any special circumstances, including modified manholes and trench sections.

12.1.3 Traffic Handling/Stage Construction

MTCO will prepare staging plans. Traffic handling plans will be prepared for each stage of construction. These plans will include temporary signing and striping and other traffic control, such as temporary k-rail, for each stage of work.

12.1.4 Signing and Striping Plans

Plans will follow County standards, along with Caltrans standards as outlined in the Highway Design Manual and MUTCD California edition, latest edition.

12.1.5 Design of Street Lighting Plans

Y&C will use ALADAN software to prepare lighting analysis to determine light spacing for Folsom Boulevard between Rod Beaudry Drive and Mather Road based on the street light used in Phase 1 of Folsom Boulevard Streetscape Project. Based on the lighting analysis, Y&C will prepare street lighting plans, specifications, and estimates.

12.1.6 Landscape and Irrigation Plans

These sheets will include preparation of planting and irrigation plans for all proposed medians and parkway strips adjacent to sidewalks. Hardscape improvements for streetscape enhancements such as special paving at crosswalks will be included as details.

12.2 Contract Specifications

Specifications will include Technical Special Provisions only. Special provisions will be based on County of Sacramento Standard Construction Specifications, dated January 2008, and Caltrans Standard Special Provisions, dated 2006. An outline will be submitted at the 65% submittal, with full specifications at the remaining submittals. The City will prepare the "boiler plate" contract documents.

12.3 Quantities/Cost Estimates

MTCO will provide cost estimates in BEES or other City approved format. MTCO will work with City staff to determine the need for separate construction bid schedules, and segregate estimates accordingly. General cross sections will be prepared to support earthwork quantities.

12.4 Utility Conflict Mapping/Utility Coordination

MTCO will provide initial consultation and coordination with utility providers during the Conceptual Design Phase for this project. Once a preferred design is selected and right of way activities are authorized, the Utility Conflict maps will be prepared. These utility plans show the existing roadway facility with existing utility facilities, superimposed on proposed improvements. Utility conflicts are noted, and sent to the respective providers. The utility provider is then requested to reply with a relocation plan and acknowledgment of franchise agreement applicability. This task will include sending out utility "B" and "C" letters.

MTCO will participate in up to six regularly scheduled Utility Coordination meetings, with the intent of presenting project plans and schedule, as well as coordinating utility relocation design. MTCO will prepare agendas and minutes for each meeting.

12.5 Drainage Report

MTCO will analyze drainage effects of the proposed improvements. MTCO will evaluate the inlet, culvert and pipe capacity and calculate resulting spread widths for the widened roadway areas. This scope assumes a draft and final report will be provided with pipe capacity worksheets for the proposed storm drain facilities.

12.6 Traffic Analysis / Traffic Signal Design

FPA will evaluate whether the MUTCD Eight-Hour Vehicular Volume, Four-Hour Vehicular Volume, and Peak Hour Traffic volume warrants are met for the study intersection of Folsom Boulevard/Bravado Drive based on existing traffic counts. FPA will provide a technical memorandum summarizing these results including data and tables.

Y&C will prepare traffic signal plans, specifications, and estimates (PS&E) for traffic signal installations and modifications at the following intersections of Folsom Boulevard at:

- Rod Beaudry Drive
- Routier Road/W. La Loma Drive
- Bravado Drive (New)
- Mather Field Road/Paseo Drive
- Dawes Street
- Coloma Road
- Aramon Drive

Task 12 Deliverables:

- Utility "B" and "C" Plans and Letters
- Traffic Warrant Memorandum for Bravado Drive / Folsom Blvd Intersection
- Final PS&E, with submittals at 65%, 90%, and 100% Stages to include:
- Plans in AutoCAD 2008 and reproducible format (10 sets)
- Special Provisions in MS Word & hardcopy (5 sets)
- Estimate in MS Excel & hardcopy (5 sets)
- Drainage Report (5 copies)

13.0 Surveying and Right of Way

13.1 Control Surveys

Every effort will be made to utilize existing control from Phase 2A of the Folsom Streetscape Project. The control for the project will be established by GPS and conventional methods on the California Coordinate System (NAD83) in U.S. Survey Feet. Elevations will be established on the County datum by digital measurements from established benchmarks. Intervisible control points will be established for design surveys. These control points will be of sufficient durability to be used for construction staking purposes later. Temporary benchmarks suitable for use during construction will be established. At least two points suitable for subsequent GPS surveys will be established. A control diagram with adjusted coordinates and elevations of the survey control points will be provided. These control points will be shown on the plans with point number, description, and coordinate values.

13.2 Supplemental Base Mapping

Base mapping of the project will be brought up to a level of detail required for Final Design.

13.2.1 Supplemental Field Topography

MTCO will perform field topography to supplement the photogrammetric mapping generated during Phase 2A of the Folsom Streetscape Project. This field topography will consist of the following:

- Cross sections on Folsom Blvd. will be measured at an interval of 50 feet extending to at least the lip of gutter to the north and to the RT tracks to the south. Sections will be taken for 200 feet beyond the project limits in both directions. Two sections will be taken along each cross street in each direction.
- Topographic features within the projects limits that may affect design will be located. These features may include trees, fences, signs.
- All visible evidence of utilities will be located. Storm Drain and Sanitary Sewer manholes as well as Drain Inlets will be "dipped" for invert elevation.
- Surveys of existing driveways on both public and private property shall be obtained to ensure the design of all conforms.
- It is assumed that crews will be able to work on Folsom Blvd. for eight hours each day with traffic control safety support for a total of six days.
- City will provide RT track warrant, Caltrans encroachment permit and City encroachment permit.
- MTCO will send field crews to appropriate safety training for above permits and warrants.

13.3 Existing Right of Way Delineation

The location of the existing rights of way will be accurately determined for Folsom Blvd from Rod Beaudry Drive to Don Juan Road. This task includes research of existing County records for maps of record. The location of lot lines will be approximately determined. All information will be combined into Land net for internal use by MTCO.

13.4 Property Owner Meetings

Beyond the meetings from Phase 2A scope, five (5) additional individual meetings with key property owners will occur during the final design and right of way acquisition tasks. These meetings will be directly related to right of way impacts to the Regional Transit Right of Way throughout the project length. MTCO will provide technical expertise at these meetings to assist the City.

13.5 Prepare Overall Acquisition Exhibit, Plats & Legal Descriptions

Land net information, existing aerial topography together with the location of proposed Right of Way acquisition parcels will be presented on an Overall Acquisition Exhibit. Acquisition parcels will be delineated with colored line work and shaded to correspond with the type of proposed acquisition. The exhibit will be of an appropriate size and scale to give general areas and types of acquisition. Property appraisers and Right of Way acquisition agents can visually view the impacts to properties in acquisition areas allowing them to better understand the impacts and the valuation of the acquisition parcels.

MTCO will prepare one legal description and one exhibit drawing for each of the anticipated four (4) acquisitions. Areas of each acquisition will be calculated as well as the areas of existing encumbrances that reside within the right of way acquisition to aid the city in appraisals and negotiations. A draft of each legal description and exhibit drawing will be submitted to the city for review and comments. The legal description and exhibit

plat will become final only after city approval.

All appraisals and acquisitions will be prepared by City staff or a City consultant and are not included in this scope. Staking of proposed right of way lines is not included in this scope.

13.6 Record of Survey

Under this task, MTCO will reference monuments in the right-of-way that may be destroyed with construction and prepare a record-of-survey for said monumentation. The pre-construction record-of-survey will meet state law requirement to preserve monumentation during construction and serve as constructive notice of the resolution used for this project. Filing this first survey will help prevent conflict should other surveying and development activities occur adjacent to the right-of-way during the project.

After construction, MTCO will set monuments sufficient to retrace the right-of-way, and prepare a Record of Survey for said monumentation. The record-of-survey will be processed through local agency, although review and filing fees are not included in this scope. This work effort will take place after construction

Task 13 Deliverables:

- Overall Acquisition Exhibit
- Legal descriptions and plats for 4 Parcels
- Pre and Post-Construction Record of Survey
- Minutes - property owner meetings (5 total)
- Updated Base Mapping – Rod Beaudry to Don Juan

14.0 Environmental Review

14.1 Environmental Document Support

Mark Thomas and Company will provide support to the City for the environmental clearance. MTCO will work with PMC to prepare the project description, project exhibits for the PES, and answering technical questions regarding the PES. MTCO will also meet with the City and Caltrans for the Field Review Meeting.

Task 14 Deliverables:

- Project Description, PES Support, Project Exhibits

15.0 Geotechnical Investigations

15.1 Geotechnical Report

BCI will prepare a Geotechnical Report for the Rod Beaudry Drive to Don Juan Road project interval using geotechnical data obtained from our geotechnical report for the Complete Streets Project, with the following additional scope of services:

15.1.1 Coordination, Site Visit, Permits, and Underground Service Alert Notification

BCI will coordinate with the client to review the preliminary plans and discuss the project design needs, issues and schedules. BCI will visit the site to determine drill rig accessibility. We will mark the boring location then notify Underground Service Alert (USA). BCI will obtain a City encroachment permit before starting work. We assume that the client will provide rights-of-entry and the City will waive the encroachment permit fee and bond requirements.

15.1.2 Subsurface Exploration and Pavement Coring

To provide geotechnical recommendations for monument foundation design, BCI will drill one boring to a depth of 10 to 15 feet (or refusal) below existing grade in the monument location. Prior to drilling, BCI will mark the site for Underground Service Alert. The boring will be advanced using a truck mounted drill rig using either solid stem or hollow flight auger. BCI will obtain relatively undisturbed soil samples at various intervals using Standard Penetration Test or California Modified samplers. A BCI engineer or geologist will log the boring. Our scope for the single boring assumes that the monument area will require a lane closure and our scope includes one day of traffic control to complete the boring. BCI will also complete shallow hand probes along each retaining wall alignment to evaluate support conditions for spread footings.

To provide existing pavement section thickness data, BCI will core the asphalt concrete pavement at 24 locations to measure the pavement and aggregate base thickness. BCI will retain a traffic control company to provide traffic control during coring operations, which will require temporary lane closures or moving lane closures. To minimize traffic impacts, BCI will perform coring operations during nighttime hours.

15.1.3 Laboratory Testing

BCI will perform moisture content, dry density and atterberg limits tests on soil samples retrieved from the boring. We will also complete two additional R-values tests.

15.1.4 Geotechnical Report

BCI will review the subsurface conditions and laboratory test results obtained from the above work in addition to geotechnical data obtained by BCI for the Complete Streets Project geotechnical report. We will perform engineering analysis, and prepare a geotechnical report including recommendations for the proposed improvements. The Report will include: Scope of Services; Project Description; Field Exploration; Laboratory Testing; Site Conditions; Subsurface Conditions; Existing Pavement Surface Conditions; New Asphalt Concrete Pavement Section Recommendations; Pavement Overlay Options/Considerations, Grading Recommendations; Exterior Concrete Flatwork Recommendations; Monument Foundation Recommendations; Retaining Wall Foundation Recommendations; Monument Boring Log; Vicinity Map; Site Plan with boring, hand-probe and pavement core locations; and Laboratory Test Results.

Task 15 Deliverables:

- Draft and Final Geotechnical Report (5 copies)

16.0 Wayfinding

16.1 Wayfinding Committee Meetings (6 meetings)

MTCO will be responsible for coordinating committee meetings. This scope assumes a total of six (6) meetings. MTCO will prepare and distribute agendas in coordination with the City Project Manager. MTCO will facilitate meetings, and prepare and distribute meeting minutes.

16.2 Wayfinding Research and Program Design

In terms of the Scope and Deliverables for the wayfinding system, MTCO and HLA anticipate to include the following items in the wayfinding implementation program:

- Study of comparable systems in other local cities. Evaluate effectiveness, graphic clarity, contribution to City identity;

- Work with the City to determine the network of destinations for inclusion into the wayfinding program
- Development of sign locations and mounting methods in concert with team;
- Development of conceptual sign design(s): color, size, font, post detail, etc;
- Create final sign layout and content.

Specific content would be determined when signs are ready to be installed and is included in Signing and Striping in Task 12.

We do not anticipate creating a specific logo for the City, but can incorporate any graphics the City may want to see in the wayfinding signs.

Task 16 Deliverables:

- Committee Meeting Agenda, Minutes (6 total)
- Draft and Final Wayfinding Guidelines (5 copies)

17.0 Bidding and Construction Services

Because the level of effort is difficult to determine, a budget amount has been provided in our cost proposal to be used on a time and materials basis.

17.1 Bidding Assistance

MTCO Y&C, HLA, ECOM and BCI will provide assistance during the bidding phase of the project. Work will include the following activities and a budget of 40 hours has been assumed:

- Attend pre-bid meeting
- Interpret PS&E/respond to bidders inquiries
- Prepare necessary addenda
- Prepare Bid Analysis

17.2 Construction Assistance

MTCO has provided only a budget amount of 240 hours at this time. Exact scope shall be determined at completion of the design phase. MTCO and subconsultants will provide assistance during the construction phase of the project. Work will include the following:

- Review shop drawings
- Prepare CCO's
- Interpret contract documents
- Complete record drawings based upon "red-lines" by Contractor.

Task 17 Deliverables:

- Bid and Construction services described above

18.0 Supplemental Project Management and Meetings

18.1 Progress Meetings/Management – Phase 3

MTCO will be responsible for the monthly team meetings. This scope assumes a total of twelve (12) additional PDT meetings beyond the Phase 2A scope. MTCO will prepare and distribute agendas in coordination with the

City Project Manager. MTCO will facilitate meetings, and prepare and distribute meeting minutes.

MTCO will be responsible for preparation and maintenance of the project schedule. MTCO will update schedules monthly, with critical path activities clearly shown for team review purposes.

18.2 Coordination with Regional Transit

MTCO will be responsible for coordinating design elements, right of way and easements with Regional Transit. This scope assumes four (4) coordination meetings with RT.

Task 18 Deliverables:

- PDT Meeting Agenda, Minutes and Schedule (12 total)
- RT Meeting Agenda, Minutes (4 total)

19.0 Optional Tasks

19.1 Underground Plan

Per the City Council's desire we've explored the option of converting the existing pole line along the south side of Folsom Blvd from wooden poles to steel poles. Additionally, the communication lines and the 12kV electrical line would be placed into a joint trench parallel to the steel poles. The advantages to this approach remove much of the visual clutter of the low hanging lines and reduce the number of the poles by increasing their spacing.

There will be additional construction costs for the project with this approach, but due to the necessity of having to relocate many of the wooden poles with the inclusion of the curb, gutter and sidewalk on the south side, SMUD has been approached to share some of this effort. The specifics of the approach will be outlined in coordination meetings with SMUD.

ECOM Engineering, Inc. will be responsible for coordinating and designing the utility undergrounding along the south side of Folsom Boulevard between Rod Beaudry Dr. and Sunrise Blvd. Specifically ECOM will:

- Resolve any design issues outstanding from the Design Development Phase.
- Attend (6) meetings with the design team, owner and pre-construction contractor as required.
- Finalize coordination of all utility services, such as electrical, communications and cable television.
- Attend (3) meetings with each of: SMUD, AT&T, Comcast, Integra and Civitel.
- Complete coordination of all utility services, such as electrical, communications and cable television.
- Provide Joint Trench Underground drawings in coordination with civil documents.
- Provide Sections, Details and Elevations for conduits, boxes and vaults.
- Provide Boxes, Slab sections and details for each utility involved for electrical and communication.

Provide complete construction drawings, specifications and electrical calculations for agency plan review.

Task 19 Deliverables:

- Final Undergrounding PS&E, with submittals at 65%, 90%, and 100% Stages
- Meeting Minutes from utility coordination meetings

Exclusions and Assumptions for Phase 2B and 3 of the project:

- Limits along the side streets intersecting Folsom Blvd. is assumed to be 500 feet maximum and lane configurations will not change

- City will provide current Preliminary Title Report and necessary supporting documents, to include current vesting deed for each acquisition parcel.
- This fee proposal assumes that the City will provide necessary RT, Caltrans and City encroachment permits
- Review and filing fees are not included in this fee proposal
- It is assumed that six (6) monuments will be referenced in the pre-construction record-of-survey
- It assumed that ten (10) monuments will be set in the post-construction record-of-survey
- It is assumed that set monuments are pipes or rebars with caps or tags supplied by MTCO. Other monuments required by the City or County will be supplied and installed at city's expense.
- City will provide right-of-entry to private property for topographic surveys.
- City will provide all environmental clearance and the Initial Site Assessment for hazardous waste investigation.
- City will provide a consultant for all right of way acquisition and appraisals.

MEMORANDUM



DATE: November 16, 2009

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director

SUBJECT: RESOLUTION DECLARING THE RESULTS OF MAIL BALLOT ELECTION FOR RANCHO CORDOVA TRANSIT-RELATED SERVICES SPECIAL TAX AREA ZONE 16 (11301 DISMANTLE COURT PROJECT)

RECOMMENDATION

Adopt Resolution No. 111-2009.

RESULT OF RECOMMENDED ACTION

Adoption of this resolution will declare the results of the transit-related services tax election concerning Transit-Related Services Special Tax Area Zone 16 that will assist the City in meeting the costs of providing City transit-related services by establishing a special tax for transit services for the 11301 Dismantle Court project.

BACKGROUND

On November 7, 2005, the City Council approved Resolution No. 141-2005, that created the Rancho Cordova Transit-Related Services Special Tax Area and announced the City's intention to impose a transit-related services tax on new development within the City. Pursuant to that resolution, a property owner must approve a special tax on the parcel(s) within a subdivision as a condition of approval by the City. The City Council then adopts a resolution establishing a zone encompassing the subdivision, and an ordinance creating the special tax.

Finally, in order to go into effect, the ordinance must be approved by two-thirds of the affected property owners voting in a mail-ballot election to be held by the City. If the tax in Zone 16 is approved by at least two-thirds of the property owners voting, the tax will first be collected hereunder for the tax year beginning July 1, 2010.

Pending Elections

In accordance with this above-described process, the City recently adopted Resolution No. 90-2009 on October 5, 2009, that created Tax Zone 16, and Ordinance No. 19-2009, on October 19, 2009, that established the special tax for transit-related services subject to landowner-voter confirmation. A ballot was mailed out to the 11301 Dismantle Court property owners following approval of the ordinance.

The ballot has been tabulated by the City Clerk, and the Council should now announce the result of the elections:

"Special Tax Area Zone 16: 3 "yes" vote; 0 "no" vote

ATTACHMENT

Resolution No. 111-2009 declaring the result of mail ballot election regarding the special tax for transit services for Special Transit-Related Service Tax Area Zone 16.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 111-2009

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
DECLARING THE RESULTS OF THE ELECTION FOR RANCHO CORDOVA
TRANSIT-RELATED SERVICES SPECIAL TAX AREA ZONE 16**

WHEREAS, on November 7, 2005, the City Council adopted Resolution No. 141-2005 creating the Rancho Cordova Transit-Related Services Special Tax Area and indicating its intent to impose the tax on new development in the City; and

WHEREAS, on October 5, 2009, the City adopted Resolution No. 90-2009, creating Zone 16 within the Transit-Related Services Special Tax Area, and recognizing the need for increased transit-related services in Zone 16 and the difficulty of funding current or increased levels of such services with available revenues. Pursuant to Resolution No. 90-2009, the City Council directed the City Clerk to conduct a transit-related services tax election, to be conducted by mail ballot, pursuant to Elections Code section 4000; and

WHEREAS, the property owner within Zone 16 waived the timing requirements of Elections Code section 4000 in order to conduct the election on a date earlier provided under the Elections Code; and

WHEREAS, on October 19, 2009, the City adopted Ordinance No. 19-2009, which established a special tax for transit-related services in Zone 16, which is contiguous with the boundaries of the 11301 Dismantle Court site, subject to landowner-voter confirmation; and

WHEREAS, Ordinance No. 19-2009 takes effect immediately upon confirmation by two-thirds of the voters voting within the relevant zone, so that taxes will be first collected for the tax year beginning July 1, 2010; and

WHEREAS, ballots were sent to the landowner of Zone 16 (11301 Dismantle Court), which asked them a single question in the form of: "Shall Ordinance No. 19-2009 of the City Council of the City of Rancho Cordova be approved so as to authorize a special tax on property located in Zone 16 of the Rancho Cordova Transit-Related Services Special Tax Area to maintain the present level of transit-related services and provide additional funding for increased transit-related services?"; and

WHEREAS, the owners of the real property subject to the Transit-Related Services Special Tax Area Zone 16 have voted on the issue of whether to approve Ordinance No. 19-2009, and the City now wishes to declare the results of this transit-related services tax election for Zone 16.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF RANCHO CORDOVA:

1. The foregoing recitals are all true and correct.
2. The City Clerk has tabulated the transit-related services special tax ballots and the following are the responses to the question on the ballot asking whether the landowner approves of Ordinance No. 19-2009 authorizing a special tax in the portion of

Transit-Related Services Special Tax Zone 16 that encompasses the landowner's property, in order to maintain the present level of transit-related services and provide additional funding for increased transit-related services:

Special Tax Area Zone 15: 3 "yes"; 0 "no".

3. In accordance with Ordinance No. 19-2009, the transit-related services special tax for Zone 16 shall take effect immediately, so that taxes will first be collected hereunder for the tax year beginning July 1, 2010.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

MEMORANDUM



DATE: November 16, 2009

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director

SUBJECT: RESOLUTION APPROVING ANNEXATION OF 11301 DISMANTLE COURT PROJECT TO THE CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2008-1 (STREET LIGHTING AND ROAD MAINTENANCE)

RECOMMENDATION

Adopt Resolution No. 112-2009.

RESULT OF RECOMMENDED ACTIONS

Adoption of this resolution declares the results of the special mailed-ballot election for the 11301 Dismantle Court Project Annexation to Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance, orders the annexation, authorizes the special tax levy on that project, and directs the recording of the Amended Notice of Special Tax Lien. There is no financial impact to existing residents.

BACKGROUND

On October 6, 2008, the City adopted a resolution of intention to establish a Community Facilities District (CFD) and Future Annexation Area for Citywide street lighting and road maintenance services. On November 17, 2008, the City adopted the resolution forming the CFD No. 2008-1 pursuant to the Mello-Roos Community Facilities Act of 1982 (State of California Government Code Section 5311 et seq.) (the "Act"). The action defining the Future Annexation Area for the District provided for a more efficient process for the annexation of property when the property owners have provided for their unanimous consent. Defining the Future Annexation Area provided the resolution of intention, noticing, and public hearing for the entire Future Annexation Area so these steps do not need to be repeated for each annexation. Thus the annexation process for projects within the Future Annexation Area has been reduced to receiving a petition from the property owner(s), conducting the mailed-ballot election, and the Council adopting a resolution determining the election result, ordering the annexation, and authorizing the levy of special taxes.

The Project included in this action was conditioned to annex to the District to provide funding for maintenance services including the maintenance, repair, replacement and lighting of public streets and roads and appurtenant facilities in the public right-of-way.

DISCUSSION

The City Clerk conducted the special mailed-ballot landowner election as required by the Act. The election was a landowner election as required by the Act when there are less than twelve registered voters residing within territory proposed to be annexed. A proposition was submitted to each qualified voter asking whether the Project should be annexed to the District and whether a special tax should be levied on each parcel annexed to finance the costs of providing certain public services.

The City Clerk has canvassed the returns of the special election for the Project and has prepared a report of such election which is on file in the Clerk's office. The results of the 11301 Dismantle Court Project election is as follows:

Total Votes Cast "Yes":	3
Total Votes Cast "No":	0
Total Votes Cast:	3

The results show that more than two-thirds (2/3) of all the votes cast were in favor of approving the annexation and levy of the special tax.

Adoption of the attached resolution confirms the election results and formally includes the Project in the District and authorizes the levy of the special tax. Taxable parcels in the District will remain subject to the special tax in perpetuity to finance the authorized maintenance services. The maximum annual special tax that will be levied on the project is based on the per square foot rates identified in the Rate and Method of Apportionment, ranging from \$0.04 per square foot for industrial buildings, \$0.09 per square foot for office buildings to \$0.10 per square foot for commercial buildings (in FY 09/10 dollars). The annual tax will escalate annually based on the construction cost index in Engineering News Record.

ATTACHMENT

Resolution No. 112-2009 including **(Exhibit A)** Canvass and Statement of Result of Election, **(Exhibit B)** Boundary Map #6, and **(Exhibit C)** Notice of Special Tax Lien (CFD No. 2008-1).

RESOLUTION NO. 112-2009

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
DECLARING RESULTS OF SPECIAL MAILED-BALLOT ELECTION FOR THE 11301
DISMANTLE COURT PROJECT ANNEXATION TO THE CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2008-1 (STREET LIGHTING AND ROAD
MAINTENANCE), ORDERING THE ANNEXATION, AUTHORIZING THE SPECIAL TAX LEVY,
AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN**

WHEREAS, the City Clerk has duly canvassed the votes cast by qualified landowners of the territory proposed to be annexed to the City of Rancho Cordova Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance) (the "District") at a special mailed-ballot election (the "Election") called for October 27, 2009, upon the proposition hereinafter set forth, and has reported to the City Council of the City of Rancho Cordova (the "City Council") the result of the votes cast at the Election upon such proposition, which said report is now on file in the office of the Clerk of the City of Rancho Cordova and attached as **Exhibit A**.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, as follows:

Section 1. The above recitals are true and correct, and the Council so finds and determines.

Section 2. The canvass of the votes cast in the territory to be annexed to the District at the Election, as shown by said report, is hereby approved and confirmed.

Section 3. At the Election the following proposition was submitted to the qualified voters of the territory to be annexed to the District and the number of votes cast for and against such proposition, as set forth in said report, is determined to be as follows:

"Shall the territory known as the 11301 Dismantle Court Project, which is included in the Future Annexation Area as shown on **Exhibit A** to Resolution No. 108-2008 adopted October 6, 2008 and as shown on the Annexation Map No. 6 (11301 Dismantle Court) recorded at Book 111, Page 0003, of the Official Records of the County of Sacramento, be annexed to City of Rancho Cordova Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance) pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended; and

Shall a special tax with a maximum rate and method of apportionment as provided in **Exhibit C** of Resolution No. 129-2008, the Resolution of Formation of the District adopted by the City Council on November 17, 2008, be levied within said territory proposed to be annexed to finance certain public services for the CFD and to pay the costs of the City in administering the CFD, and shall the annual appropriations limit of the CFD be established at \$12,000,000?"

Section 4. The total number of votes cast at the Election for and against such proposition was and is set forth in said report.

Section 5. More than two-thirds of all the votes cast at the Election were cast in favor of such proposition, and such proposition carried, and the territory proposed to be

annexed shall be included in the District and a special tax levied to finance the cost of providing the certain public services therein.

Section 6. The City Clerk is hereby directed to enter this resolution on the minutes of the City Council, which shall constitute the official declaration of the result of such Election.

Section 7. The City Council finds and determines that the Territory shown in **Exhibit B** is hereby added to and made a part of the District with full legal effect.

Section 8. The City Council finds and determines that a special tax shall be levied within the Territory to be annexed and which special tax shall be the same as the tax to be levied within the District. Collection of said tax shall commence in Fiscal Year 2010-11, and the rate and method of apportionment of said tax shall be as set forth in **Exhibit B** of the Resolution of Formation, incorporated herein, and made a part hereof.

Section 9. The City Clerk is directed to execute and record a Notice of Special Tax Lien in substantially the same form as shown in **Exhibit C** attached hereto, in the office of the County Recorder of Sacramento County not later than 15 days after adoption of this resolution.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of ____, 2009, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk

CANVASS AND STATEMENT OF RESULT OF ELECTION

CITY OF RANCHO CORDOVA
Community Facilities District No. 2008-1
(Street Lighting and Road Maintenance)

I hereby certify that on October 27, 2009, I canvassed the returns of the election held on in the Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance) of the City of Rancho Cordova and the total number of ballots cast in said District and the total number of votes cast for and against the measure are as follows and the totals as shown for and against the measure are full, true and correct:

	Qualified Landowner <u>Votes</u>	<u>Votes Cast</u>	<u>YES</u>	<u>NO</u>
Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance) of the City of Rancho Cordova, Special Tax Election, October 27, 2009	3	3	3	0

BALLOT MEASURE: "Shall the territory known as the 11301 Dismantle Court Project, which is included in the Future Annexation Area as shown on Exhibit A to Resolution No. 108-2008 adopted October 6, 2008 and as shown on the Annexation Map No. 6 (11301 Dismantle Court) recorded at Book 111, Page 0003, of the Official Records of the County of Sacramento, be annexed to City of Rancho Cordova Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance) pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended; and

Shall a special tax with a maximum rate and method of apportionment as provided in Exhibit C of Resolution No. 129-2008, the Resolution of Formation of the District adopted by the City Council on November 17, 2008, be levied within said territory proposed to be annexed to finance certain public services for the CFD and to pay the costs of the City in administering the CFD, and shall the annual appropriations limit of the CFD be established at \$12,000,000?"

YES: _____

NO: _____

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND on November 16, 2009.

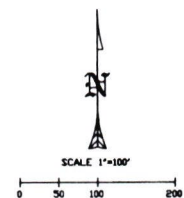
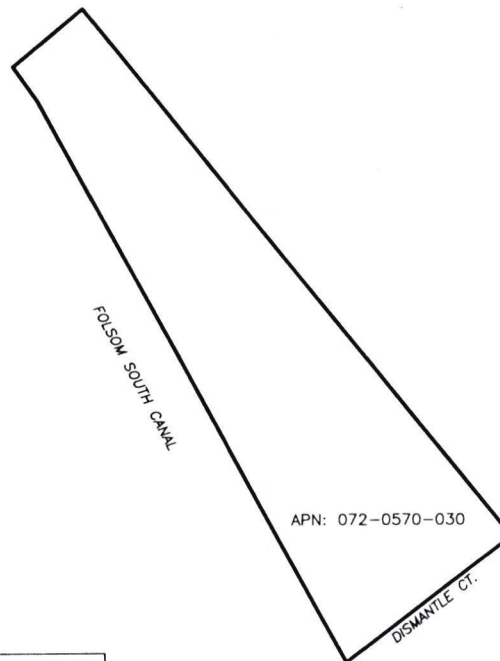
By: _____

Mindy Cuppy, City Clerk
City of Rancho Cordova

ANNEXATION MAP NO. 6 (11301 DISMANTLE CT.)
COMMUNITY FACILITIES DISTRICT No. 2008-1
(STREET LIGHTING AND ROAD MAINTENANCE)

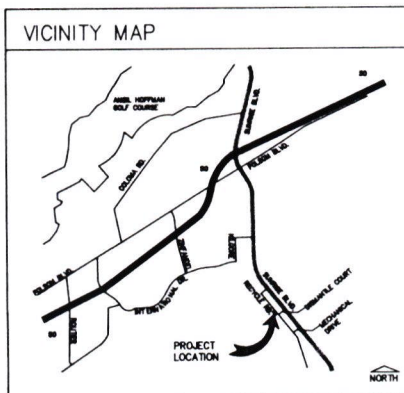
EXHIBIT B

CITY OF RANCHO CORDOVA
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA
OCTOBER 2009, SHEET 1 OF 1



VICINITY MAP

NTS



CLERK'S MAP STATEMENT

I HEREBY STATE THAT THE AREA SHOWN ON THIS MAP OF PROPOSED ANNEXATION TO COMMUNITY FACILITIES DISTRICT NO. 2008-1 (STREET LIGHTING AND ROAD MAINTENANCE), CITY OF RANCHO CORDOVA, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AT A REGULAR MEETING THEREOF, HELD ON THE 6th DAY OF OCTOBER 2008, BY ITS RESOLUTION No. 108-2008.

Nindy Lopez
CITY CLERK OF THE CITY OF RANCHO CORDOVA

COUNTY RECORDER'S FILING STATEMENT

FILED THIS 2nd DAY OF October, 2009, AT THE HOUR OF 9:09 O'CLOCK A.M. IN BOOK 111 OF MAPS OF ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES DISTRICTS AT PAGE 1003 IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

CRAIG A. KRAMER
COUNTY RECORDER OF THE COUNTY OF SACRAMENTO,
CALIFORNIA.

BY: *[Signature]*
DEPUTY

FILE: Book 10091002 Page 0846

CLERK'S MAP FILING STATEMENT

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF RANCHO CORDOVA THIS 1st DAY OF October, 2009.

Nindy Lopez
CITY CLERK OF THE CITY OF RANCHO CORDOVA

REFERENCE IS MADE TO THE ORIGINAL BOUNDARY MAP OF THE DISTRICT, ENTITLED AND RECORDED AS FOLLOWS:

"PROPOSED BOUNDARIES OF THE COUNTY OF SACRAMENTO COMMUNITY FACILITIES DISTRICT NO. 2008-1 (STREET LIGHTING AND ROAD MAINTENANCE) AND FUTURE ANNEXATION AREA, RECORDED ON OCTOBER 14, 2008 IN BOOK 110 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, AT PAGE 12, IN THE OFFICE OF THE COUNTY RECORDER OF SACRAMENTO COUNTY, CALIFORNIA."

REFERENCE IS MADE TO THE FUTURE ANNEXATION AREA MAP OF THE DISTRICT, ENTITLED AND RECORDED AS FOLLOWS:

"PROPOSED FUTURE ANNEXATION AREA OF THE COUNTY OF SACRAMENTO COMMUNITY FACILITIES DISTRICT NO. 2008-1 (STREET LIGHTING AND ROAD MAINTENANCE) AND FUTURE ANNEXATION AREA, RECORDED ON OCTOBER 14, 2008 IN BOOK 110 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, AT PAGE 12, IN THE OFFICE OF THE COUNTY RECORDER OF SACRAMENTO COUNTY, CALIFORNIA."

RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

City Clerk
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, California 95670

NOTICE OF SPECIAL TAX LIEN

CITY OF RANCHO CORDOVA
Community Facilities District No. 2008-1
(Street Lighting and Road Maintenance)

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code of California and the Mello-Roos Community Facilities Act of 1982, as amended, section 53311, *et. seq.*, of the California Government Code (the "Act"), the undersigned City Clerk of the City of Rancho Cordova, State of California, hereby gives notice that a lien to secure payment of a special tax is hereby imposed by the City Council of the City of Rancho Cordova, County of Sacramento. The special tax secured by this lien is authorized to be levied for the purpose providing certain public services described in **Exhibit A** attached hereto and hereby made a part hereof.

The special tax is authorized to be levied within Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance) (the "CFD") which has now been officially formed and the lien of the special tax is a continuing lien which shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax is as set forth in **Exhibit B** attached hereto and hereby made a part hereof. Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are: None.

Notice is further given that upon the recording of this notice in the office of the County Recorder of the County of Sacramento, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within the CFD in accordance with Section 3115.5 of the Streets and Highways Code of California.

The name(s) of the owner(s) and the assessor's tax parcel numbers of the real property included within the area of the CFD and not exempt from the special tax are as set forth in **Exhibit C** attached hereto and hereby made a part hereof.

EXHIBIT C

Reference is made to the boundary map of the CFD recorded at Book 110 of Maps of Assessment and Community Facilities Districts at Page 10 (Document No. 20081014-0822), in the office of the County Recorder for the County of Sacramento, State of California, which map is now the final boundary map of the CFD, Annexation Map No. 1, recorded at Book 110 of Maps of Assessment and Community Facilities Districts at Page 0013 (Document No. 20090121-0720); Annexation Map No. 2, recorded at Book 110 of Maps of Assessment and Community Facilities Districts at Page 0014 (Document No. 20090121-0721); Annexation Map No. 3, recorded at Book 110 of Maps of Assessment and Community Facilities Districts at Page 0015 (Document No. 20090121-0722); Annexation Map No. 4, recorded at Book 110 of Maps of Assessment and Community Facilities Districts at Page 0016 (Document No. 20090121-0723); Annexation Map No. 5, recorded at Book 110 of Maps of Assessment and Community Facilities District at Page 0021 (Document No. 20090626-0609); and Annexation Map No. 6, recorded at Book 111 of Maps of Assessment and Community Facilities Districts at Page 0003 (Document No. 20091002-0840), in the office of the County Recorder for the County of Sacramento, State of California, which is the map of the above referenced parcel annexed to the District. The original boundary map along with the recorded annexation maps now comprise the boundary map of the District.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact the Chief Financial Officer of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California 95670; telephone number (916) 851-8700.

Dated: As of _____, 2009

By: _____
Mindy Cuppy, City Clerk
City of Rancho Cordova

EXHIBIT A

**CITY OF RANCHO CORDOVA
Community Facilities District No. 2008-1
(Street Lighting and Road Maintenance)**

DESCRIPTION OF DISTRICT SERVICES

Maintenance and Lighting of Public Streets and Roads

- Maintenance means the furnishing of services and materials for the ordinary and usual operation, maintenance and servicing of the street improvements, the street-lighting network, dedicated easements, and appurtenant facilities, and administration and overhead of all aspects of the District.

Reserve Fund

- The Special Taxes may be collected and set-aside in designated funds, collected over several years, that may be used by the District to fund future repairs to street lighting and roadway improvements and other services as determined by the District.

EXHIBIT B

CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2008-1 (STREET LIGHTING AND ROAD MAINTENANCE)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance) shall be levied and collected according to the tax liability determined by the City Council, acting in its capacity as the legislative body of CFD No. 2008-1, through the application of the appropriate Special Tax rate, as described below. All of the property in CFD No. 2008-1, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2008-1 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acreage" or "Acre" means the land area making up an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final subdivision map or other parcel map recorded at the County Recorder's Office.

"Additional Load and Decorative Lighting Parcel" means any Parcel that is determined by the City to be both an Additional Load Parcel and a Decorative Lighting Parcel.

"Additional Load Parcel" means any Parcel of Commercial Property or Industrial Property that is determined by the City to create excessive wear and tear on the roadways and/or a high volume of vehicular traffic.

"Administrative Expenses" means the costs incurred by the City to determine, levy and collect the Special Tax, including salaries of City employees and fees of consultants and the costs of collecting installments of the Special Taxes upon the general tax rolls, preparation of required reports, and any other costs required to administer the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

“Authorized Services” means the public services authorized to be funded by CFD No. 2008-1 as set forth in the documents adopted by the City Council when the CFD was formed.

“CFD” or **“CFD No. 2008-1”** means the City of Rancho Cordova Community Facilities District No. 2008-1 (Street Lighting and Road Maintenance).

“City” means the City of Rancho Cordova.

“City Council” means the City Council of the City of Rancho Cordova, acting as the legislative body of CFD No. 2008-1.

“Commercial Property” means, in any Fiscal Year, all Developed Property for which a building permit or use permit has been issued for a commercial establishment which includes, but is not limited to, retail stores, clothing stores, book stores, video rental stores, drug stores, professional services (i.e., barber shops, dry cleaners), restaurants, supermarkets, hospitals, movie theaters, appliance and electronic stores, home supply stores, auto parts stores, and other businesses providing auto-related products and services. The City shall make the determination if a Parcel is Commercial Property.

“County” means the County of Sacramento.

“Decorative Lighting Parcel” means any Parcel of Developed Property that is determined by the City to have or benefit from decorative lighting features.

“Developed Property” means, in any Fiscal Year, all Parcels of Taxable Property for which a use permit or building permit for new construction of a residential or non-residential structure (which shall not include a permit issued solely for construction of the foundation if another permit remains to be issued for vertical construction of the building) was issued prior to June 30 of the preceding Fiscal Year.

“Fiscal Year” means the period starting on July 1 and ending on the following June 30.

“Hotel Property” means, in any Fiscal Year, all Developed Property for which a building permit or use permit has been issued for a structure that constitutes a place of lodging providing sleeping accommodations and related facilities for travelers.

“Industrial Property” means, in any Fiscal Year, all Developed Property for which a building permit or use permit has been issued for construction of an industrial, manufacturing, or warehousing structure. The City shall make the determination if a Parcel is Industrial Property.

“Maximum Special Tax” means the greatest amount of Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Section C below.

“Multi-Family Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit or use permit has been issued for construction of a residential structure with five or more Units that share a single Assessor’s Parcel number, all of which are offered for rent to the general public and cannot be purchased by individual homebuyers.

“Non-Residential Property” means, collectively, Commercial Property, Hotel Property, Industrial Property, and Office Property.

“Office Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit or use permit has been issued for a building in which professional, banking, insurance, real estate, administrative or in-office medical or dental activities are conducted. The City shall make the determination if a Parcel is Office Property.

“Ordinary Use Parcel” means any Parcel of Taxable Property that is not an Additional Load Parcel, Decorative Lighting Parcel, Residential Alley Parcel, Additional Load and Decorative Lighting Parcel, or Residential Alley and Decorative Lighting Parcel.

“Proportionately” means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Parcels of Developed Property.

“Public Property” means any property within the boundaries of CFD No. 2008-1 that is owned by the federal government, State of California, County, City, or other public agency.

“Residential Alley and Decorative Lighting Parcel” means any Parcel that is determined by the City to be both a Residential Alley Parcel and a Decorative Lighting Parcel.

“Residential Alley Parcel” means any Parcel of Residential Property that is determined by the City to have residential alleys that are part of the public roadways.

“Residential Property” means, collectively, Single Family Attached Property, Single Family Detached Property, and Multi-Family Property.

“Single Family Attached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls, have separate Assessor’s Parcel numbers assigned to them (except for a duplex unit, which may share an Assessor’s Parcel with another duplex unit), and are offered as for-sale Units (which shall still be the case even if the Units are purchased and subsequently offered for rent by the owner of the Unit(s)), including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

“Single Family Detached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a Unit that does not share a common wall with another Unit.

“Special Tax Requirement” means the amount of revenue needed in any Fiscal Year to pay for the following: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Special Taxes which have occurred or (based on delinquency rates in prior years) may be expected to occur in the Fiscal Year in which the tax will be collected.

“Special Tax” means a special tax levied in any Fiscal Year on property within CFD No. 2008-1 to pay the Special Tax Requirement.

“Square Foot,” “Square Footage,” or “Square Feet” means the building square footage reflected on the original building permit issued for construction of a building.

“Taxable Property” means all Assessor’s Parcels within the boundaries of CFD No. 2008-1 which are not exempt from the Special Tax pursuant to law or Section E below.

“Taxable Public Property” means, in any Fiscal Year, all Assessor’s Parcels in CFD No. 2008-1 that had, in prior Fiscal Years, been taxed as Developed Property and subsequently came under the ownership of a public agency.

“Tax Zone” means one of the three mutually exclusive tax zones identified in Attachment 1 of this Rate and Method of Apportionment of Special Tax, as may be updated to include new Parcels or new tax zones added to the CFD as a result of future annexations.

“Tax Zone 1” means the geographic area that is identified by Assessor’s Parcel number in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone 1 and any property annexed into Tax Zone 1 after formation of the CFD.

“Tax Zone 2” means the geographic area that is identified by Assessor’s Parcel number in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone 2 and any property annexed into Tax Zone 2 after formation of the CFD.

“Tax Zone 3” means the geographic areas that are identified by Assessor’s Parcel number in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone 3 and any property annexed into Tax Zone 3 after formation of the CFD.

“Unit” means an individual single-family detached unit or an individual residential unit within a duplex, triplex, fourplex, townhome, condominium, or apartment structure. Unit shall also mean a single room or unit on a Parcel of Hotel Property.

B. DATA COLLECTION FOR ANNUAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel number for all Parcels of Taxable Property within CFD No. 2008-1 and shall determine within which Tax Zone each Assessor’s Parcel is located. Upon each annexation of property into CFD No. 2008-1, the Administrator shall update Attachment 1 to include the new Assessor’s Parcel number(s). In addition, for all Parcels of Developed Property, if applicable to the Tax Zone in which the

Parcels are located, the Administrator shall determine if each Parcel is an Ordinary Use Parcel, an Additional Load Parcel, a Residential Alley Parcel, a Decorative Lighting Parcel, an Additional Load and Decorative Lighting Parcel, or a Residential Alley and Decorative Lighting Parcel.

Based on review of building permit records for property within the CFD, the Administrator shall determine which Parcels in the CFD are Developed Property for purposes of levying the Special Tax pursuant to Section D below. For Single Family Attached Property, Multi-Family Property, and Hotel Property, the number of Units shall be determined by referencing the condominium plan, apartment plan, site plan or other development plan for the property. For Residential Property, the Administrator shall determine the Square Footage of each Unit. For Non-Residential Property, the Administrator shall determine the Acreage of, and Square Footage on, each Parcel.

If a Parcel in the CFD is rezoned prior to such Parcel becoming Developed Property, the City may in its sole discretion, move the Parcel to a different Tax Zone based on the rezone. If a Parcel rezones after the Parcel has been taxed as Developed Property in prior Fiscal Years, the City can either continue to apply the Maximum Special Tax to the Parcel that had applied prior to the rezone or, in the City's sole discretion, allow for the Parcel to be moved to a different Tax Zone based on the rezone.

In any Fiscal Year, if it is determined that (i) a parcel map for a portion of property in CFD No. 2008-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

C. MAXIMUM SPECIAL TAX

1. Tax Zone 1

The Maximum Special Tax for a Parcel of Developed Property in Tax Zone 1 for Fiscal Year 2008-09 shall be \$0.0771 per Square Foot. On each January 1, commencing January 1, 2009, this Maximum Special Tax shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

2. Tax Zone 2

The Maximum Special Tax for a Parcel of Developed Property in Tax Zone 2 for Fiscal Year 2008-09 shall be \$0.0211 per Square Foot. On each January 1, commencing January 1, 2009, this Maximum Special Tax shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

3. Tax Zone 3

The following Maximum Special Taxes apply to all Parcels of Developed Property within Tax Zone 3 of CFD No. 2008-1:

a. Ordinary Use Parcels

**MAXIMUM SPECIAL TAXES
ORDINARY USE PARCELS
(FISCAL YEAR 2008-09)**

Land Use Class	Square Footage	Maximum Special Tax
Single Family Detached Property	Units greater than 1,200 Square Feet	\$335.81 per Unit
Single Family Detached Property	Units less than or equal to 1,200 Square Feet	\$295.51 per Unit
Single Family Attached Property	Units greater than 1,200 Square Feet	\$295.51 per Unit
Single Family Attached Property	Units less than or equal to 1,200 Square Feet	\$235.06 per Unit
Multi-Family Property	N/A	\$235.06 per Unit
Commercial Property	N/A	The greater of \$973.30 per Acre or \$0.0944 per Square Foot
Hotel Property	N/A	The greater of \$2,688.49 per Acre or \$56.98 per Unit
Industrial Property	N/A	The greater of \$222.20 per Acre or \$0.0351 per Square Foot
Office Property	N/A	The greater of \$851.74 per Acre or \$0.0827 per Square Foot

On each January 1, commencing January 1, 2009, the Maximum Special Taxes shown above shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

b. Residential Alley Parcels

**MAXIMUM SPECIAL TAXES
RESIDENTIAL ALLEY PARCELS
(FISCAL YEAR 2008-09)**

Land Use Class	Square Footage	Maximum Special Tax
Single Family Detached Property	Units greater than 1,200 Square Feet	\$463.41 per Unit
Single Family Detached Property	Units less than or equal to 1,200 Square Feet	\$407.80 per Unit
Single Family Attached Property	Units greater than 1,200 Square Feet	\$407.80 per Unit
Single Family Attached Property	Units less than or equal to 1,200 Square Feet	\$324.39 per Unit
Multi-Family Property	N/A	\$324.39 per Unit
Commercial Property	N/A	N/A
Hotel Property	N/A	N/A
Industrial Property	N/A	N/A
Office Property	N/A	N/A

On each January 1, commencing January 1, 2009, the Maximum Special Taxes shown above shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

c. *Decorative Lighting Parcels*

**MAXIMUM SPECIAL TAXES
DECORATIVE LIGHTING PARCELS
(FISCAL YEAR 2008-09)**

Land Use Class	Square Footage	Maximum Special Tax
Single Family Detached Property	Units greater than 1,200 Square Feet	\$360.99 per Unit
Single Family Detached Property	Units less than or equal to 1,200 Square Feet	\$317.67 per Unit
Single Family Attached Property	Units greater than 1,200 Square Feet	\$317.67 per Unit
Single Family Attached Property	Units less than or equal to 1,200 Square Feet	\$252.69 per Unit
Multi-Family Property	N/A	\$252.69 per Unit
Commercial Property	N/A	The greater of \$1,046.30 per Acre or \$0.1015 per Square Foot
Hotel Property	N/A	The greater of \$2,890.13 per Acre or \$61.25 per Unit
Industrial Property	N/A	The greater of \$238.87 per Acre or \$0.0377 per Square Foot
Office Property	N/A	The greater of \$915.62 per Acre or \$0.0889 per Square Foot

On each January 1, commencing January 1, 2009, the Maximum Special Taxes shown above shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

d. Additional Load Parcels

**MAXIMUM SPECIAL TAXES
ADDITIONAL LOAD PARCELS
(FISCAL YEAR 2008-09)**

Land Use Class	Square Footage	Maximum Special Tax
Single Family Detached Property	Units greater than 1,200 Square Feet	N/A
Single Family Detached Property	Units less than or equal to 1,200 Square Feet	N/A
Single Family Attached Property	Units greater than 1,200 Square Feet	N/A
Single Family Attached Property	Units less than or equal to 1,200 Square Feet	N/A
Multi-Family Property	N/A	N/A
Commercial Property	N/A	The greater of \$1,216.63 per Acre or \$0.1180 per Square Foot
Hotel Property	N/A	N/A
Industrial Property	N/A	The greater of \$277.75 per Acre or \$0.0439 per Square Foot
Office Property	N/A	N/A

On each January 1, commencing January 1, 2009, the Maximum Special Taxes shown above shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

e. *Additional Load and Decorative Lighting Parcels*

**MAXIMUM SPECIAL TAXES
ADDITIONAL LOAD AND DECORATIVE LIGHTING PARCELS
(FISCAL YEAR 2008-09)**

Land Use Class	Square Footage	Maximum Special Tax
Single Family Detached Property	Units greater than 1,200 Square Feet	N/A
Single Family Detached Property	Units less than or equal to 1,200 Square Feet	N/A
Single Family Attached Property	Units greater than 1,200 Square Feet	N/A
Single Family Attached Property	Units less than or equal to 1,200 Square Feet	N/A
Multi-Family Property	N/A	N/A
Commercial Property	N/A	The greater of \$1,289.63 per Acre or \$0.1251 per Square Foot
Hotel Property	N/A	N/A
Industrial Property	N/A	The greater of \$294.42 per Acre or \$0.0465 per Square Foot
Office Property	N/A	N/A

On each January 1, commencing January 1, 2009, the Maximum Special Taxes shown above shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

f. Residential Alley and Decorative Lighting Parcels

**MAXIMUM SPECIAL TAXES
RESIDENTIAL ALLEY AND DECORATIVE LIGHTING PARCELS
(FISCAL YEAR 2008-09)**

Land Use Class	Square Footage	Maximum Special Tax
Single Family Detached Property	Units greater than 1,200 Square Feet	\$488.60 per Unit
Single Family Detached Property	Units less than or equal to 1,200 Square Feet	\$429.97 per Unit
Single Family Attached Property	Units greater than 1,200 Square Feet	\$429.97 per Unit
Single Family Attached Property	Units less than or equal to 1,200 Square Feet	\$342.02 per Unit
Multi-Family Property	N/A	\$342.02 per Unit
Commercial Property	N/A	N/A
Hotel Property	N/A	N/A
Industrial Property	N/A	N/A
Office Property	N/A	N/A

On each January 1, commencing January 1, 2009, the Maximum Special Taxes shown above shall be increased by an amount equal to the percentage increase, if any, in the construction cost index for the San Francisco region for the prior 12-month period (December to December) as published in the Engineering News Record or other comparable source.

D. METHOD OF LEVY AND COLLECTION OF SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied as follows until the amount of the levy equals the Special Tax Requirement for that Fiscal Year:

First: The Special Tax shall be levied proportionately on each Parcel of Developed Property up to 100% of the Maximum Special Tax determined for each category of Developed Property within each Tax Zone until the amount levied is equal to the Special Tax Requirement for the Fiscal Year.

Second: If additional revenue is needed after the first step has been completed, the Special Tax shall be levied proportionately on each Parcel of Taxable Public Property up to 100% of the Maximum Special Tax that would have

applied to the Parcel had the Parcel not become Public Property until the amount levied is equal to the Special Tax Requirement for the Fiscal Year.

The Special Tax for CFD No. 2008-1 shall be collected at the same time and in the same manner as ordinary ad valorem property taxes provided, however, that the City may (under the authority of Government Code Section 53340) collect Special Taxes at a different time or in a different manner if necessary to meet CFD No. 2008-1 financial obligations and the Special Tax shall be equally subject to foreclosure if delinquent.

E. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on (i) any Parcel of Public Property that is not Taxable Public Property, and (ii) any Parcel in CFD No. 2008-1 that is not Developed Property.

F. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the Rate and Method of Apportionment of Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. The City may make interpretations by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Taxes.

ATTACHMENT 1

**CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT 2008-1
(STREET LIGHTING AND ROAD MAINTENANCE)**

IDENTIFICATION OF TAX ZONES

Tax Zone	Assessor's Parcels Included in Tax Zone *	Fiscal Year In Which Property Was Added to CFD No. 2008-1
1	077-0050-085	2008-09
2	067-0010-060	2008-09
3	067-0990-001	2008-09
	067-1000-001	2008-09
	072-0500-040	2008-09
	072-0500-041	2008-09

** The property identified by the Assessor's Parcel Numbers listed above shall remain part of the identified Tax Zone regardless of changes in the configuration of the Assessor's Parcels or changes to APNs in future Fiscal Years. As APNs change, the City may update Attachment 1 to reflect the most current APNs.*

EXHIBIT C

**CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2008-1
(STREET LIGHTING AND ROAD MAINTENANCE)**

**ASSESSOR'S PARCEL NUMBERS AND OWNERS OF LAND WITHIN
COMMUNITY FACILITIES DISTRICT**

<u>Assessor's Parcel No.</u>	<u>Names of Property Owners</u>
Tax Zone 1: 077-0050-085-0000	JPI XXIX, L.P.
Tax Zone 2: 067-0010-060-0000	Sacramento Medical Foundation
Tax Zone 3: 072-0500-040-0000	Brian Porter
072-0500-041-0000	Brian Porter
067-1000-001-0000	Mather Development Partners III, L.P.
067-0990-001-0000	Mather Development Partners III, L.P.
056-0222-002-0000	Alcides A. Gonzalez Trust
077-0050-014-0000	Hoang Tran
072-0610-064-0000	Monument Properties-Prospect Park, LLC

MEMORANDUM



DATE: November 16, 2009
TO: Honorable Mayor and Council Members
FROM: Donna Silva, Finance Director
SUBJECT: TREASURER'S REPORT – SEPTEMBER 30, 2009

RECOMMENDATION

This report is informational only. It is recommended that the report be received and filed.

RESULT OF RECOMMENDED ACTION

This report provides Council with information concerning the City's investment portfolio. This report will meet requirements as provided by state law.

BACKGROUND

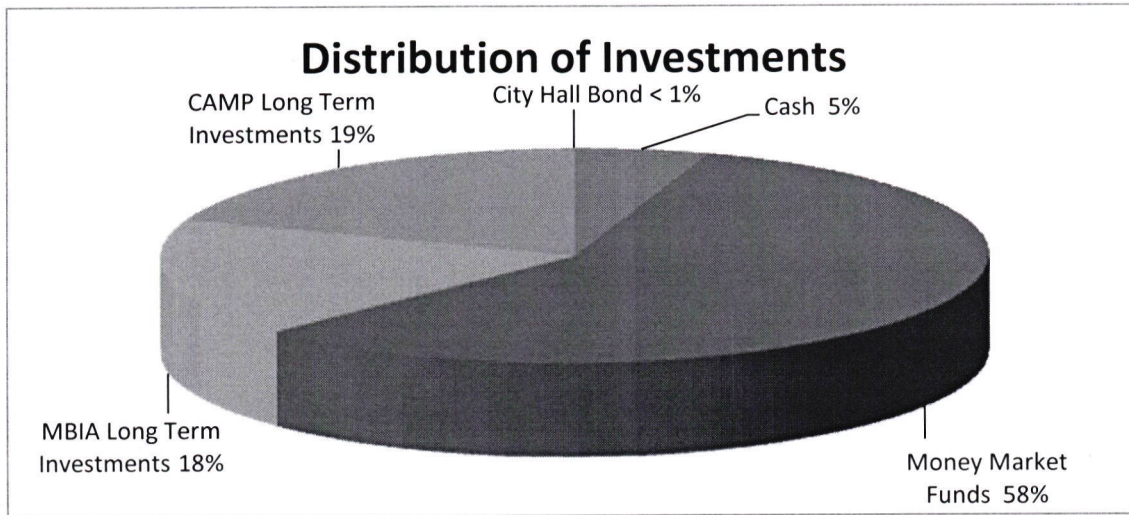
Attached is the quarterly Treasurer's report for the period ending September 30, 2009. Treasurer's reports are provided to Council on a quarterly basis.

At June 30, 2009, the current value of the City's total portfolio was \$106 million. Since that time, the balances have decreased by \$13 million for an ending balance of \$93 million at September 30, 2009. Of that, the General Fund Cash and Investments balance was \$23 million. Cash and short-term investments decreased by \$13 million while long-term investments decreased by \$.7 million. The overall portfolio is well diversified with \$27 million invested in long-term investments. \$52 million is invested in short-term investments that are considered liquid (CAMP and LAIF). The remainder consists of \$6 million on deposit with our banks and \$5,813 is invested in a City of Rancho Cordova City Hall bond. Staff, in conjunction with our Financial Advisors, periodically reviews the mix of liquid and long-term investments and adjusts the portfolio according to the market conditions and our short-term cash needs. At September 30th, interest rates at LAIF and CAMP had fallen from their June 2009 amounts of 1.51% and .6%, to .9% and .4%, respectively.

The decrease in cash and investment balances, as noted in the above paragraph, is typical for this time of the year. We received our final 2008/2009 property tax distribution in July. Cash is expected to decline over the next three months until our next property tax installment is received in January 2010.

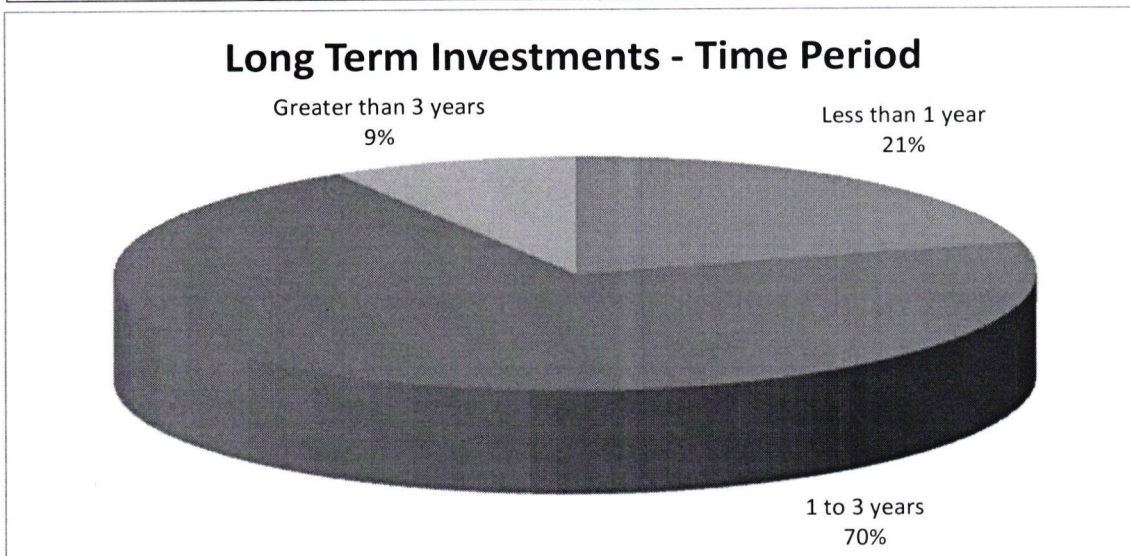
Staff thoroughly reviews investment statements and makes appropriate inquiries of CAMP, LAIF, and MBIA, as necessary, to confirm the existence and viability of the City's assets. The City invests conservatively in S & P rated AAA securities and U.S. Treasury

Notes. The long-term assets are in securities that can be held to maturity, thus are less vulnerable to the fluctuations of the market.



Analysis of the long-term investments:

	Par Value	Current Value	Percent of L-T Investments
Less than 1-year	\$ 7,075,000	\$ 7,198,382	20.88%
1 to 3 years	23,655,000	24,320,361	70.53%
Greater than 3-years	2,805,000	2,964,453	8.59%
	<u>\$ 33,535,000</u>	<u>\$ 34,483,196</u>	100.00%



ATTACHMENT

Treasurer's Report for September 30, 2009

CITY OF RANCHO CORDOVA, CA
TREASURER'S REPORT
SEPTEMBER 30, 2009

	Par Value	Current Value	Maturity Date
Cash and Cash Equivalents			
Wells Fargo Bank	4,803,055	4,803,055	n.a.
U.S. Bank Checking - old system	202,596	202,596	n.a.
Bank of Sacramento	64,589	64,589	
	<u>5,070,240</u>	<u>5,070,240</u>	
Money Market Funds			
Wells Fargo Adv Treasury Plus MMF (MBIA)	1,126,072	1,126,072	n.a.
Sub-total	<u>1,126,072</u>	<u>1,126,072</u>	
Money Market Funds			
Local Agency Investment Fund (LAIF)	18,892,017	18,892,017	n.a.
California Asset Management Program (CAMP)	33,215,561	33,215,561	n.a.
Sub-total	<u>52,107,578</u>	<u>52,107,578</u>	
Long-Term Investments - MBIA:			
U.S. Treasury Note	750,000	753,077	11/15/2009
U.S. Treasury Note	500,000	503,789	12/31/2009
Federal Home Loan Note	500,000	504,563	12/11/2009
Fannie Mae Note	500,000	506,644	2/15/2010
Federal Home Loan Note	500,000	516,819	6/11/2010
Freddie Mac Note	750,000	780,107	9/1/2010
Freddie Mac Note	750,000	750,361	10/8/2010
Federal Home Loan Note	750,000	786,347	12/10/2010
Farm Credit Note	1,000,000	1,035,476	1/18/2011
Fannie Mae Note	1,000,000	1,005,109	2/11/2011
Farm Credit Note	500,000	527,922	2/18/2011
Fannie Mae Note	1,000,000	1,006,676	3/16/2011
Fannie Mae Note	750,000	800,540	4/15/2011
Federal Home Loan Bank	725,000	728,794	6/3/2011
Freddie Mac Note	1,000,000	1,007,083	7/27/2011
U.S. Treasury Note	1,000,000	1,002,852	7/31/2011
Farm Credit Note	750,000	799,598	12/8/2011
Fannie Mae Note	750,000	755,632	3/2/2012
Farm Credit Note	500,000	541,087	4/12/2012
Freddie Mac Note	750,000	751,547	9/25/2012
Federal Home Loan Note	1,000,000	1,043,243	10/5/2012
Farm Credit Note	500,000	540,209	10/17/2012
Sub-total	<u>16,225,000</u>	<u>16,647,474</u>	

CITY OF RANCHO CORDOVA, CA
TREASURER'S REPORT
SEPTEMBER 30, 2009

	Par Value	Current Value	Maturity Date
Long-Term Investments -CAMP:			
U.S. Treasury Bill	750,000	749,792	1/14/2010
Federal Home Loan Bank Tap Bonds	500,000	510,469	3/12/2010
Fannie Mae Global Benchmark Notes	500,000	511,719	5/15/2010
U.S. Treasury Note	575,000	581,289	4/30/2010
Federal Home Loan Global Notes	750,000	763,865	6/28/2010
Fannie Mae Global Benchmark Notes	500,000	516,250	8/15/2010
U.S. Treasury Note	600,000	623,765	10/15/2010
Federal Home Loan Global Notes	740,000	768,906	10/22/2010
U.S. Treasury Notes	1,085,000	1,089,662	12/31/2010
Fannie Mae Notes (Callable)	500,000	502,500	2/11/2011
Fannie Mae Global Benchmark Notes	500,000	533,750	4/15/2011
Federal Home Loan Global Reference Notes	1,000,000	1,077,813	7/18/2011
Federal Home Loan Bank Notes	500,000	505,781	7/27/2011
U.S. Treasury Notes	500,000	535,332	8/31/2011
Fannie Mae Global Benchmark Notes	750,000	812,344	10/15/2011
U.S. Treasury Notes	1,000,000	1,004,844	3/15/2012
U.S. Treasury Notes	1,000,000	1,004,844	3/15/2012
Federal Home Loan Global Notes	500,000	503,907	3/23/2012
FFCB Notes	1,025,000	1,042,297	4/24/2012
U.S. Treasury Notes	550,000	551,847	5/15/2012
Fannie Mae Global Benchmark Notes	500,000	544,688	5/18/2012
Federal Home Loan Global Notes	505,000	507,682	6/15/2012
FFCB Notes	350,000	383,797	8/1/2012
Federal Home Loan Bank Notes	825,000	827,578	8/22/2012
Federal Home Loan Global Bonds	500,000	543,281	10/10/2012
U.S. Treasury Notes	600,000	635,110	6/30/2013
U.S. Treasury Notes	200,000	196,797	3/31/2014
Sub-total	<u>17,305,000</u>	<u>17,829,909</u>	
Long-Term Investments - Brandis Tallman LLC			
City Hall COP Bond	5,000	5,813	2/1/2035
	<u>\$ 91,838,890</u>	<u>\$ 92,787,086</u>	

- All data is per September 2009 statements of accounts.
- The portfolio is in compliance with the current Investment Portfolio of the City of Rancho Cordova.
- Based on the value and liquidity of the portfolio, the City of Rancho Cordova is able to meet its expenditure requirements for the next six months.

Community Redevelopment Agency

OF THE CITY OF RANCHO CORDOVA

MEMORANDUM

DATE: November 16, 2009

TO: Agency Director and Members

THRU: Ted A. Gaebler, Executive Director

FROM: Reed Flory, Housing Service Administrator

SUBJECT: PUBLIC HEARING TO CONSIDER ADOPTION OF A RESOLUTION OF NECESSITY DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF 10447 FOLSOM BOULEVARD, RANCHO CORDOVA, CALIFORNIA, FOR THE RANCHO CORDOVA REDEVELOPMENT PROJECT ("PROJECT")

RECOMMENDATION

Staff recommends that the Agency Board adopt the proposed Resolution of Necessity – Resolution No. CRA-9-2009. The required findings for adoption are:

1. That the public interest and necessity require the Project; and
2. That the Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury; and
3. That the subject property is necessary for the Project.

Therefore, staff recommends that the Agency Board:

- Consider all evidence presented on whether the public interest and necessity require the Project.
- Consider all evidence presented on whether the Project is planned or located in the manner that will be the most compatible with the greatest public good and least private injury.
- Consider all evidence presented on whether the subject property is necessary for the Project.

If, based on the evidence presented, the Agency Board finds and determines each of the aforementioned then staff recommends that the Agency Board adopt the proposed Resolution of Necessity.

AGENDA ITEM 10.1

RESULT OF RECOMMENDED ACTION

Action on the Resolution of Necessity will authorize the Agency Executive Director to direct the filing of an action in eminent domain to acquire the subject property for the Project.

BACKGROUND

A. The Rancho Cordova Redevelopment Project

On December 6, 2004, the City Council formed the Community Redevelopment Agency of the City of Rancho Cordova ("Agency") under Ordinance No. 55-2004 (incorporated herein by this reference as though fully set forth herein) in order to address areas in the City of Rancho Cordova ("City") that exhibit adverse physical and economic conditions¹. The City Council, Agency, Planning Commission, and citizens and other members of the Rancho Cordova community began the process of forming a redevelopment project to help revitalize Rancho Cordova. Their work culminated in the Rancho Cordova Redevelopment Project Area and Final Redevelopment Plan (incorporated herein by this reference as though fully set forth herein), finalized on August 6, 2006. The outreach and adoption process included various public workshops and hearings, including meetings in the community and with the Community Advisory Committee ("CAC"), a community workshop on June 6, 2006, a joint public hearing by the City Council and Agency on June 19, 2006, and a City Council meeting on July 10, 2006. Outreach also included mailings to over 8,500 property owners, residents, business and community organizations, and public notices in the Grapevine Independent.

The intent of the Redevelopment Plan is to alleviate blight and address the physical and economic conditions that are present in the Redevelopment Project Area. The Redevelopment Plan helps achieve many of the City's goals, including providing critical financial resources to alleviate adverse physical and economic conditions in the project area, helping establish a vibrant downtown, implementing the City's Specific Plan to enhance Folsom Boulevard, expanding, improving, and preserving the City's supply of affordable housing, and facilitating transit station improvements and connectors to local and other transportation systems.

1. Redevelopment Project Area Boundaries

With much help from CAC, the Agency worked diligently to define redevelopment project area boundaries and develop a redevelopment plan focused on:

- Enhancing existing businesses and helping attract new business;
- Creating a downtown destination;

¹ See Rancho Cordova Municipal Code section 2.34.020 entitled "Findings and determinations": "The city council hereby finds and determines that the city council has investigated and determined that there is a community need for a redevelopment agency in the city and does hereby so declare that there is a need for a redevelopment agency to function within the city pursuant to Section 33000 et seq. of the Health and Safety Code, the Community Redevelopment Law. [Ord. 55-2004 § 2]."

- Upgrading the Folsom Boulevard corridor;
- Stimulating investment in the City's older commercial and industrial areas;
- Improving housing conditions and community facilities;
- Funding needed infrastructure improvements; and
- Remediating contaminated sites.

The proposed project boundaries, along with the proposed redevelopment plan, were discussed at a June 6, 2006 community workshop. The workshop was well attended due to the extensive mailing to business and property owners in and around the proposed project area.

As spelled out in the May 2006 Report to the Council (incorporated herein by this reference as though fully set forth herein), the project area is impeded by adverse physical and economic conditions, such as:

- Unsafe, unhealthy and deteriorated buildings;
- Vacant and underutilized buildings and lots;
- Residential overcrowding and problem businesses;
- Other adverse conditions that inhibit development including irregularly shaped lots, landlocked parcels, poor circulation, and the presence of hazardous materials; and
- Inadequate public improvements, infrastructure, public facilities, and utilities.

The Rancho Cordova Project Area (**Attachment 2**) includes commercial, industrial, and residential land uses located north of Old Placerville Road and International Boulevard, south of the American River, east of Bradshaw Road, and west of Sunrise Boulevard. In total, it includes 480 non-residential parcels and 4,600 residential parcels, on over approximately 2,580 acres. Approximately 50 acres of the Project Area consists of vacant parcels.

2. Implementation of the Redevelopment Plan

It is anticipated that the Agency will undertake various redevelopment projects as part of the Redevelopment Plan and issue bonds or other tax exempt debt for these projects. The Redevelopment Program is organized into six program categories including: (1) Economic Development, (2) Building Rehabilitation, (3) Transportation and Circulation, (4) Site Preparation and Development, (5) Public Infrastructure and Facilities, and (6) Affordable Housing.

3. Environmental Review and Plan Approval

In compliance with the California Community Redevelopment Law and the California Environmental Quality Act ("CEQA"), Agency staff and consultants prepared (i) a Draft Redevelopment Plan for the proposed project area, which described the proposed goals, objectives, and programs for the project area, (ii) a Draft Environmental Impact Report ("EIR") which analyzed the potential environmental effects of implementing the Draft Redevelopment Plan, and (iii) a Preliminary Report which described existing conditions in the proposed project area, analyzed the financial feasibility of the Draft Redevelopment Plan, and described proposed projects and activities that would eliminate blight and promote economic development in the proposed project area (each

of the aforementioned documents are attached hereto by this reference as though fully set forth herein).

On March 20, 2006, the Agency approved the Draft Redevelopment Plan, the Draft Environmental Impact Report, and the Preliminary Report, and authorized their transmittal to affected taxing entities, the Planning Commission, and interested parties. On April 13, 2006, the Planning Commission reviewed the Draft Redevelopment Plan and determined that it was consistent with the City's General Plan as currently in effect and as it may hereafter be amended, and recommended approval of the Draft Redevelopment Plan (Resolution No. 29-2006, incorporated herein by this reference as though fully set forth herein).

At a June 5, 2006 concurrent Agency/City Council meeting, the Agency adopted Resolution No. 91-2006 (incorporated herein by this reference as though fully set forth herein) approving the Report to Council and authorizing the transmittal of the proposed Redevelopment Plan, the Report to Council, and the (Final EIR (incorporated herein by this reference as though fully set forth herein) to the City Council for consideration at a joint public hearing with the Council on June 19, 2006. At the same meeting, the City Council adopted Resolution No. 91-2006 (incorporated herein by this reference as though fully set forth herein) accepting the Report to Council and related documents.

Following the public hearing on June 19, 2006, the Agency adopted the Resolution No. 109-2006 (certifying the Final EIR for the Redevelopment Plan Project, and adopting the related findings, a Statement of Overriding Consideration and a Mitigation Monitoring, and Reporting Program), and Resolution No. 110-2006 (adopting interim mitigation measures for the Project until the proposed General Plan is adopted and effective). Both the aforementioned Resolutions are incorporated herein by this reference as though fully set forth herein. At the same meeting, the Agency adopted Resolution No. 112-2006, approving a Redevelopment Plan for the Rancho Cordova Redevelopment Project Area (incorporated herein by this reference as though fully set forth herein). On June 26, 2006, the Agency adopted Resolution No. 122-2006, adopting the Five-Year Implementation Plan for the Rancho Cordova Redevelopment Project for the Years 2006/07 to 2010/11.

4. Use of Eminent Domain to Implement Project

A public agency may acquire property through eminent domain whenever redevelopment cannot be accomplished by private enterprise alone (Health and Safety Code sections 33037(b), 33342, and 33391.) It is well established that acquiring property for redevelopment constitutes a public use (See *Fellom v. Redevelopment Agency* (1958) 157 Cal.App.2d 243, 246; *Anaheim Redevelopment Agency v. Dusek* (1987) 193 Cal.App.3d 249, 263; and *Redevelopment Agency of the City of Chula Vista v. Rados Bros.* (2001) 95 Cal.App.4th 309,314.)

The Redevelopment Plan authorized 12 years of limited eminent domain authority to be used as part of the Redevelopment Program's implementation, to wit, the proposed program of projects and activities to alleviate the adverse conditions in the Project Area. The Redevelopment Plan specifically prohibits the Agency from using eminent domain on residential properties, meaning properties that will result in the displacement of residential occupants. In June 2008, Article 1, Section 19 of the California Constitution was amended by Initiative Measure – i.e., Proposition 99. Section 19(a) now provides:

"The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person." The Redevelopment Plan is consistent with this Constitutional amendment. Since the subject parcel consists of a vacant commercial structure, the use of eminent domain for acquisition of the property is not proscribed by recent amendment to the Eminent Domain Law or the Redevelopment Plan.

B. Crossings @ New Rancho Conceptual Master Plan

As part of implementing the Redevelopment Plan, the Agency has developed a conceptual plan for a future development site along Folsom Boulevard near Woodberry Way – the Crossings @ New Rancho Conceptual Master Plan ("Conceptual Plan") (**Attachment 3**). The Conceptual Plan involves the development of low-income housing. In total, the proposed site consists of approximately 1.9 acres and includes six parcels owned by six different owners. The Conceptual Plan demonstrates one potential scenario for the consolidated development of the six parcels. It helps provide the basis for future City planning and redevelopment efforts related to this area of the Project.

The Conceptual Plan envisions development of the following uses on the site, including the Subject Property:

- Approximately 53 units of housing (20 units of family housing, 33 units of senior housing).
- A Recreation Center.
- A Community Center.
- Parking.
- Open space, including garden and tot lot.

The Conceptual Plan is consistent with many of the policies and goals set forth in the Redevelopment Plan, including (but is not limited to) affordable housing, open space, and stimulating in-fill development and land assembly opportunities on obsolete, underutilized, incompatible and vacant property in the Project Area. The Conceptual Plan also advances efforts to upgrade and improve the Folsom Boulevard corridor.

OFFER TO PARTICIPATE

California Redevelopment Law requires that the Agency provide opportunities for owners of property within the Project area to participate in development of that property. Prior to making an offer to purchase, the Agency reached out to the Owners to participate in review of the Conceptual Plan.

In May of 2009, an invitation was given to the Owners (in addition to the other property owners of the five other parcels in the Conceptual Plan area) to participate in a meeting with the Agency (**Attachment 5**). A representative of the Owners attended the meeting.

Following the meeting and on June 2, 2009, the Owners sent the Agency a letter and a completed one page **Attachment A** (Statement of Interest in Participating) expressing their interest in participating in the development of the Subject Property (**Attachment 6**). The attachment did not include any proposal for participating – it did not include a proposed scope of development or uses, a proposed schedule of performance,

information about the owner's financial ability to participate, or any information about a development proposal.

In subsequent discussions with the Owners, the Agency learned that the Owners wanted to sell their property. Accordingly, the Agency sent the Owners a letter dated June 27, 2009 requesting that the Owners resubmit an **Attachment A** with a description of the Owners' interest to sell (**Attachment 7**). The Owners did not submit a second **Attachment A**.

THE SUBJECT PROPERTY AND OFFER TO PURCHASE:

The Subject Property consists of 10447 Folsom Boulevard (APN 057-0221-010) and is located near Woodberry Way (**Attachment 4**). The Subject Property is owned by Land IDM, Inc., Jung Do Hwang, and Sonia H. Hwang (the "Owners").

The Subject Property consists of an approximately 33,638 square foot (or .772 acres) parcel currently improved with a commercial structure. The commercial structure, formally the site of a tavern known as the Stagger Inn, is at the end of its economic life. The property is currently fenced off and the structure vacant and boarded up. The business thereon has been closed for several years.

The Agency desires to acquire fee simple title to the Subject Property for the Project, and specifically for the Conceptual Plan as set forth above.

The Agency retained a qualified appraiser to appraise the Subject Property, and made a written offer to the owner (pursuant to Government Code §7267.2) based upon the Property's appraised value. In the course of negotiating for the purchase of the Subject Property with the owner, Daniel Hwang, the Agency has learned that (a) the owner obtained a loan from a bank to purchase the Property in 2006; and (b) because of the downturn in the real estate market, the appraised value of the Property is now substantially less than the outstanding amount due on the loan.

As a result, the Redevelopment Agency has contacted the bank to include the bank in the negotiation process. In particular, the Redevelopment Agency has asked whether the bank would be willing to accept the Agency's appraised value as partial payment of the outstanding amount of the loan, and forgive the remaining amount of the loan. The owner has indicated that he would be willing to sell the Property to the Agency for the appraised value, and has acknowledged that it would be the bank (not the owner) that would receive the purchase monies. But, the owner cannot agree to this without the bank's consent.

At this point, the bank has indicated that it wants to obtain its own appraisal. Certainly, the Redevelopment Agency will continue its efforts to try to come to a mutually acceptable resolution with the owner and the bank. However, due to the time constraints relating to funding (discussed in the next section), the Redevelopment Agency needs to move forward in the event that the bank refuses to forgive the remaining amount of its loan.

In that event, an eminent domain action will resolve any disputes as to the value of the property. In California, a jury determines the value of the property in an eminent domain trial. In an eminent domain trial, the bank will be allowed to submit its own appraisal on

the value of the Subject Property. If the bank submits an appraisal of the Property which is at or higher than the outstanding loan amount, and if the jury agrees with that value, the bank will have the full amount of its loan paid off. If, on the other hand, the jury finds the value of the Property is less than the outstanding loan amount, the bank will be legally required to forgive the remaining amount of the loan.

In either case, the bank has not yet indicated whether it will forgive the remaining amount of the loan, or argue for a higher amount in an eminent domain trial. In the meantime, and for the reasons set forth below, Staff recommends the Agency to commence eminent domain proceedings to resolve the issue.

ADOPTION OF THE RESOLUTION OF NECESSITY AND FINDINGS:

By adopting the proposed Resolution of Necessity, the Agency Board will authorize the filing of an eminent domain action to acquire the Subject Property as aforementioned. Before adopting the Resolution of Necessity, the Agency Board must make the following findings based on evidence presented at the hearing:

1. The public interest and necessity require the Project.

As previously explained, the intent of the Rancho Cordova Redevelopment Project (including the Rancho Cordova Redevelopment Project Area and Final Redevelopment Plan) is to alleviate blight and address the physical and economic conditions that are present in the Redevelopment Project Area. As part of implementing the Redevelopment Plan, the Redevelopment Agency's Conceptual Plan (the Crossings @ New Rancho Conceptual Master Plan) involves the development of low-income housing on the Subject Property.

The acquisition of property by eminent domain for redevelopment purposes and the elimination of blight is an established "public use" under the law (Health & Safety Code §§33037(b), 33372, and 33391; *Redevelopment Agency of the City of Chula Vista v. Rados Bros.* (2001) 95 Cal.App.4th 309, 314). This includes the acquisition of private property by a redevelopment agency for the construction of affordable housing (Health & Safety Code §33334.6.).

The public necessity for going forward with eminent domain proceedings is also based upon timing and financial considerations. The Agency has applied for essential gap funding under the Housing and Economic Recovery Act of 2008 for the Neighborhood Stabilization Program. In order to secure this money, the Agency must demonstrate that it can obligate a percentage (25%) of the money by December 31, 2009. The filing of an eminent domain action and the issuance of an "order for prejudgment possession" by the Court and applicable Eminent Domain Law provisions will put the Agency in a position to secure the NSP funding.

2. The proposed project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.

As previously noted, the environmental review and extensive public outreach process analyzed the potential environmental effects of implementing the Redevelopment Plan. Through this process, the "No Project Alternative" and the "Reduced Project Area Boundary Alternative" were rejected after careful analysis (FEIR, at p. 2.0-2). For Instance, "No Project Alternative" was rejected because the blighted conditions would likely remain or worsen without the Redevelopment Plan (FEIR, at p. 2.0-2). The "Reduced Project Area Boundary Alternative" was likewise rejected because blighted conditions exist throughout the Project Area and failure to treat these conditions would likely reduce the overall effectiveness of redevelopment efforts (FEIR, at p. 2.0-2). Alternative sites and an "Expanded Project Area Boundary Alternative" were also considered (FEIR, at p. 2.0-2 to 2.0-3).

Efforts were made to minimize the number of acres needed for the Project Area. However, due to the existence of blight throughout the Project Area the "Reduced Project Area Boundary Alternative" was rejected (FEIR, at p. 2.0-2). The Project Area could not be reduced without compromising the Project. A reduced Project Area would result in diminished tax increment revenues, thus reducing opportunities to finance economic development, affordable housing, and public facilities (FEIR, at p. 2.0-2).

Specific to the Subject Property, efforts were made to involve the Owners in review of the Conceptual Plan and to participate in development. Staff has endeavored to work with the Owners to obtain the property by negotiation. Discussions are on-going.

3. The property described in the Resolution of Necessity is necessary for the Project.

Due to the location of the Subject Property within the Project Area and its underutilized condition, the Project cannot go forward without acquisition of the Subject Property in fee as listed herein. Through the aforementioned public review process, it was determined that there is no alternative land on which to realign the Project without comprising the Project. Also, the Subject Property is located off the Folsom Boulevard Corridor – a key focal point for redevelopment of the Project Area.

4. The offer required by Government Code section 7267.2 has been made to the owners of record.

A written offer to purchase and an appraisal summary statement for the Subject Property was provided to the owner on September 25, 2009. The Agency is continuing its attempts to acquire the Subject Property through negotiations, including engaging the lender of the Subject Property in these discussions.

5. The Subject Property is being acquired for a compatible use such that the Agency's use of the Subject Property will not interfere with or impair the continued use of the Subject Property for the public use that exists or may

reasonably be expected to exist in the future on the Subject Property, pursuant to California Code of Civil Procedure Section 1240.510.

The Subject Property is affected by various easements including those in favor of: Pacific Gas & Electric Company (for pipelines and appurtenance thereto), Sacramento Municipal Utility District (for poles and appurtenance thereto, and for electric facilities and appurtenance thereto), and Pacific Bell Telephone Company (for communication facilities and appurtenance thereto). The acquisition and use of the Subject Property for the public use required for the Project will not interfere with or impair the continuance of the aforementioned easement holders' public use as they exist or may reasonably be expected to exist in the future, pursuant to California Code of Civil Procedure Section 1240.510.

6. The use for which the Subject Property is sought to be taken is a more necessary public use than the use to which the property is currently appropriated, pursuant to California Code of Civil Procedure section 1240.610.

The Subject Property is being acquired for a more necessary public use pursuant to California Code of Civil Procedure section 1240.610, to wit, for redevelopment purposes and for implementation of the Conceptual Plan. Insofar as the Subject Property has been put to public use (per the aforementioned easements), the acquisition and use of the Subject Property for public use by the Agency for the Project is for a more necessary public use. Moreover, as previously indicated, the Agency's use will not impact any of the current use for the aforementioned purposes or any other public use reasonably foreseeable in the future. If any current or future uses cannot co-exist with the proposed use of the Subject Property, the proposed use should dominate.

REASONS FOR THE RECOMMENDATION:

Staff recommends adoption of the attached Resolution of Necessity (**Attachment 1**), that authorizes the commencement of eminent domain proceedings to acquire the Subject Property as stated herein. The proposed Resolution makes the required findings that the Agency Board is authorized to acquire the Subject Property through its eminent domain powers by filing an action in court. The resolution must be approved by a two-thirds vote.

FINANCIAL IMPACT:

The direct fiscal impacts include the costs of acquisition for the Subject Property, relocation costs, attorney fees and costs if the action is filed, and administrative expenses.

ATTACHMENTS

1. Resolution CRA-9-2009 (for 10447 Folsom Boulevard; APN: 057-0221-010).
2. Rancho Cordova Project Area.

3. Crossings @ New Rancho Conceptual Master Plan.
4. Subject Property Map.
5. May 1, 2009 Letter to Mr. Jung D. Hwang, Ms. Sonia H. Hwang, and Land IDM, Incorporated.
6. June 2, 2009 Letter to the Agency (without attachments containing financial information).
7. July 27, 2009 Letter to Mr. Daniel Hwang.

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF RANCHO CORDOVA

RESOLUTION NO. CRA-9-2009

A RESOLUTION OF THE BOARD OF THE COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF RANCHO CORDOVA DETERMINING THAT THE PUBLIC INTEREST AND
NECESSITY REQUIRE THE ACQUISITION OF THE PROPERTY AT 10447 FOLSOM
BOULEVARD, RANCHO CORDOVA, CALIFORNIA, AND DIRECTING THE FILING OF
EMINENT DOMAIN PROCEEDINGS

RANCHO CORDOVA REDEVELOPMENT PROJECT

10447 Folsom Boulevard,
Rancho Cordova, Sacramento County, California
10447 Folsom Boulevard (APN 057-0221-010)
Property Owners: Land IDM, Inc., Jung Do Hwang, Sonia H. Hwang

WHEREAS, the purpose of the Rancho Cordova Redevelopment Project ("Project") is to alleviate blight and address the physical and economic conditions that are present in the Redevelopment Project Area, and the policies and goals set forth in the Redevelopment Plan for the Project, include, among others, affordable housing;

WHEREAS, the Project is consistent with the adopted General Plan for the City of Rancho Cordova;

WHEREAS, after extensive public input and analysis of several alternatives, including the "No Project Alternative," the Board of the Community Redevelopment Agency of the City of Rancho Cordova adopted Resolution No. 109-2006 to certify the Final Environmental Impact Report for the Project, and adopt the related findings, a Statement of Overriding Considerations and a Mitigation Monitoring, and Report Program;

WHEREAS, as part of implementing the Redevelopment Plan for the Project, the Agency has developed a conceptual plan for a future development site north of Folsom Boulevard near Woodberry Way – the Crossings @ New Rancho Conceptual Master Plan which includes development of the following uses on the site: affordable senior and family housing, with ancillary residential uses, including recreational center and community center;

WHEREAS, for the aforementioned reasons, it is desirable and necessary for the Board of the Community Redevelopment Agency of the City of Rancho Cordova to acquire fee simple title in the property located at 10447 Folsom Boulevard, Rancho Cordova, Sacramento County, California, as more particularly described in **Exhibit A**, which exhibit is attached hereto and made a part hereof by this reference and hereinafter referred to as the "Subject Property;"

WHEREAS, the Community Redevelopment Agency of the City of Rancho Cordova is vested with the power of eminent domain to acquire all real property interests by virtue of Article 1, Section 19, of the Constitution of the State of California; Health and Safety Code sections 33037(b), 33342, and 33391; and California Code of Civil Procedure sections 1240.010 - 1240.050, 1240.110, 1240.120, and 1240.220;

WHEREAS, pursuant to Code of Civil Procedure section 1245.235, the Community Redevelopment Agency of the City of Rancho Cordova has provided the owners of the Subject Property, a copy of the "Notice of Intent to Adopt Resolution of Necessity" informing them of the date and time any interested person can be heard before the Board, on the following matters, and to have the Board give consideration to testimony prior to deciding whether or not to adopt the

proposed Resolution of Necessity to commence eminent domain proceedings:

1. Whether the public interest and necessity require the Project;
2. Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether the property sought to be acquired is necessary for the Project;
4. Whether the offer required by Government Code section 7267.2 has been made to the owner of record;
5. Whether the subject property is being acquired for use that will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future; and
6. If the subject property being acquired is appropriated to public use, whether the use for which the property is sought to be taken is a more necessary public use than the use to which the property is appropriated.

WHEREAS, pursuant to the provisions of section 7267.2 of the Government Code of the State of California, the Community Redevelopment Agency of the City of Rancho Cordova has made an offer to the owners of record to acquire the Subject Property for just compensation and provided same with an appraisal summary statement;

WHEREAS, the Community Redevelopment Agency of the City of Rancho Cordova has satisfied the provisions and complied with all requirements of the California Environmental Quality Act, and public notice has been given in the form provided by law, and members of the public have been given an extensive opportunity for public review and comment on the Project;

WHEREAS, the Board considered this matter as an item placed on its agenda at its regular meeting of November 16, 2009;

WHEREAS, all the findings and conclusions made by the Board pursuant to this Resolution are based upon substantial evidence in the entire record before the Board, and are not based solely on the information provided in this Resolution;

WHEREAS, prior to taking action, the Board has heard, been presented with, reviewed and considered all of the information and data in the administrative record, including each of the Project-related documents relevant to the adoption of this resolution, including but not limited to, the Preliminary Report, the Report to Council, the Final Draft Environmental Impact Report, and the Redevelopment Plan, and all oral and written evidence presented to it during all meetings and hearings;

WHEREAS, the Board has duly considered all pertinent information presented to it on the issue before it, and specifically whether: (1) the public interest and necessity require the Project; (2) the Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury; and (3) the subject property is necessary for the Project;

WHEREAS, all other legal prerequisites to the adoption of the Resolution have occurred.

NOW, THEREFORE, it is found, determined, and resolved by the Board of the Community Redevelopment Agency of the City of Rancho Cordova as follows:

1. The above recitals are true and correct and are matters on which these findings are based.
2. The public interest and necessity require this Project.
3. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury as determined.
4. The taking in fee simple title of the real property more particularly described in **Exhibit A** is necessary for the Project.
5. The offer required by Government Code section 7267.2 was made to the owners of record on September 25, 2009.
6. The proposed use of the subject project will not unreasonably interfere with or impair the continuance of the public use as it currently exists or may reasonably be expected to exist in the future, pursuant to California Code of Civil Procedure section 1240.510.
7. The use for which the Subject Property is sought to be taken is a more necessary public use than the use to which the property is currently appropriated, pursuant to California Code of Civil Procedure section 1240.610.
8. While continuing to make every reasonable effort to acquire the Subject Property interests by negotiation, the Executive Director of the Community Redevelopment Agency of the City of Rancho Cordova or his duly authorized designee be, and is hereby, authorized and directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the Subject Property and to take such action as may be deemed advisable or necessary in connection therewith.
9. An order for prejudgment possession may be obtained in said action and a warrant issued to the State Treasury Condemnation Deposits Fund, in the amount determined by the Court to be so deposited, as a condition to the right of immediate possession.

PASSED AND ADOPTED by the Board of the Community Redevelopment Agency of the City of Rancho Cordova on the ____ day of ____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Skoglund, Agency Director

Attest:

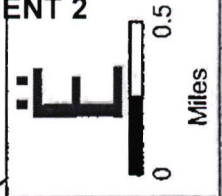
Mindy Cuppy, Agency Secretary

**CITY OF
RANCHO CORDOVA
REDEVELOPMENT AREA**

APRIL 2008



ATTACHMENT 2

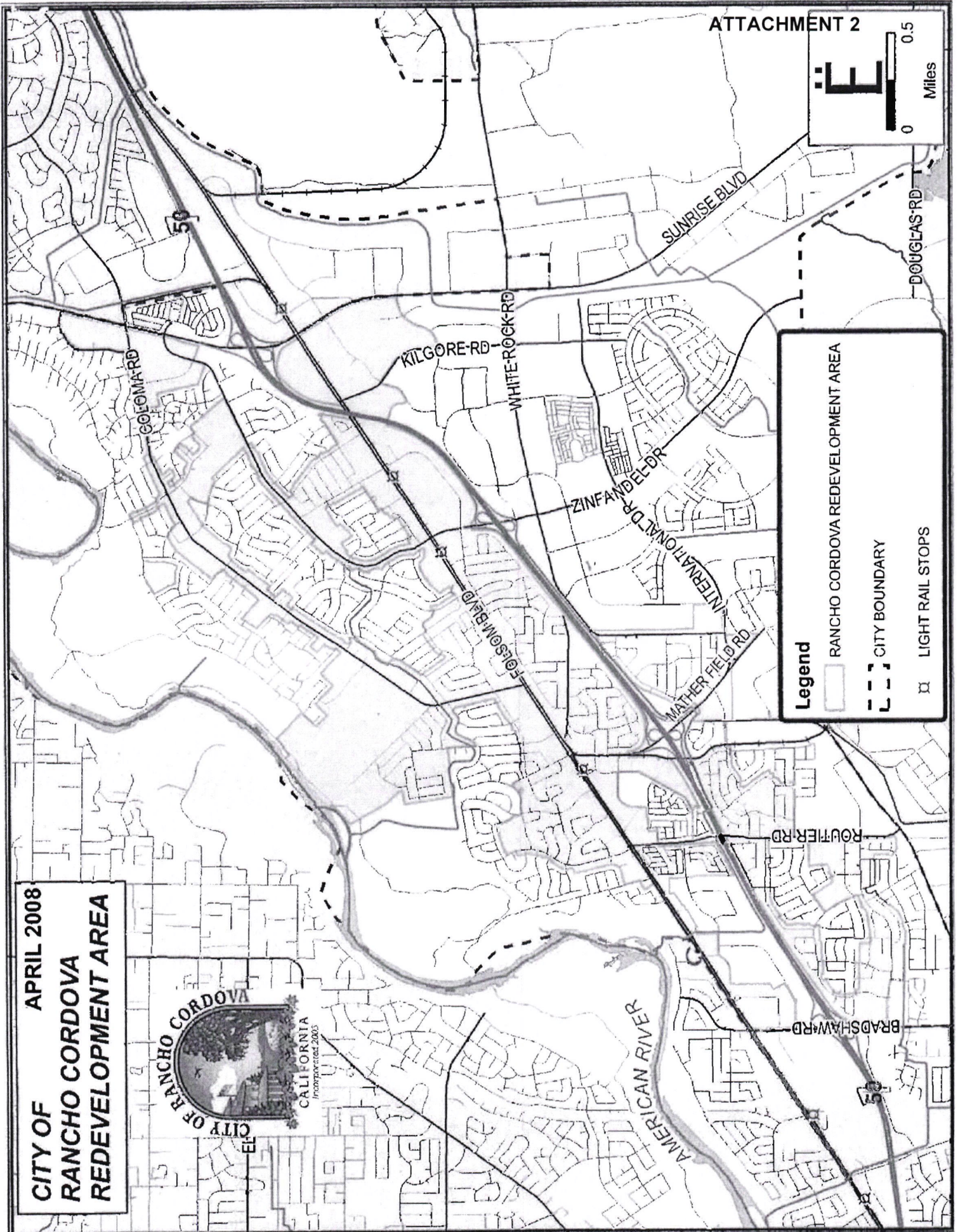


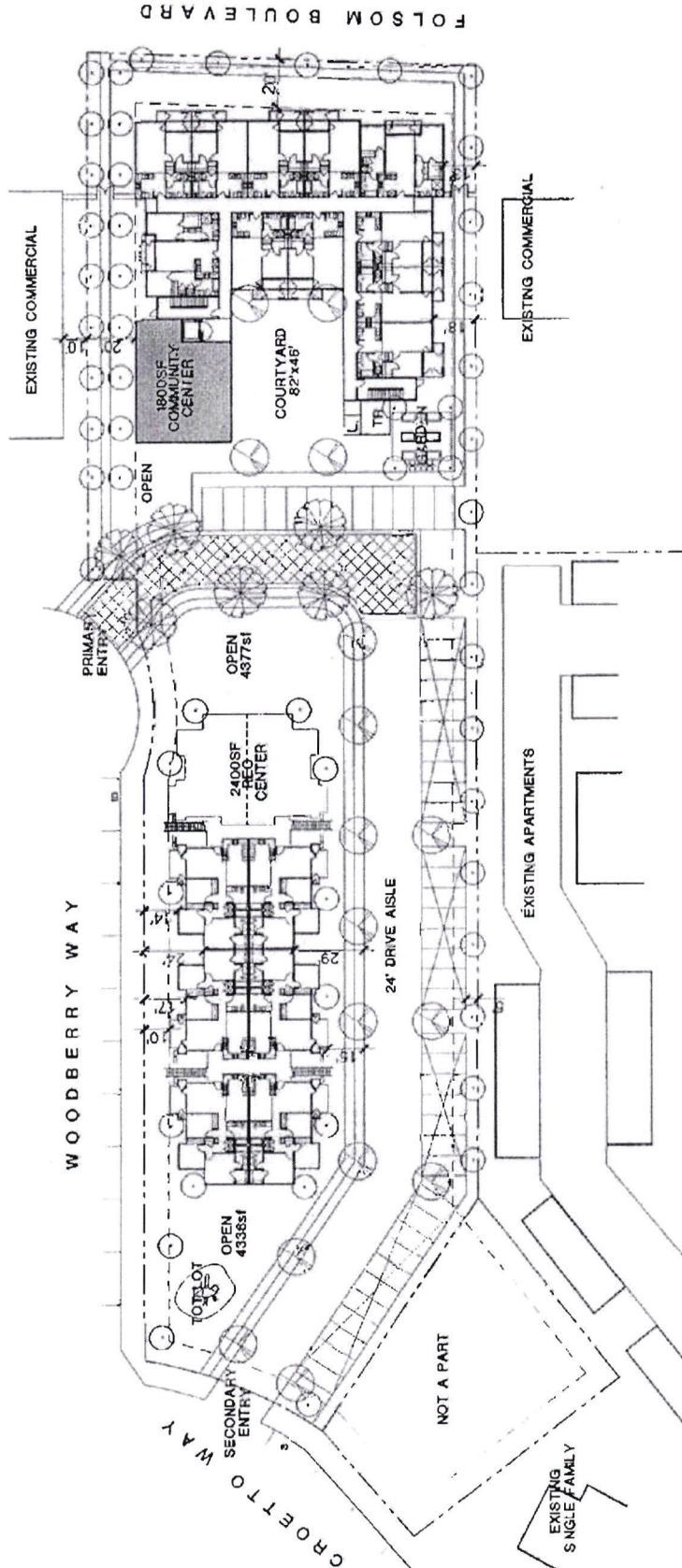
Legend

RANCHO CORDOVA REDEVELOPMENT AREA

CITY BOUNDARY

LIGHT RAIL STOPS





Summary: 1.88 Acres, 53 Total Units, 28.2 Dv./Ac

Family

- (4) Plan 2 - 2 bed / 2 bath @ 932sf (net)
- (16) Plan 3 - 3 bedroom / 2 bath @ 1052sf (net)
- (20) Total Units

Parking Required - 30 spaces (1.5 spaces/unit)
 Parking Provided - 35 spaces (1.8 spaces/unit)
 (+6-7 spaces on Croetto and Woodberry)

Senior

- (27) Plan 1 - 1 bedroom flat / 1 bath @ 641sf (net)
- (6) Plan 2 - 2 bedroom flat / 1 bath @ 903sf (net)
- (33) Total Units

Parking Required - 11 spaces (0.33 spaces/unit)
 Parking Provided - 11 spaces on-site
 (+6-7 spaces on Woodberry)



SCALE 1" = 20'-0"

.....an affordable family community

Crossings @ Folsom
 Rancho Cordova, California

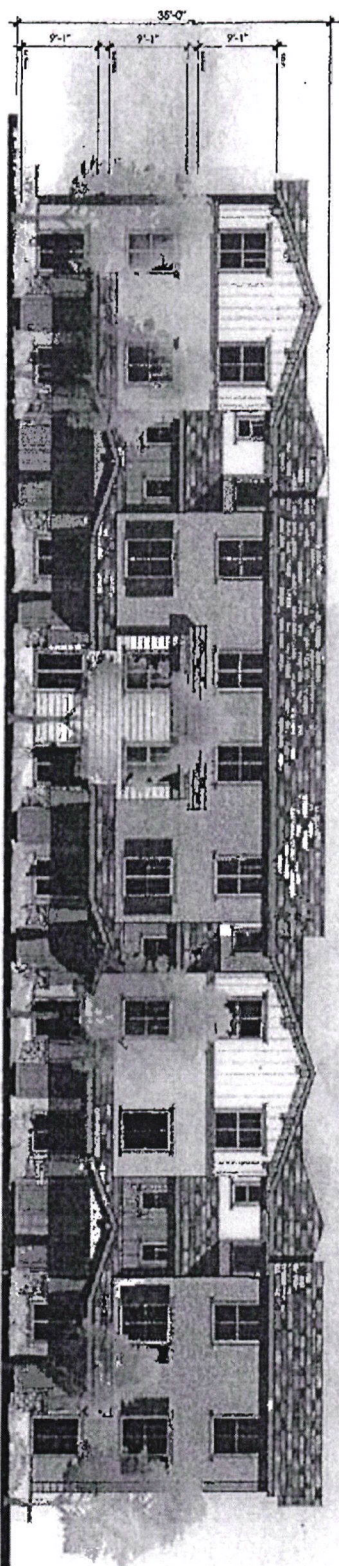
Illustrative Site Plan - Alternate F



Architecture + Planning
 17982 Michel South
 Irvine, CA 92614
 949.851.2133
 atgy.com



A-1
 KTY # 20090099
 August 4, 2009



Family Apartment Home
Conceptual Front Elevation
(Buildings 1-3)

- Material Legend:
1. Fibercement Horizontal Siding
 2. Fibercement Board & Batten
 3. Exterior Plaster Finish
 4. 30yr Composition Roof, 24" Eave - 4:12 Pitch
 5. Composite Wood Rails
 6. Vinyl Windows
 7. Fiberglass Entry Doors
 8. Composite Accent Shutters
 9. Wood Outlooker Beams @ Gable Ends
 10. 8" Wood Fascia
 11. Stone Veneer Column Base

.....an affordable family community

Crossings @ Folsom

Rancho Cordova, California

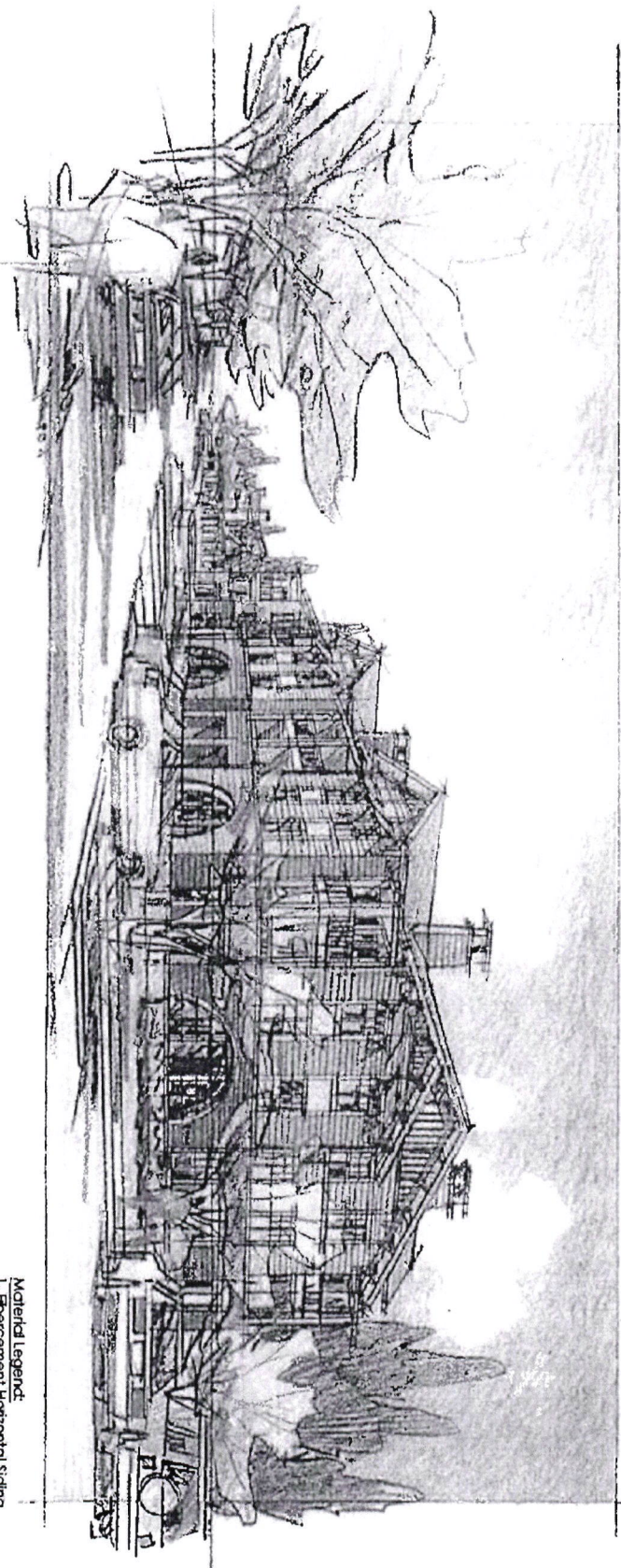


Architecture + Planning
17352 MARSH SLOAN
IRVINE, CA 92614
949.851.2153
kay.com



A-2.1
KGC # 20090025
May 4, 2009





Senior Apartment Homes
Conceptual Elevation
(Building 4)

Material Legend:

1. Fibercement Horizontal Siding
2. Fibercement Board & Bolt
3. Exterior Plaster Finish
4. 30yr Composition Roof, 24" Eave - 4:12 Pitch
5. Composite Wood Rails
6. Vinyl Windows
7. Fiberglass Entry Doors
8. Composite Accent Shutters
9. Wood Outlooker Beams @ Gable Ends
10. 8" Wood Fascia
11. Stone Veneer Column Base

Crossings @ Folsom

Rancho Cordova, California

.....an affordable family community



Architect: J. J. J. & J. J. J.
17500 Michelson Blvd.
Irvine, CA 92614
949.851.2133
kgg.com



A-2.2

KIC # 2000029
May 4, 2009

File No: 58141325

Exhibit "A"

All that certain real property situated in the County of Sacramento , State of California, described as follows:

City of Rancho Cordova

Parcel One:

The west 139 feet of Lot 35, measured at right angles from the southwesterly line of said lot of Cordova Court Unit No. 2, according to the official Plat thereof, filed March 31, 1959, Book 53, of maps, Map No. 8, Sacramento County Records

Parcel Two

A right of way for road purposes, but not the exclusive use, over and across a strip of land 31 feet in width contiguous to the easterly line of the above described property, said right of way shall not be used for parking purposes or obstructed in any manner.

Assessor's Parcel Number **057-0221-010-0000**

57-22

POR. SEC. 35, T.9N., R.6E., M.D.B. & M.
(PROJ. INTO TRANCIO RIO DE LOS AMERICANOS)

Tax Area Code

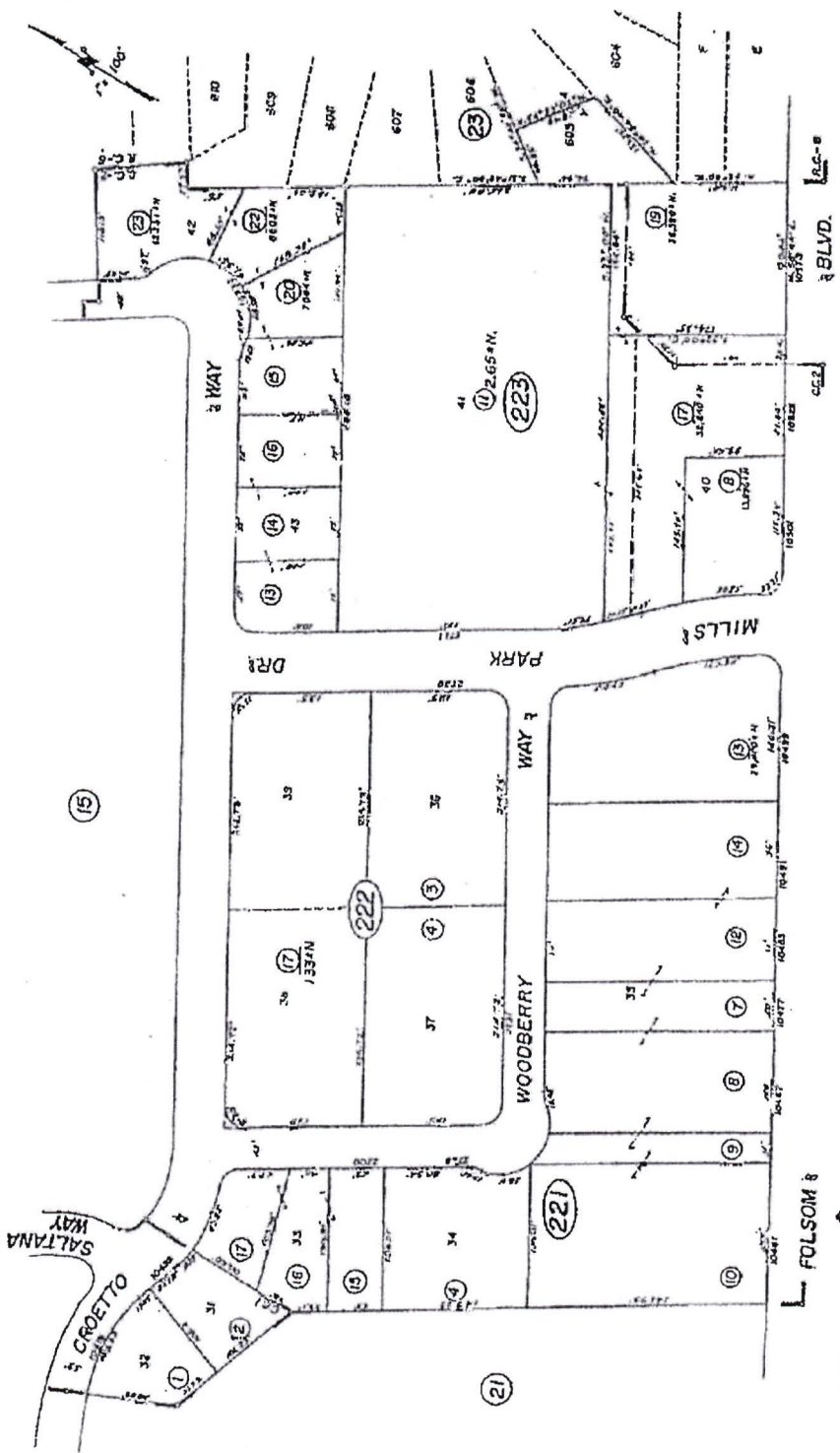


Exhibit "B"

(Bk. 72)

Cordova Court Unit 1, R.M. Bk. 52, Pg. 19
Cordova Court Unit 2, R.M. Bk. 53, Pg. 8
Par. Rancho Cordova Unit 6, R.M. Bk. 37, Pg. 23

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

Assessor's Map Bk. 57—Pg. 22
County of Sacramento, Calif.

JUN 15 1994

Community Redevelopment Agency

OF THE CITY OF RANCHO CORDOVA

May 1, 2009

Dan Skoglund
Chairperson

Ken Cooley
Vice Chair Person

Robert McGarvey
Board Member

David Sander
Board Member

Linda Budge
Board Member

Mr. Jung D. Hwang
Ms. Sonia H. Hwang
Land IDM Incorporated
79 Bonaventura Drive
San Jose, California 95134

RE: 10447 Folsom Boulevard
Rancho Cordova, CA 95670
APN: 057-0221-010

Dear Mr. & Ms. Hwang,

This is an invitation to attend a property and business owner's meeting with representatives from the Community Redevelopment Agency of the City of Rancho Cordova (the "Agency") regarding a potential redevelopment project. The purpose of this meeting is to review a conceptual master plan for the six properties beginning with the Stagger Inn site which fronts on Folsom Blvd and including those 5 other parcels immediately adjacent to one another and running northerly along the westerly side of Woodberry Way to Croetto Way. These sites are within the Agency's project area.

It is the desire of the Agency to take actions that will permit the development of these properties in a coordinated manner consistent with the conceptual master plan. It is possible that at some point in time the Agency may consider making offers to acquire the subject property. Under the Agency owner participation rules, any owner or business occupant interested in participating in the redevelopment of the property must submit a "Statement of Interest in Participating" (the "Statement") to the Agency. This document is included as Attachment A, and if the owner or business occupant would like to participate in the development of the master plan, the interested party is required to submit the "Statement" to the Agency by June 15, 2009. The Agency will consider, subject to the terms of its owner participation rules, all "Statements" submitted by the deadline, and will provide reasonable options for the owners and business occupants, such as staying in place or moving to another location.

The Agency may in its sole discretion determine that a participation proposal is not feasible or in the best interests of the project area or the community. In such event, the Agency may select a developer from among prospective participants submitting Statements of Interest and others that the Agency may invite to submit proposals through a Request for Proposals process or otherwise.

Your participation and feedback on how to effectively redevelop the site will be welcomed at the meeting specified on this page. The completion of the Statement of Interest is not required in order to attend this meeting; however, if the owner or business occupant is interested in participating in the redevelopment of the area, the "Statement" must be received by June 15, 2009.

Meeting Date & Time:

May 13, 2009 at 1:30 pm

Location: Community Board Room, first floor
City Hall, 2729 Prospect Park Drive

Please RSVP and direct any questions to:

Reed Flory (916) 851-8784

Sincerely,

A handwritten signature in cursive script that reads "Ted A. Gaebler".

Ted A. Gaebler
Executive Director
Community Redevelopment Agency of the City of Rancho Cordova

enclosure - one



From: Land IDM, Inc.
P.O. Box 2175
Los Gatos, CA 95031
408)205-2002

6/2/2009

To: Community Redevelopment Agency of the City of Rancho Cordova
Re: 10447 Folsom Blvd., Rancho Cordova, CA 95670
APN: 057-0221-010

Dear Ted A. Gaebler,

This building was purchased on 9/19/2006 and it was agreed with City of Rancho Cordova, Economic Development Dept, Mr. Curt Haven to remodel the front side of the building and rent it out soon after. However, City of Rancho Cordova has not notified and zoning was changed. Breaking our first arrangement has resulted to this day for about 3 years, has caused a great loss.

City of Rancho Cordova Lawyer Mr. Adam U. Lindgren and we had a meeting regarding this issue. From our standpoint, City and we can resolve this issue as quickly as possible without causing further inconvenience to each other.

Enclosed are expense amount and a list of bill from the date of purchase to this date (approx 31 months).

Should you have any other questions, please reach me, Daniel Hwang.
408-205-2002

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Hwang", is written over a horizontal line. The signature is stylized with a large initial "D" and "H".

Daniel Hwang
President

CC: Mr. Adam U. Lindgren
Mr. Reed Flory

Tel: 408-944-0987
Fax: 408-954-1200
info@landidm.com

Investment Development Management

79 Bonaventura Drive, San Jose, CA 95134

ATTACHMENT A

RANCHO CORDOVA REDEVELOPMENT AGENCY

STATEMENT OF INTEREST IN PARTICIPATING

I hereby express my interest in participating in the Rancho Cordova Redevelopment Project Area and submit the following information:

1. Name: LOND, DM Telephone: (408) 205-4000 (David)

2. Mailing Address: P.O. BOX 2175 LOS ATOS, CA 95031

3. Following are the addresses of all property, which I own or lease in the Project Area.

10447 Wilson Blvd Rancho Cordova - CA 95676

4. Following are the names and addresses of all businesses I own or operate in the Project Area.

APN - 057-0221-010

Name of Business: _____ Address: _____

Name of Business: _____ Address: _____

5. Following are the names and addresses of all businesses located on property I own in the Project Area.

Name of Business: _____ Address: _____

Name of Business: _____ Address: _____

6. If I participate: (check all that apply)

- a. ☒ I would like to participate at the same location I now own.
b. ☐ I would like to participate at a different location within the Project Area.
c. ☐ I would like to sell my property for its fair market value and be relocated.
d. ☐ I would like to sell my property for its fair market value and cease to be an Owner in the Project Area.
e. ☐ I would like to acquire other real property for expansion (describe requirements for other property; use additional sheets if necessary).

REMARKS: (use additional sheets if necessary): _____

I understand that submission of this Statement of Interest does not obligate me to participate in the Project Area.

Signed

Date

5/11/09



Dan Skoglund
Mayor

Ken Cooley
Vice Mayor

Linda Budge
Council Member

Robert McGarvey
Council Member

David Sander
Council Member

July 27, 2009

Mr. Daniel Hwang
President
Land IDM, Inc
P.O. Box 2175
Los Gatos, CA 95031

Re: 10447 Folsom Boulevard, Rancho Cordova, CA 95670

Dear Mr. Hwang:

Thank you for your timely response to the request for a "Statement of Interest in Participating" concerning your property that fronts Folsom Boulevard at the address indicated above.

A request for this statement is required by the rules of the Community Redevelopment Agency of the City of Rancho Cordova. The Agency is developing strategies it might employ to address the conditions of blight and deterioration observed in the area in which your property is located. I also thank you for sending your representative, David Lucchesi, to the meeting of property owners held at the City on May 13, 2009. At this meeting, staff explained the Agency plan to address the observed conditions. Staff also expressed an interest in hearing from the six landowners invited to the meeting as to the manner in which they feel they might participate in either the Agency plan or in any alternate plan. Although your initial response on Attachment "A" signed by you and dated May 11, 2009 describes your interest to be "... to participate at the same location I now own", we now understand, that your interest is to sell the subject property. Attached to this letter is another Attachment "A" which we ask that you return to the Agency with a description of your current interest to sell.

In your letter you expressed concern about zoning changes made to your property located along the Folsom Blvd. corridor and the notification associated with these changes. The City has the legal authority to update its zoning, and at no time has the prior or current zoning prevented you from using the property. Further, the notification materials were developed from the property owner data provided by the County Assessor's Office, which would have preceded the date of your purchase. The City would not have known of the property transfer in September of 2006, when the Assessor produced their updates. All the properties within the two rezoning areas were assembled and the data was used to prepare the mailing labels, which in turn were

affixed to the notice. In addition, the City's notification process requires notice to property owners within 500 feet of the project boundary, whereas the State's requirement is 300 feet. Due to the large number of properties within the two project areas and 500 foot radius of the project area, the City sent notices to all property owners in the project areas and placed a larger notification ad in the local paper as required by Government Code Section 65091a (4). The City has used this provision before for large city wide projects (General Plan and New Zoning Code), where individual property notice is not practical.

The City is sensitive to the dramatic downturn in the economy, and the particularly sudden changes in the real estate market. The economy has impacted the property values of many diligent investors, and caused losses such as those you have described in your letters to the City.

Sincerely,

A handwritten signature in cursive script, reading "Ted A. Gaebler".

Ted A. Gaebler
City Manager
City of Rancho Cordova

Enclosure: 1269924.1

Community Redevelopment Agency

OF THE CITY OF RANCHO CORDOVA

ATTACHMENT A

RANCHO CORDOVA REDEVELOPMENT AGENCY

STATEMENT OF INTEREST IN PARTICIPATING

I hereby express my interest in participating in the Rancho Cordova Redevelopment Project Area and submit the following information:

1. Name: _____ Telephone: () _____

2. Mailing
Address: _____

3. Following are the addresses of all property, which I own or lease in the Project Area.

4. Following are the names and addresses of all businesses I own or operate in the Project Area.

Name of Business: _____ Address: _____

Name of Business: _____ Address: _____

5. Following are the names and addresses of all businesses located on property I own in the Project Area.

Name of Business: _____ Address: _____

Name of Business: _____ Address: _____

6. If I participate: (check all that apply)

a. ☐ I would like to participate at the same location I now own.

b. ☐ I would like to participate at a different location within the Project Area.

c. ☐ I would like to sell my property for its fair market value and be relocated.

d. ☐ I would like to sell my property for its fair market value and cease to be an Owner in the Project Area.

e. ☐ I would like to acquire other real property for expansion (describe requirements for other property; use additional sheets if necessary).

REMARKS: (use additional sheets if necessary): _____

I understand that submission of this Statement of Interest does not obligate me to participate in the Project Area.

Signed: _____ Date: _____

MEMORANDUM



Date: November 16, 2009
To: Honorable Mayor and Council Members
From: Ted Gaebler, City Manager
Subject: 2010 CITY COUNCIL MEETING SCHEDULE

RECOMMENDATION

Staff recommends Council discuss and confirm its meeting schedule for 2010.

RESULT OF RECOMMENDED ACTION

Action on this item will confirm the 2010 meeting schedule for Rancho Cordova City Council Members.

BACKGROUND

In November, as part of its annual business planning for the upcoming year, the City Council reviews the next year's calendar and determines its meeting schedule for 2010.

Attached is a month-by-month detailed calendar (with colored legend & graphics) listing local, state, and national events, including the League of California Cities, the National League of Cities, the California Redevelopment Association, the American Society for Public Administration, and various other organization conferences.

ATTACHMENT

2010 Council Meeting & Conference Calendar

MEMORANDUM



DATE: November 16, 2009

TO: Honorable Mayor and Council Members

FROM: Adam U. Lindgren, City Attorney

SUBJECT: RESOLUTION 113-2009, RESCINDING, SETTING ASIDE, AND VACATING RESOLUTION NO. 105-2006, CERTIFYING AN ENVIRONMENTAL IMPACT REPORT AND ADOPTING FINDINGS, A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING PLAN FOR THE PRESERVE AT SUNRIDGE PROJECT, ORDINANCE NO. 40-2006 APPROVING A SPECIAL PLANNING AREA REZONE FOR THE PRESERVE AT SUNRIDGE PROJECT, RESOLUTION NO. 108-2006 APPROVING A TENTATIVE SUBDIVISION MAP FOR THE PRESERVE AT SUNRIDGE PROJECT, AND ORDINANCE NO. 41-2006 APPROVING DEVELOPMENT AGREEMENT RC-03-052 FOR THE PRESERVE AT SUNRIDGE PROJECT IN ORDER TO COMPLY WITH PEREMPTORY WRIT OF MANDATE ISSUED BY THE SACRAMENTO COUNTY SUPERIOR COURT

RECOMMENDATION

Adopt Resolution No. 113-2009.

RESULT OF RECOMMENDED ACTION

Adoption of this resolution will allow the City to file a required response to the decision issued by the Sacramento County Superior Court on September 28, 2009. This resolution will rescind, set aside, and vacate the described land use approvals for the Preserve at Sunridge Project.

BACKGROUND

In 2006, the City certified the EIR for and approved the Preserve at Sunridge Project. The California Native Plant Society ("CNPS") challenged these approvals in the Sacramento County Superior Court and that Court originally found in favor of CNPS's challenge on a number of grounds. The City and the developers Jaeger Road 530, LLC appealed the Superior Court's decision to the Court of Appeal and in March of this year, received a decision from the Court of Appeal upholding the City's decisions on all but a single issue. The Court of Appeal then sent the case back to the Superior Court to enter judgment consistent with the Court of Appeal's decision. Following briefing and arguments before the Superior Court, that Court issued the attached final judgment and ordered a peremptory writ of mandate to issue that commands the City to set aside and

vacate Resolution No. 105-2006, Ordinance No. 40-2006, Resolution No. 108-2006, and Ordinance No. 41-2006. The peremptory writ of mandate issued on September 28, 2009 and commanded that the City file a return demonstrating compliance with the writ within sixty (60) days.

RESOLUTION

The proposed resolution would rescind, set aside, and vacate the previous approvals of the Project in order to comply with the peremptory writ of mandate from the Sacramento County Superior Court.

REQUESTED MOTION

"I move that the City Council adopt Resolution 113-2009 rescinding, setting aside, and vacating Resolution No. 105-2006, Ordinance No. 40-2006, Resolution No. 108-2006, and Ordinance No. 41-2006."

ATTACHMENTS

1. Resolution No. 113-2009.
2. Final Judgment of the Sacramento County Superior Court in case No. 06CS01311 dated September 28, 2009.
3. Peremptory Writ of Mandate from the Sacramento County Superior Court in Case No. 06CS01311 dated September 28, 2009.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 113-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA RESCINDING, SETTING ASIDE, AND VACATING: RESOLUTION NO. 105-2006, CERTIFYING AN ENVIRONMENTAL IMPACT REPORT AND ADOPTING FINDINGS, A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING PLAN FOR THE PRESERVE AT SUNRIDGE PROJECT; ORDINANCE NO. 40-2006 APPROVING A SPECIAL PLANNING AREA REZONE FOR THE PRESERVE AT SUNRIDGE PROJECT; RESOLUTION NO. 108-2006 APPROVING A TENTATIVE SUBDIVISION MAP FOR THE PRESERVE AT SUNRIDGE PROJECT; AND ORDINANCE NO. 41-2006 APPROVING DEVELOPMENT AGREEMENT RC-03-052 FOR THE PRESERVE AT SUNRIDGE PROJECT IN ORDER TO COMPLY WITH A PEREMPTORY WRIT OF MANDATE ISSUED BY THE SACRAMENTO COUNTY SUPERIOR COURT

RECITALS

WHEREAS, on July 17, 2006, the City of Rancho Cordova ("City") approved Resolution No. 105-2006, certifying an environmental impact report and adopting findings, a statement of overriding considerations, and a mitigation monitoring program for the Preserve at Sunridge Project ("Project"); and

WHEREAS, on August 7, 2006 the City adopted Ordinance No. 40-2006, approving a special planning area rezone for the Project; and

WHEREAS, on August 7, 2006, the City adopted Resolution No. 108-2006, approving a tentative subdivision map for the Project; and

WHEREAS, on August 7, 2006, the City adopted Ordinance No. 41-2006, approving Development Agreement RC-03-052 for the Project; and

WHEREAS, Petitioner California Native Plant Society challenged these approvals in the Sacramento County Superior Court; and

WHEREAS, following litigation both before the Sacramento County Superior Court and the Court of Appeal, the Sacramento County Superior Court, on September 28, 2009, issued a peremptory writ of mandate commanding the City to set aside and vacate Resolution No. 105-2006, Ordinance No. 40-2006, Resolution No. 108-2006, and Ordinance No. 41-2006;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA that the Council resolves as follows:

1. In compliance with the peremptory writ of mandate issued by the Sacramento County Superior Court the Council hereby rescinds, sets aside and vacates:
 - a. Resolution No. Resolution No. 105-2006, certifying an environmental impact report and adopting findings, a statement of overriding considerations, and a mitigation monitoring program for the Preserve at Sunridge Project;

- b. Ordinance No. 40-2006, approving a special planning area rezone for the Preserve at Sunridge Project;
 - c. Resolution No. 108-2006, approving a tentative subdivision map for the Preserve at Sunridge Project; and
 - d. Ordinance No. 41-2006, approving Development Agreement RC-03-052 for the Preserve at Sunridge Project.
2. The City Council of the City of Rancho Cordova directs the City Attorney to file a return to the peremptory writ of mandate issued by the Sacramento County Superior Court on September 28, 2009, demonstrating the City's compliance with the writ.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of _____, 2009 by the following vote:

AYES:

NOES:

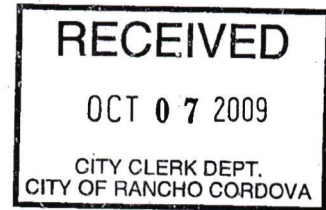
ABSENT:

ABSTAIN:

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, City Clerk



Keith G. Wagner, SBN 210042
Thomas N. Lippe, SBN 104640
LIPPE GAFFNEY WAGNER LLP
329 Bryant St., Suite 3D
San Francisco, California 94107
Tel: (415) 777-5600
Fax: (415) 777-9809

Charity Kenyon, SBN 078823
J. William Yeates, SBN 084343
Jason R. Flanders, SBN 238007
Christina Morkner Brown, SBN 258479
KENYON YEATES LLP
2001 N Street, Suite 100
Sacramento, CA 95811
Phone: (916) 609-5000
Fax: (916) 609-5001

Attorneys for Petitioner:
CALIFORNIA NATIVE PLANT SOCIETY.

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

CALIFORNIA NATIVE PLANT SOCIETY,

Petitioner

v.

CITY OF RANCHO CORDOVA et al.,

Respondents

JAEGER ROAD 530, LLC,

Real Parties in Interest.

CASE NO: 06CS01311

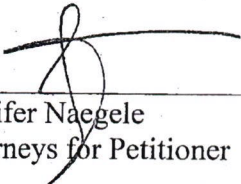
NOTICE OF ENTRY OF JUDGMENT

1 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 28, 2009, the Court entered its Final Judgment in
3 the above-referenced matter. A true and correct copy of said Final Judgment is attached hereto as
4 Exhibit 1.

5
6 LIPPE GAFFNEY WAGNER

7
8 DATE: Oct. 5, 2009

9 
10 Jennifer Naegele
11 Attorneys for Petitioner
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

PROOF OF SERVICE

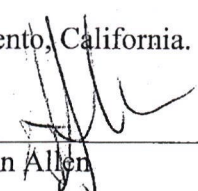
CASE: *CNPS v. City of Rancho Cordova* (Sacramento County Superior Court Case No. 06 CS 01311)

I am a citizen of the United States, employed in the County of San Francisco My business address is 329 Bryant Street, Suite 3D, San Francisco, CA 94107. I am over the age of 18 years and not a party to the above-entitled action.

On _____, 2009, I served the foregoing document on the parties in this action, located on the attached service list, by service as designated below:

(A) By First Class Mail:	In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service at 3400 Cottage Way, Suite K, California, with first-class postage thereon fully prepaid in a sealed envelope.
(B) By Personal Service:	I personally delivered each such envelope to the office of the address on the date last written below.
(C) By Overnight Mail:	I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
(D) By Facsimile	I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.
(E) By Courier:	I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on 10-5, 2009, at Sacramento, California.



Ann Allen

SERVICE LIST

TYPE OF SERVICE

ADDRESSEE

(C)

James G. Moose
Remy, Thomas, Moose, & Manley
455 Capitol Mall, Suite 210
Sacramento, CA 95814
Phone: (916) 443-2745

(C)

Attorneys for Real Parties In Interest:
Jaeger Road 530, LLC
Bill Yeates
Attorney at Law
Kenyon Yeates LLP
2001 N St., Suite 100
Sacramento, CA 95811
Phone 916 -609-5000
Fax 916-609-5001

Co-Counsel for Petitioner: California
Native Plant Society

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

ENTERED
SEP 28 2009

~~FILED~~
ENDORSED
SEP 28 2009
By D. RIOS, SR.
Deputy Clerk

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

CALIFORNIA NATIVE PLANT SOCIETY,
Petitioner,
vs.
CITY OF RANCHO CORDOVA et al.,
Respondents,

JAEGER ROAD 530, LLC,
Real Party in Interest.

Case No. 06CS01311

FINAL JUDGMENT

Date: Friday, September 11, 2009
Time: 1:30 p.m.
Dept.: 19
Judge: Patrick Marlette

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

FINAL JUDGMENT

Having considered the issues framed by the operative pleadings, the administrative, record, and the briefs filed by the parties in this action; having issued a Tentative Ruling in this matter on June 28, 2007; having heard oral argument by counsel for all parties in this matter on July 6, 2007; having entered judgment and directed the issuance of a writ of mandate on July 23, 2007; having considered the Court of Appeal's published decision in this case, *CNPS v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603; having issued a follow-up Tentative Ruling on Petitioner's Motion for Final Judgment in this matter on September 10, 2009; and having heard oral argument regarding Petitioner's Motion for Final Judgment by counsel for all parties in this matter on September 11, 2009, the Court enters its final judgment in this matter as follows:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Court of Appeal's published decision in *CNPS v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, a copy of which is attached at Exhibit 1, is hereby adopted as this Court's final ruling on the merits in this matter.

2. This Court's September 10, 2009 Tentative Ruling is hereby adopted as its final ruling on Petitioner's Motion for Final Judgment.

3. The motion for a peremptory writ of mandate is granted on the grounds set forth in the Court of Appeal's decision.

4. Nothing in this Final Judgment is to be construed as compelling a revised project to be submitted by Real Party in Interest Jaeger Road 530, LLC, or the City to take any particular action with regard to any such future project that may be proposed, except that the City shall ensure that its consideration or approval of any such future project shall avoid or cure the legal and substantive defects identified in the Court of Appeal's decision. The City retains full authority to consider and act (or not act) on any future project that may be proposed, provided that such authority must and shall be exercised in a manner consistent with this Judgment, and all applicable laws.

5. The Clerk of the Sacramento County Superior Court shall immediately issue a peremptory writ of mandate, directing respondents City of Rancho Cordova and the Rancho Cordova City Council to set aside and vacate the following resolutions and ordinances regarding the Preserve at Sunridge Project:

- Resolution No. 105-2006 certifying an EIR, and adopting findings, a statement of overriding considerations, and a mitigation monitoring plan for the Project.
- Ordinance No. 40-2006 approving a Special Planning Area Rezone for the Project.

1 • Resolution No. 108-2006 a Tentative Subdivision for the "Preserve at Sunridge", subject to
2 Conditions of Approval, Sections 1 and 2 and formal adoption August 7, 2006 Regular City
3 Council Meeting.

4 • Ordinance No. 41-2006 accepting the terms of draft Development Agreement RC-03-052 for
5 the Project.

6 6. Respondent shall make and file a return demonstrating full and complete compliance with
7 the Court's peremptory writ of mandate within sixty (60) days of the writ's issuance.

8 7. The Court retains jurisdiction to make any additional orders necessary to enforce the
9 judgment or provide any necessary additional relief in this matter pending discharge of the peremptory writ.

10 8. Petitioner California Native Plant Society is the prevailing party in this action, and may
11 recover its trial court costs of suit from the City pursuant to a timely filed memorandum of costs, and any
12 timely motion(s) to strike or tax costs that may subsequently be filed in opposition by any Respondent,
13 Defendant or Real Party.

14 9. Petitioner California Native Plant Society may seek an award of attorneys fees from the City
15 pursuant to applicable statutes and rules of court.

16 IT IS SO ORDERED.

17 Date: SEP 25 2009

PATRICK MARLETTE

Judge Patrick Marlette
Sacramento County Superior Court

EXHIBIT 1

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

**CALIFORNIA NATIVE PLANT SOCIETY, Plaintiff and Appellant, v. CITY OF
RANCHO CORDOVA et al., Defendants and Appellants; JAEGER ROAD 530,
LLC, Real Party in Interest and Appellant.**

C057018

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

172 Cal. App. 4th 603; 91 Cal. Rptr. 3d 571; 2009 Cal. App. LEXIS 430

March 24, 2009, Filed

SUBSEQUENT HISTORY: Rehearing denied by Cal. Native Plant Soc'y v. City of Rancho Cordova, 2009 Cal. App. LEXIS 651 (Cal. App. 3d Dist., Apr. 13, 2009)

PRIOR HISTORY: [***1]

APPEAL from a judgment of the Superior Court of Sacramento County, No. 06CS01311, Patrick Marlette, Judge.

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, 40 Cal. 4th 412, 53 Cal. Rptr. 3d 821, 150 P.3d 709, 2007 Cal. LEXIS 748 (2007)

DISPOSITION: Reversed.

LexisNexis(R) Headnotes

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

Environmental Law > National Environmental Policy Act > General Overview

[HN1] In California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq., cases a court decides whether the agency has not proceeded in a manner required by law and the act or decision is supported by substantial evidence in the light of the whole record. Pub. Resources Code, §§ 21168, 21168.5. The agency is the finder of fact, and the reviewing court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. Accordingly, the burden is on the challenger. The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Environmental Law > Litigation & Administrative Proceedings > Jurisdiction & Procedure

Environmental Law > National Environmental Policy Act > General Overview

[HN2] Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq., action. Pub. Resources Code, § 21177, subd. (a), sets forth the exhaustion requirement. That requirement is satisfied if the alleged grounds for noncompliance with CEQA were presented by any person during the public comment period provided by CEQA or prior to the close of the public hearing on the project before the issuance of the notice of determination. To exhaust administrative remedies, more is required than generalized environmental comments at public hearings. On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding.

Environmental Law > National Environmental Policy Act > Environmental Assessments

[HN3] A requirement that an applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing the California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq. By deferring environmental assessment to a future date, such conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.

Environmental Law > National Environmental Policy Act > Environmental Impact Statements

[HN4] See Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1)(B).

Environmental Law > National Environmental Policy Act > Environmental Impact Statements

[HN5] A mitigation measure is feasible if it is capable of being accomplished in a successful manner within a

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

reasonable period of time, taking into account economic, environmental, social, and technological factors. Pub. Resources Code, § 21061.1. Under this definition, concerns about whether a specific mitigation measure will actually work as advertised, whether it can be carried out, and whether its success is uncertain go to the feasibility of the mitigation measure, not to whether its formulation has been improperly deferred. Similarly, concerns about whether it is realistically foreseeable that a mitigation measure will actually be carried out as outlined do not raise an issue of improper deferral. If the agency has identified one or more mitigation measures and has committed to mitigating the impact those measures address, then the principles forbidding deferral of mitigation are not implicated.

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

Environmental Law > Litigation & Administrative Proceedings > Jurisdiction & Procedure

Environmental Law > National Environmental Policy Act > Environmental Impact Statements

[HN6] Under the California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., if an agency decides to approve a project despite its significant adverse impacts, the agency must issue findings which specifically state how the agency has responded to the significant impacts identified in the environmental impact report. Pub. Resources Code, § 21081; Cal. Code Regs., tit. 14, § 15091. One such finding is that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. Pub. Resources Code, § 21081, subd. (a)(1); Cal. Code Regs., tit. 14, § 15091, subd. (a)(1). Any such finding must be supported by substantial evidence in the record. § 15091, subd. (b).

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

Environmental Law > National Environmental Policy Act > Environmental Impact Statements

[HN7] Pointing out that other agencies disagreed with an agency's finding that its chosen mitigation measures would reduce the adverse impacts of a project to less than significant does not show there was insufficient evidence in the record to support the finding. The burden is on the party challenging an environmental impact report (EIR) to show it is inadequate. Given that substantial evidence challenges under the California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., are resolved much as substantial evidence claims in any other setting, the burden is on the challenger to affirmatively show there is no substantial evidence in the record to support the agency's findings, and the challenger cannot carry that burden by simply

pointing to portions of the administrative record that favor its position. Rather, the challenger must set forth in its challenge to the EIR all of the evidence material to the agency's finding, then show that that evidence could not reasonably support the finding.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

Environmental Law > National Environmental Policy Act > General Overview

[HN8] See Pub. Resources Code, § 21177.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

Environmental Law > National Environmental Policy Act > General Overview

[HN9] By its plain language, Pub. Resources Code, § 21177, requires that the alleged grounds for noncompliance with the California Environmental Quality Act (CEQA), Pub. Resources Code, § 21000 et seq., a party seeks to raise in a CEQA action must have been presented to the public agency by someone during the administrative proceeding. The purpose of the exhaustion doctrine is to ensure the administrative agency will have had an opportunity to act and render the litigation unnecessary. That is why § 21177 requires someone to have presented to the administrative agency in the administrative proceeding the alleged ground for noncompliance with CEQA that a litigant later seeks to raise in a CEQA action--so the agency knows about the claimed problem and has an opportunity to fix it before legal action is commenced. To satisfy the exhaustion requirement, objections a party seeks to raise in a CEQA action must have been made known in some fashion, however unsophisticated, in the administrative proceeding. Otherwise, the agency would have no opportunity to respond to the objections prior to judicial review--which is the essence of the exhaustion doctrine.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

Environmental Law > National Environmental Policy Act > Environmental Impact Statements

[HN10] An agency is entitled to know exactly what objections members of the public have to the current environmental impact report (EIR). If one of those objections is that the current EIR incorporates a faulty or insufficient analysis from an earlier EIR, then the agency

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

is entitled to notice of this objection, so that it can correct the deficiency or explain why it believes there is no deficiency. An objector cannot simply sit back and wait for the earlier EIR to be invalidated, then belatedly assert after the administrative proceeding is complete that the current EIR is defective because it relied on the earlier EIR that has now been invalidated. Nor is it sufficient that the agency had notice of the alleged deficiencies in the earlier EIR at the time it relied on that EIR in preparing the current EIR. The Legislature has incorporated into Pub. Resources Code, § 21177, a traditional exhaustion requirement, which demands that any deficiency a litigant seeks to raise in a California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., action must have been raised before the agency in the administrative proceeding.

Governments > Courts > Judicial Precedents

[HN11] Cases are not authority for propositions not there considered.

*Environmental Law > Zoning & Land Use > Comprehensive & General Plans
Real Property Law > Zoning & Land Use > Comprehensive Plans*

[HN12] See Gov. Code, § 65300.

*Environmental Law > Zoning & Land Use > Comprehensive & General Plans
Real Property Law > Zoning & Land Use > Comprehensive Plans*

[HN13] The general plan has been aptly described as the constitution for all future developments within the city or county. The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements (statutorily required elements include land use, circulation, housing, conservation, open space and noise). The consistency doctrine has been described as the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.

*Environmental Law > Zoning & Land Use > Comprehensive & General Plans
Real Property Law > Subdivisions > State Regulation
Real Property Law > Zoning & Land Use > Comprehensive Plans*

[HN14] See Gov. Code, § 66473.5.

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

Environmental Law > National Environmental Policy Act > General Overview

[HN15] Because the appellate court, like the trial court, reviews the agency's decision in a California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., action, not the trial court's decision, it does not matter what standard of review the trial court used because the appellate court will use the correct standard in any event.

*Environmental Law > Zoning & Land Use > Comprehensive & General Plans
Real Property Law > Zoning & Land Use > Comprehensive Plans*

Real Property Law > Zoning & Land Use > Judicial Review

[HN16] Appellate courts review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. Under this standard, the appellate court defers to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it. Some cases review consistency with a general plan under the abuse of discretion standard applicable to administrative mandamus, inquiring if the agency has proceeded as required by law and the decision is supported by substantial evidence. Under the substantial evidence prong, a common formulation asks if a reasonable person could have reached the same conclusion on the evidence. Since this is the same test used under the arbitrary and capricious standard for factual findings, there is no inconsistency. Thus, the question for the appellate court--just like the trial court--is whether a finding of consistency with the general plan was reasonable based on the evidence in the record.

*Environmental Law > Zoning & Land Use > Comprehensive & General Plans
Real Property Law > Subdivisions > State Regulation
Real Property Law > Zoning & Land Use > Comprehensive Plans*

[HN17] A project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy. To be consistent, a subdivision development must be compatible with the objectives, policies, general land uses and programs specified in the general plan.

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

Environmental Law > Zoning & Land Use > Comprehensive & General Plans

Real Property Law > Zoning & Land Use > Comprehensive Plans

Real Property Law > Zoning & Land Use > Judicial Review

[HN18] In addressing claims of inconsistency between a project and a general plan, it is important to keep in mind the deferential nature of judicial review. It is not for a reviewing court to substitute its judgment for that of a local agency in making a determination of consistency; rather, the agency's determination comes to the court with a strong presumption of regularity. Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be in harmony with the policies stated in the plan. It is, emphatically, not the role of the courts to micromanage these development decisions. Thus, as long as the agency reasonably could have made a determination of consistency, the agency's decision must be upheld, regardless of whether the reviewing court would have made that determination in the first instance.

Environmental Law > Zoning & Land Use > Comprehensive & General Plans

Real Property Law > Zoning & Land Use > Comprehensive Plans

Real Property Law > Zoning & Land Use > Judicial Review

[HN19] Although the standard of review on an interpretation of a general plan is highly deferential, deference is not abdication.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court found that a city's approval of a development project and certification of the environmental impact report (EIR) violated the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) and that the approval also violated the Planning and Zoning Law (Gov. Code, § 65000 et seq.). The EIR concluded that vernal pool impacts would be mitigated to less than significant levels, but no proposed mitigation site was identified. Three federal agencies, including the U.S. Fish and Wildlife Service, found the mitigation measures inadequate. The environmental group objected to the draft EIR on the grounds of improperly deferred mitigation and lack of substantial evidence. (Superior Court of Sacramento County, No. 06CS01311, Patrick Marlette, Judge.)

The Court of Appeal reversed and remanded for the issuance of a different writ of mandate to the city. The court held that administrative remedies were not

exhausted under Pub. Resources Code, § 21177, subd. (a), as to other arguments on mitigation and the use of material from another EIR. The lack of a proposed mitigation site, even if it raised concerns about feasibility under Pub. Resources Code, § 21061.1, did not amount to improper deferral of mitigation under Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1)(B). The federal agencies' disapproval did not establish that the findings lacked substantial evidence under Pub. Resources Code, § 21081, subd. (a)(1), and Cal. Code Regs., tit. 14, § 15091, subd. (a)(1). Because the general plan called for coordination with the U.S. Fish and Wildlife Service, the lack of such coordination was an inconsistency with the general plan under Gov. Code, § 66473.5. (Opinion by Robie, J., with Nicholson, Acting P. J., and Hull, J., concurring.) [*604]

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES.

(1) **Pollution and Conservation Laws § 2.9--California Environmental Quality Act--Proceedings--Judicial Review--Exhaustion of Administrative Remedies.**--Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) action. Pub. Resources Code, § 21177, subd. (a), sets forth the exhaustion requirement. That requirement is satisfied if the alleged grounds for noncompliance with CEQA were presented by any person during the public comment period provided by CEQA or prior to the close of the public hearing on the project before the issuance of the notice of determination. To exhaust administrative remedies, more is required than generalized environmental comments at public hearings. On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding.

(2) **Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Impact Reports--Contents and Sufficiency--Mitigation Measures--Deferral.**--A requirement that an applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). By deferring environmental assessment to a future date, such conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.

(3) **Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Impact Reports--Contents and Sufficiency--Mitigation Measures--Deferral.**--A mitigation measure is feasible if it is

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Pub. Resources Code, § 21061.1). Under this definition, concerns about whether a specific mitigation measure will actually work as advertised, whether it can be carried out, and whether its success is uncertain go to the feasibility of the mitigation measure, not to whether its formulation has been improperly deferred. Similarly, concerns about whether it is realistically foreseeable that a mitigation measure will actually be carried out as outlined do not raise an issue of [*605] improper deferral. If the agency has identified one or more mitigation measures and has committed to mitigating the impact those measures address, then the principles forbidding deferral of mitigation are not implicated.

(4) Pollution and Conservation Laws § 2.8--California Environmental Quality Act--Proceedings--Agency Findings and Project Approval--Response to Significant Impacts.--Under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), if an agency decides to approve a project despite its significant adverse impacts, the agency must issue findings which specifically state how the agency has responded to the significant impacts identified in the environmental impact report (Pub. Resources Code, § 21081; Cal. Code Regs., tit. 14, § 15091). One such finding is that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment (Pub. Resources Code, § 21081, subd. (a)(1); Cal. Code Regs., tit. 14, § 15091, subd. (a)(1)). Any such finding must be supported by substantial evidence in the record (§ 15091, subd. (b)).

(5) Pollution and Conservation Laws § 2.9--California Environmental Quality Act--Proceedings--Judicial Review--Exhaustion of Administrative Remedies.--By its plain language, Pub. Resources Code, § 21177, requires that the alleged grounds for noncompliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) a party seeks to raise in a CEQA action must have been presented to the public agency by someone during the administrative proceeding. The purpose of the exhaustion doctrine is to ensure the administrative agency will have had an opportunity to act and render the litigation unnecessary. That is why § 21177 requires someone to have presented to the administrative agency in the administrative proceeding the alleged ground for noncompliance with CEQA that a litigant later seeks to raise in a CEQA action--so the agency knows about the claimed problem and has an opportunity to fix it before legal action is commenced. To satisfy the exhaustion requirement, objections a party seeks to raise in a CEQA action must have been made known in some fashion, however

unsophisticated, in the administrative proceeding. Otherwise, the agency would have no opportunity to respond to those objections prior to judicial review--which is the essence of the exhaustion doctrine. [*606]

(6) Pollution and Conservation Laws § 2.9--California Environmental Quality Act--Proceedings--Judicial Review--Exhaustion of Administrative Remedies.--An agency is entitled to know exactly what objections members of the public have to the current environmental impact report (EIR). If one of those objections is that the current EIR incorporates a faulty or insufficient analysis from an earlier EIR, then the agency is entitled to notice of this objection, so that it can correct the deficiency or explain why it believes there is no deficiency. An objector cannot simply sit back and wait for the earlier EIR to be invalidated, then belatedly assert after the administrative proceeding is complete that the current EIR is defective because it relied on the earlier EIR that has now been invalidated. Nor is it sufficient that the agency had notice of the alleged deficiencies in the earlier EIR at the time it relied on that EIR in preparing the current EIR. The Legislature has incorporated into Pub. Resources Code, § 21177, a traditional exhaustion requirement, which demands that any deficiency a litigant seeks to raise in a California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) action must have been raised before the agency in the administrative proceeding.

(7) Courts § 45--Obiter Dicta.--Cases are not authority for propositions not there considered.

(8) Pollution and Conservation Laws § 2.9--California Environmental Quality Act--Proceedings--Judicial Review--Exhaustion of Administrative Remedies.--The trial court erred in finding that a city violated the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) in its certification of a project environmental impact report and approval of the project. The objecting party failed to establish any such violation on which administrative remedies were exhausted.

[Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2009) ch. 11, § 11.06; Cal. Forms of Pleading and Practice (2009) ch. 418, Pollution and Environmental Matters, § 418.13.]

(9) Zoning and Planning § 10--Consistency with General Plan.--The general plan has been aptly described as the constitution for all future developments within the city or county. The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements (statutorily required elements include land use, circulation, housing, conservation, open space and noise). The consistency doctrine has been

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

described as the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law. [*607]

(10) Zoning and Planning § 10--Consistency with General Plan.--A project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy. To be consistent, a subdivision development must be compatible with the objectives, policies, general land uses and programs specified in the general plan.

COUNSEL: Kenyon Yeates, Charity Kenyon, J. William Yeates, Jason R. Flanders; Lippe Gaffney Wagner and Keith G. Wagner for Plaintiff and Appellant.

Meyers, Nave, Riback, Silver & Wilson, Adam U. Lindgren, Julia L. Bond and Edward Grutzmacher for Defendants and Appellants.

Remy, Thomas, Moose and Manley, James G. Moose, Sabrina V. Teller and Jason W. Holder for Real Party in Interest and Appellant.

JUDGES: Opinion by Robie, J., with Nicholson, Acting P. J., and Hull, J., concurring.

OPINION BY: Robie

OPINION

[**575] **ROBIE, J.**--In this mandamus action brought by plaintiff California Native Plant Society (the Society), the trial court directed defendants City of Rancho Cordova and Rancho Cordova City Council (jointly the City) to set aside two resolutions and two ordinances relating to a residential and commercial development project known as the Preserve at Sunridge (the Project). The trial court found the City's certification of the environmental impact report (EIR) for the Project and approval of the Project violated the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.): (1) "by [*576] improperly deferring mitigation [***2] of impacts on vernal pool and wetland habitat and associated animal species"; (2) because the "findings [in the EIR] that impact on vernal pool and wetland habitat and associated animal species had been mitigated to less than significant levels [we]re not supported by substantial evidence"; and (3) "because the EIR failed to disclose the potentially significant impact of the water supply plans for the project on fish migration in the Cosumnes River." The trial court also found the approval of the Project violated the Planning and Zoning Law (Gov. Code, [*608] § 65000 et seq.) because the Project was "not consistent with, and d[id]

not comply with, mandatory requirements of [the City]'s General Plan regarding interconnection of preserved habitat areas that support special-status plant and animal species, and regarding mitigation on such species to ensure that the project does not contribute to the decline of the affected species population."

I All further statutory references are to the Public Resources Code unless otherwise indicated. We will refer to the CEQA statutes in the format CEQA, section ____.

On the appeal by the City and real party in interest Jaeger Road 530, LLC (Jaeger), and the [***3] cross-appeal by the Society, we will conclude the trial court did not err in finding the approval of the Project violated the Planning and Zoning Law because, as we will explain, the City's general plan required the City to design mitigation for impacts of the Project on special-status species in coordination with the United States Fish and Wildlife Service (the Service), which the City did not do. The trial court did err, however, in finding the City violated CEQA in preparing the EIR and approving the Project. Accordingly, we will reverse the judgment and instruct the trial court to enter a new and different judgment consistent with our decision.

FACTUAL AND PROCEDURAL BACKGROUND

The Project

The Project involves the development of an approximately 530-acre site in the southeastern portion of the City that is to include "single-family residential, multi-family residential, commercial and office uses, a neighborhood park, an elementary school, detention/water quality basins, an open space/wetland preserve, pedestrian facilities, bikeways, parkways, and drainage corridors." The Project site lies in the center of a master planned community known as Sunrise Douglas, which was the subject [***4] of a community plan (the Sunrise Douglas Community Plan) approved by Sacramento County. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 421-422 [53 Cal. Rptr. 3d 821, 150 P.3d 709] (*Vineyard*).)

The Project site "is located within the Laguna Formation Geological Formation in the Southeastern Sacramento Valley Vernal Pool Region." Vernal pools are "seasonally inundated shallow depressions underlain by an impermeable layer of soil, generally hardpan or bedrock The pools are inundated with water for various periods of times [*sic*] depending on the depression depth, extent and duration of rainfall, and ambient temperatures." "The vernal pools on the site are classified as northern hardpan vernal pools" and they "support a variety of invertebrate species that are adapted

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

to seasonal inundation and climatic regime associated by this habitat ... " [*609]

A large "unnamed ephemeral drainage" that is "a headwater tributary to Morrison Creek" runs through the Project site. ' [*577] "This drainage typically functions in the collection and transport of stormwater and convey flows during and immediately after storm events." "Depressional areas occur within the reach of the drainage [***5] where water pools and remains after the primary channel is dried. These depressional areas support vernal pool and seasonal wetland vegetation in the spring" and provide habitats for two species of vernal pool crustaceans--vernal pool fairy shrimp and vernal pool tadpole shrimp--that are listed as threatened and endangered (respectively) under the federal Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.). ' Vernal pool tadpole shrimp were actually "observed in some of the deeper on-site pools during ... surveys" in 2002 and 2005, and vernal pool fairy shrimp "have been documented within vernal pools in the immediate project vicinity."

2 Commonly the papers connected with the Project refer to this tributary as Morrison Creek.

3 Both species of vernal pool shrimp subsist in three habitat types found in the Project area--vernal pool, depressional seasonal wetland, and riverine seasonal wetland--while the vernal pool tadpole shrimp also subsists in a fourth habitat type--ephemeral drainage.

"These crustaceans ... hatch from hard-shelled eggs after winter rains fill the pools, and are present as adults for only one to four months. As the pools dry, the shrimp reproduce and die, leaving eggs for the following [***6] year. Widespread agricultural and urban development has reduced the number of vernal pools in the valley, and is the primary cause of these species' endangerment."

The Federal Agencies' "Conceptual-Level Strategy"

In the spring of 2004, three federal agencies--the Service, the U.S. Environmental Protection Agency (USEPA), and the U.S. Army Corps of Engineers (the Corps)--"met to formulate a [**578] conceptual-level strategy for avoiding, minimizing, and preserving aquatic resource habitat in the Sunrise-Douglas Community Plan Area." According to the agencies' strategy document, these meetings resulted in the identification of "preserve areas" within the Sunrise Douglas Community Plan area that were "predicated on ten principles and standards that would be followed by developers and planners as each element of the overall development proceeds." Further, the agencies' strategy document provided that "[t]he mapped boundaries [of these preserve areas were] the

smallest that would be acceptable to the Agencies" The document also provided as follows: "The conceptual level strategy should be used by developers and planners to design and plan projects in the [Sunrise Douglas Community Plan [***7] area]. The Agencies will use the strategy to aid in the review of proposed development and evaluate the probable individual and cumulative effects on aquatic resources and sensitive species." '

4 Jaeger requests that we take judicial notice of a "joint rule" adopted by the Corps and USEPA in April 2008 regarding "Compensatory Mitigation for Losses of Aquatic Resources." In Jaeger's view, "The Joint Rule ... tends to prove ... that the mitigation measures for impacts to wetlands described in the EIR and adopted by the City may ultimately be acceptable to the Corps and the EPA." As this point, even if true, has no bearing on our decision, we deny the request for judicial notice.

[*610]

The Notices of Preparation and Initial Comments

In September 2004, the City issued notice of its intent to prepare an EIR for the Project. In response, the Service submitted a comment letter. The Service referred extensively to the conceptual-level strategy document it had developed earlier that year in conjunction with USEPA and the Corps, then stated as follows: "Based on our review of the proposal submitted by the project proponent, the project design for the [Project] is not consistent with our conceptual-level [***8] strategy document and the map. The proposal would result in significant impacts to, and loss of, vernal pool tadpole shrimp [and] vernal pool fairy shrimp ... and the habitats they depend on (grasslands, wetlands and vernal pools). In addition, the proposal would result in the realignment of Morrison Creek for much of its length in the project site. This action will result in significant changes and impacts to the overall hydrology of the area which will, in turn, adversely impact endangered species habitat. We strongly recommend that the ... [P]roject, and all future projects, in the [Sunrise Douglas Community Plan area] be designed consistent with the strategy discussed here."

The Draft EIR

The City released the draft EIR for comment in October 2005. In its assessment of impacts on biological resources, the draft EIR noted the Project would "result in the direct loss of 14.1 acres of vernal pool fairy shrimp habitat" and "15.65 acres of vernal pool tadpole shrimp habitat." ' The draft EIR deemed the loss of this habitat significant. The draft EIR further provided that these direct impacts would be mitigated "in such a manner that there will be no net loss of habitat (acreage and [***9] function) for these species in the Laguna Formation

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

following implementation of the project." To achieve this and thereby reduce the impact of the Project to less than significant, the applicant would be required to "complete and implement a habitat mitigation and monitoring plan that will compensate for the loss of acreage, function and value of the impacted resources." (This mitigation requirement is referred to as mitigation measure 4.9.1b.) Generally, the plan would require the applicant to preserve two acres of existing habitat or create one acre of new habitat for each acre of habitat impacted by the Project. The plan would have to include "[t]arget areas for creation, restoration and preservation," "[a] complete biological assessment of the existing resources on the target areas," [*611] "[s]pecific creation and restoration plans for each target area," and "[p]erformance standards for success that will illustrate that the compensation ratios are met."

5 The draft EIR also noted the Project would result in the long-term preservation of 5.61 acres of habitat for both species.

In addition to noting the direct loss of habitat for both species of vernal pool shrimp, the draft EIR also noted [***10] the Project would have indirect adverse effects on the habitat for these species, both "in the on-site preserve and adjacent off-site habitat areas," which would be significant. * Specifically, "Alternation of current inundation and desiccation regimes due to altered hydrology [resulting from the creation of impervious surfaces and the redirection of stormwater flows] could substantially alter the characteristics of vernal pool habitat, resulting in [the] loss or degradation of [that] habitat." To mitigate these indirect effects, the applicant would be required (among other things) to adhere to the same 2-1/1-1 preservation/creation requirement under the same mitigation and monitoring plan imposed to mitigate the direct loss of habitat from the Project. (This mitigation requirement is referred to as mitigation measure 4.9.2a.)

6 The "on-site preserve" is an approximately 90-acre open space/wetland preserve located in the southwest portion of the Project site, which would apparently include the 5.61 acres of habitat for the vernal pool fairy shrimp and tadpole shrimp to be preserved as part of the Project.

The draft EIR noted the Project would result in a significant impact to the northern [***11] [**579] hardpan vernal pool community, consisting of a direct loss of 10.46 acres of such pools as well as indirect effects on such pools. The draft EIR noted that implementation of several already-identified mitigation measures, including 4.9.1b and 4.9.2a, would reduce the impact to less than significant.

The draft EIR also noted the Project would result in

a significant impact due to the loss of 15.65 acres of "waters of the US." This impact was to be mitigated by "plans for the creation of jurisdictional waters at a mitigation ratio no less than 1:1 acres of created waters to each acre filled." This mitigation measure (4.9.5a) could be satisfied by the vernal pool and seasonal wetland mitigation pursuant to mitigation measure 4.9.1b.

7 The phrase "waters of the US" (sometimes "jurisdictional waters") refers to "wetlands and other water bodies that fall under the jurisdiction of the United States Army Corps of Engineers."

Comments on the Draft EIR

The Service submitted a comment letter on the draft EIR directing the City's attention back to the Service's letter of October 2004 in response to the notice of preparation of the EIR. The Service noted that with respect to the vernal pool fairy [***12] and tadpole shrimp (and two special-status species of [*612] grass), "we cannot discern any changes to the proposal which would reduce impacts to these species, thus our previous comments are pertinent."

In its own comment letter on the draft EIR, the Society asserted the mitigation and monitoring plan proposed as mitigation measure 4.9.1b would "also have environmental impacts but these are not addressed in the DEIR. Additionally, committing to the preparation of a document does not constitute mitigation. In order for the public to be fully informed of the environmental consequences (both positive and negative) of this proposed project, the DEIR should identify the proposed mitigation site and discuss the environmental impacts associated with the proposed mitigation and monitoring plan." The Society also asserted its belief "that creation of artificial vernal pools within an existing intact vernal pool grassland ecosystem is actually a negative environmental impact upon that natural system. Additionally, we are concerned that creation or restoration of mitigation vernal pools could have significant negative impacts upon the ecosystem as a whole." The Society offered a similar comment to mitigation [***13] measure 4.9.5a.

The Final EIR and Approval of the Project

In response to the Society's comments, the City added a new mitigation measure (4.9.2c) in the final EIR. The purpose of this new measure was to "address[] the potential impacts of the proposed off-site creation activities" so as to "ensure that the biological impacts are reduced to less than significant." Among other things, this new measure required the applicant to submit a wetland "Avoidance/Mitigation Plan," which would include "[t]he location of the proposed vernal pool and

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

seasonal wetland habitat site(s) ... to be created to ensure no net loss in wetland habitat acreage, values and functions," "a monitoring plan to assess whether the compensation wetlands are functioning as intended," and "a maintenance plan for the wetland preservation/mitigation areas describing the measures to be implemented to assure that they are maintained as wetland habitat in perpetuity."

In July 2006, the City adopted resolutions certifying the EIR for the Project [**580] and approving an amendment to certain mitigation measures in the Sunrise Douglas Community Plan. The City specifically found the Project was consistent with its new general plan.

In [***14] August 2006, the City adopted a resolution approving a tentative subdivision map for the Project, an ordinance amending the zoning for the area of the Project, and an ordinance approving the development agreement between the City and Jaeger. The City specifically found the tentative map, the rezoning, and the development agreement were consistent with the City's general plan. [*613]

Proceedings in the Trial Court

In September 2006, the Society filed a petition for writ of mandate alleging violation of CEQA. In November, the Society filed an amended petition alleging violations of CEQA and the Planning and Zoning Law. Later, the Society filed a second amended petition that contained four causes of action asserting violations of CEQA and one cause of action asserting violation of the Planning and Zoning Law.

The Society's arguments in support of its petition, and the City's responses to those arguments, will be described in detail in the discussion to come. For now, suffice it to say that while the trial court rejected some of the Society's arguments and found some were not preserved for review by the exhaustion of administrative remedies, the court nonetheless granted judgment in favor of the [***15] Society, finding that the City's approval of the Project and certification of the EIR violated CEQA and that the approval of the Project also violated the Planning and Zoning Law. The City and Jaeger filed a timely appeal, and the Society filed a timely cross-appeal.*

8 Following the completion of briefing, the Society filed a motion to "strike new evidence and argument presented for first time in" the City's and Jaeger's reply briefs or for permission to file a surreply. Because it does not appear any of the "new evidence and argument" about which the Society complains was material to our decision, the Society's motion is denied.

DISCUSSION

I

CEQA Issues

A

Standard and Scope of Review

[HN1] In CEQA cases a court decides whether "the agency has not proceeded in a manner required by law" and "the act or decision is supported by substantial evidence in the light of the whole record." (CEQA, §§ 21168.5, 21168; see *Neighbors of Cavitt Ranch v. County of Placer* (2003) 106 Cal.App.4th 1092, 1099-1100 [131 Cal. Rptr. 2d 379].) "The agency is the finder of fact and we must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor [*614] of the [***16] agency's decision." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117 [104 Cal. Rptr. 2d 326].) Accordingly, the burden is on the challenger. (*Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1617 [45 Cal. Rptr. 2d 688].) "The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo." (*Vineyard, supra*, 40 Cal.4th at p. 427.)

B

Offsite Mitigation

In the trial court, the Society argued the EIR violated CEQA because it "failed to [**581] describe ... where off-site vernal pool and wetland creation may occur, or how such activities may affect these undescribed off-site environments." The Society contended that by failing to identify where the offsite mitigation might occur, the EIR (1) failed to establish an accurate, stable, and finite description of the Project; and (2) failed to describe the environment that might be affected by the offsite mitigation. The Society also contended the new mitigation measure (4.9.2c) added in the final EIR "unlawfully segments, or 'piecemeals,' environmental review for the 'whole' of the ... project." In addition, the Society contended the City had "unlawfully [***17] deferred development and adoption of mitigation measures until after project approval" by failing to describe where the offsite mitigation might occur and failing to analyze or disclose the impacts of that mitigation. Finally, the Society contended the City had violated CEQA by failing to recirculate the draft EIR after adding the new mitigation measure.

The Society also argued the City's finding that the vernal pool and seasonal wetland mitigation measures

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

provided for in the EIR would reduce the impact of the Project on these habitats to less than significant was not supported by the evidence.

In its opposition, the City argued (among other things) that the Society had failed to exhaust its administrative remedies because it had failed to raise any of these arguments in the administrative proceedings.

The trial court determined the Society's letter commenting on the draft EIR was sufficient to exhaust administrative remedies on two of the arguments relating to offsite mitigation: (1) "whether mitigation of impacts on vernal pools, wetlands, and associated animal species, improperly [were] deferred" [*615] and (2) "whether the finding that proposed off-site mitigation measures would reduce [***18] the impacts on vernal pools to a 'less than significant level' was supported by substantial evidence." The court further concluded, however, that administrative remedies had not been exhausted on the issues of whether the City was required to recirculate the draft EIR after adding the new mitigation measure and whether the City's "handling of proposed off-site mitigation made the EIR deficient in its description of the project, in its description of the environmental background of the project, or in the sense that the project was being improperly 'piecemealed.'"

On the merits of the issues the trial court found were properly raised, the court agreed with the Society. The court concluded "the proposed mitigation plan for addressing the loss of vernal pool and wetlands habitat on the project site ... suffers from flaws in two areas which prevent it from complying with the rules for acceptable deferred mitigation." First, "the mitigation plan does not identify any particular locations in the Laguna Formation Area at which replacement vernal pools and wetlands may be constructed, or give any reasonable assurance, or even expectation, that such locations can and will be acquired and used [***19] for such purposes." Second, "the mitigation plan lacks appropriate standards and criteria applicable to its goal of replacing lost habitat with functioning new vernal pools and wetlands. ... The mitigation plan as it stands thus lacks the kind of specific performance criteria that are necessary for proper deferred mitigation." As a consequence of its finding of improper deferred mitigation measures, the trial court also concluded the City's "findings that impacts have been reduced to the level of 'less than significant' based on those measures are not supported by substantial evidence."

[**582] On appeal, the City and Jaeger contend the trial court erred in concluding the City improperly deferred mitigation and that substantial evidence does not support the City's finding that offsite mitigation will reduce the impact of the Project on the vernal pool and seasonal wetland habitats to less than significant.

In its cross-appeal, the Society asserts the trial court

erred in concluding administrative remedies were not exhausted on the Society's four other arguments relating to offsite mitigation.

We begin with the exhaustion issue.

1. Exhaustion of Administrative Remedies

[HN2] (1) " 'Exhaustion of administrative [***20] remedies is a jurisdictional prerequisite to maintenance of a CEQA action.' [Citation.] Subdivision (a) of CEQA [*616] section 21177 sets forth the exhaustion requirement [the trial court applied] here. That requirement is satisfied if 'the alleged grounds for noncompliance with [CEQA] were presented ... by any person during the public comment period provided by [CEQA] or prior to the close of the public hearing on the project before the issuance of the notice of determination.'" (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 791-792 [39 Cal. Rptr. 3d 189], fn. & italics omitted.)

"The purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review. [Citation.] The decisionmaking body "is entitled to learn the contentions of interested parties before litigation is instituted."" (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 384 [110 Cal. Rptr. 2d 579].)

To exhaust administrative remedies, "[m]ore is obviously required" than "generalized environmental comments at public hearings." (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197 [200 Cal. Rptr. 855].) [***21] "On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding. This is because "[i]n administrative proceedings, [parties] generally are not represented by counsel. To hold such parties to knowledge of the technical rules of evidence and to the penalty of waiver for failure to make a timely and specific objection would be unfair to them." [Citation.] It is no hardship, however, to require a layman to make known what facts are contested." (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163 [217 Cal. Rptr. 893].)

In reaching its conclusion that administrative remedies were not exhausted on the Society's four other arguments relating to offsite mitigation, the trial court offered this explanation:

"[The Society]'s comments [did not] alert [the City] to the contention that its handling of proposed off-site mitigation made the EIR deficient in its description of the project, in its description of the environmental background of the project, or in the sense that the project

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

was being improperly 'piecemealed'. These claimed deficiencies are more than merely alternative legal theories [***22] arising from the allegation that off-site mitigation was being deferred improperly or would not actually reduce the impact of the project on vernal pools to 'less than significant'; they are also separate factual issues that, if accepted and acted upon, would have required restructuring and rewriting sections of the EIR entirely distinct from those addressing the mitigation measures at issue here. [**583] Nothing in [the Society]'s comments made that clear in a way that would have given [the City] the opportunity to address the issue prior to approval of the project. [*617]

"Finally, nothing in [the Society]'s comments alerted [the City] to the contention that it was required to recirculate the Draft EIR because significant new information regarding the environmental impacts of the proposed off-site mitigation measures, and a corresponding new mitigation measure to address them, allegedly had been added after circulation of the Draft EIR. Of course, [the Society's comment] letter could not have addressed these issues, because the new environmental impact and the new mitigation measures ... related to off-site mitigation were announced in the responses to [the Society]'s comment. ... But [the Society] [***23] still could have addressed the issue prior to [the City]'s final decision to certify the Final EIR and approve the project. No evidence is cited that it did so."

The trial court's analysis of the exhaustion issue is well reasoned and persuasive, and nothing in the Society's argument on appeal convinces us the trial court erred. The core of the Society's comments on the draft EIR was that the mitigation measures proposed in the EIR to reduce the impact of the Project on the vernal pool and seasonal wetland habitats were inadequate because the EIR did not "identify the proposed mitigation site and discuss the environmental impacts associated with the proposed mitigation and monitoring plan" and "committing to the preparation of a document does not constitute mitigation." Nothing in these comments called into question the description of the Project or its environmental background or suggested the Project was being improperly "piecemealed." Also, the Society still has not cited any evidence that it ever attempted to raise in the administrative proceedings the issue of recirculation of the EIR.

On appeal, the Society attempts to draw support for its challenge to the trial court's conclusions [***24] on the exhaustion issue from two cases, but neither case is helpful to the Society. In *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745 [12 Cal. Rptr. 2d 308] (SORE), a nonprofit association of property owners and residents (SORE) challenged the adequacy of an EIR relating to a

five-story residential care facility for senior citizens to be built in the City of West Hollywood. (*Id.* at p. 1748.) The ultimate issue was "whether the EIR for the Project was required to examine alternative sites outside the territorial limits of the City, since the EIR found no feasible alternative sites within the City." (*Ibid.*) The City contended SORE had not exhausted its administrative remedies on that issue because "SORE did not specifically object to the legal adequacy of the EIR's alternative site analysis" (*Id.* at p. 1750.) The appellate court rejected that argument, concluding "that SORE's objections to the Project, while not identifying the precise legal inadequacy upon which the trial court's ruling [*618] ultimately rested, fairly apprised the City and Rossmoor [the developer] that SORE believed the environmental impacts of developing the Project on the Rossmoor site would be deleterious [***25] to the surrounding community." (*Ibid.*)

Given that the appellate court in *SORE* failed to identify what SORE's actual "objections to the Project" were, the *SORE* case is of little assistance here, as we cannot determine exactly what comments the court found were sufficient to exhaust administrative remedies on the adequacy of the EIR's alternative site analysis and thus cannot extrapolate from the facts of that case a legal principle we can apply to [**584] the facts of this case. Without that detail, *SORE* at best stands for the proposition that complaints a project will be deleterious to the surrounding community may be sufficient to exhaust administrative remedies on the EIR's failure to adequately examine alternative sites. But the Society fails to explain how that proposition has any bearing here. The Society's comments that the EIR here did not "identify the proposed mitigation site and discuss the environmental impacts associated with the proposed mitigation and monitoring plan" and that "committing to the preparation of a document does not constitute mitigation" did not fairly apprise the City that the draft EIR was inadequate in its description of the Project and its environmental background, [***26] that environmental review of the Project was being improperly "piecemealed," or that the EIR would need to be recirculated.

In the second case the Society cites--*East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155 [258 Cal. Rptr. 147]--a school district, in determining that its decision to close a high school and transfer the students to other schools was exempt from CEQA, failed to consider "all physical changes caused by the transfer, including the cumulative impacts of the transfer and related past and reasonably foreseeable future closings and transfers" and instead considered "only ... specified physical changes at the receptor schools." (*East Peninsula*, at pp. 159, 162, 165.) On appeal, the district asserted that the plaintiff had failed to exhaust administrative remedies on the issue of

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

cumulative impacts, but the appellate court disagreed, concluding various comments were sufficient to alert the school district "to the fact that its method of analysis was faulty and should be expanded to include analysis of long-term impacts, traffic and safety." (*Id.* at p. 176.) The specific comments mentioned in the appellate opinion are set forth in [***27] the following footnote. "

9 One person wrote in a letter, "Have you prepared an Environmental Impact Report? Due to the increased traffic and smog, etc., isn't this legally required?" Another person stated at a hearing, "I think what you need to do is look at a long term solid based analysis that projects the impacts in the long term." At the same meeting, another person complained that "nowhere have you mentioned in your criteria the most basic concern of many Peninsula parents and that is traffic and safety." (*East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.*, *supra*, 210 Cal.App.3d at p. 176.)

[*619]

Like the *SORE* case, *East Peninsula* is of little assistance to the Society here. While the comments in *East Peninsula* fairly apprised the school district of the need to address cumulative impacts of the school closure and transfer, including impacts to traffic and safety, the comments of the Society here did not fairly apprise the City that the draft EIR was inadequate in its description of the Project and its environmental background, that environmental review of the Project was being improperly "piecemealed," or that the EIR would need to be recirculated.

For [***28] the foregoing reasons, we agree with the trial court that the Society did not exhaust its administrative remedies on the four other arguments relating to offsite mitigation. Accordingly, we turn to our analysis of the two arguments the trial court concluded were raised in the administrative proceeding.

2. Improper Deferral of Mitigation

As we have noted, the Society argued in the trial court that by failing to describe where the offsite mitigation [**585] might occur and failing to analyze or disclose the impacts of that mitigation, the City had "unlawfully deferred development and adoption of mitigation measures until after project approval." In support of this argument, the Society relied on *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394-1395 [43 Cal. Rptr. 2d 170], which in turn discussed two earlier cases involving claims of improperly deferred mitigation: *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 [248 Cal. Rptr. 352] and *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011 [280 Cal. Rptr. 478] (*SOCA*). We begin

our discussion of this issue with an analysis of this trio of cases.

Sundstrom involved the granting of a use permit for a private sewage treatment plant based on a negative declaration. (*Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d at pp. 301-303.) [***29] The use permit included conditions requiring the applicant to obtain hydrological studies analyzing the effect of the project on "adjacent sewage disposal systems and surface and ground water hydrology," as well as "soil stability, erosion, sediment transport, and the flooding of downslope properties" and (implicitly) requiring the applicant to mitigate any such effects the studies identified. (*Id.* at p. 306.)

(2) On appeal from the denial of a petition for a writ of mandate requiring the preparation of an EIR, Division One of the First Appellate District concluded, [HN3] "The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the [*620] guidelines implementing CEQA. ... [¶] By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. ... [¶] It is also clear that the conditions improperly delegate the County's legal responsibility to assess environmental impact by directing the applicant himself to conduct the hydrological studies subject to the approval of the planning commission staff." (*Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d at pp. 303, 306-307.)

SOCA [***30] involved a challenge to the adequacy of an EIR addressing the mitigation of traffic and parking impacts of the expansion of the downtown Sacramento Convention Center complex and the construction of a nearby office tower. (*SOCA*, *supra*, 229 Cal.App.3d at p. 1015.) The EIR determined that, "under the worst case scenario, ... parking spaces would ... be needed for 2,621 cars." (*Id.* at p. 1020.) The plaintiffs complained the EIR was "defective because the City failed to describe and examine 'true' mitigation measures and failed to analyze the potential environmental impacts of implementing such measures." (*Id.* at p. 1026.) More specifically, the plaintiffs complained the EIR contained "no specific mitigation measures for the parking impacts, but instead offer[ed] a list of 'seven general measures of the sort that might be included in [the City's] unformulated "Transportation Management Plan."'" (*Ibid.*, italics omitted.) In support of their argument, the plaintiffs relied on *Sundstrom*. (*SOCA*, at p. 1027.)

On appeal from the denial of a petition for a writ of mandate, this court found *Sundstrom* distinguishable and concluded the "proposed mitigation measures satisfied CEQA." (*SOCA*, *supra*, 229 Cal.App.3d at pp. 1018, 1030.) [***31] The court explained that "in *Sundstrom* the county had determined, before the required studies

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

were even performed, [**586] that the project would not have a significant impact on the environment. In contrast, the City in the present case acknowledged traffic and parking have the potential, particularly under the worst case scenario, of causing serious environmental problems. The City did not minimize or ignore the impacts in reliance on some future parking study. [¶] Moreover, the county in *Sundstrom* approved the project without considering or addressing any mitigation measures. In the present case, the City has set forth a list of alternatives to be considered in the formulation of a transportation management plan, a plan the City itself, not the developer, will prepare. [¶] ... [¶] The range of alternatives includes scheduling changes for the expanded center's activities, satellite parking locations; public transit, carpooling; and construction of new parking or expanded use of existing parking." (*SOCA*, at pp. 1028, 1030, italics omitted.) Moreover, the City had "committed itself to mitigating the impacts of parking and traffic" and had "approved [***32] funds for a major study of downtown transportation." (*Id.* at p. 1029.) [*621]

Gentry involved the approval of a residential development based on a mitigated negative declaration. (*Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at p. 1367.) Among other things, the plaintiff complained "some conditions [placed on the project] improperly deferred the determination of appropriate mitigation into the future." (*Id.* at p. 1393.) On appeal from the denial of a petition for a writ of mandate, Division Two of the Fourth Appellate District concluded most of the challenged conditions did *not* improperly defer mitigation. (*Id.* at pp. 1359, 1394-1396.) The only condition the court found "improperly defer[red] the formulation of mitigation" was a condition that allowed the developer "to obtain a biological report regarding the Stephens' kangaroo rat" and "comply with any recommendations in the report." (*Id.* at p. 1396.) The *Gentry* court concluded this condition was "on all fours with the condition in *Sundstrom* which required the applicant to comply with any recommendations of a report that had yet to be performed." (*Gentry*, at p. 1396.)

The principles of deferred mitigation expressed in *Sundstrom*, *SOCA*, [***33] and *Gentry* are succinctly summarized in the California Code of Regulations, title 14, section 15126.4, subd. (a)(1)(B), " which provides that [HN4] "[f]ormulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way."

10 Hereafter, we will refer to the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) in the format CEQA Guidelines, section

Unlike the trial court, we do not agree with the Society that the City violated the principles expressed in *Sundstrom*, *SOCA*, and *Gentry* regarding improper deferral of mitigation. *Sundstrom* and *Gentry* stand for the proposition that it is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur *before* the project is approved. On the other hand, *SOCA* stands for the proposition that when a public agency has evaluated the potentially significant impacts of a project and [***34] has identified measures that will mitigate those impacts, the agency does not have to [**587] commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project. Moreover, under *SOCA*, the details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study. [*622]

The City satisfied these requirements here. The City did not defer a determination of whether the Project would have a significant impact on the vernal pool and seasonal wetland habitats or defer the identification of measures calculated to mitigate that impact. Rather, the City determined the impact the Project would have--habitat loss--and identified a specific measure to mitigate that impact--preservation or creation of replacement habitat offsite in a specific ratio to the habitat lost as a result of the Project. While it is true the City did not identify any specific proposed mitigation site, there is nothing in *Sundstrom*, *SOCA*, or *Gentry* that required it to do so. Just as the City of Sacramento in *SOCA* did not have to choose in the EIR exactly which of the mitigation measures it had identified would [***35] ultimately be used to mitigate the impact of the convention center project on downtown parking, the City here did not have to identify exactly where in the Laguna Formation any offsite mitigation site would be located. In both instances, the agency was entitled to rely on the results of a future study to fix the exact details of the implementation of the mitigation measures the agency identified in the EIR.

In accepting the Society's argument that the City improperly deferred mitigation relating to the loss of vernal pool and seasonal wetland habitat, the trial court expressed its belief that "in order to be valid, a proposed mitigation measure that is intended to be carried out at some time after project approval must be sufficiently detailed that the public and the approving agency may make an informed decision about whether it will actually work as advertised, and that it must be realistically foreseeable that the measure will actually be carried out as outlined. If the success of a proposed mitigation

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

measure is uncertain, the approving agency cannot reasonably determine that significant effects will be mitigated below the level of significance. [Citation.] And if there is no information [***36] at hand demonstrating that a proposed mitigation solution can or will be carried out, the approving agency does not have meaningful information reasonably justifying an expectation of compliance with the condition."

(3) We agree with the City that, in part, these comments evidence a confusion of two distinct CEQA concepts: (1) whether the agency has improperly deferred the formulation of mitigation measures; and (2) whether the mitigation measures the agency has formulated are *feasible*. [HN5] A mitigation measure is feasible if it is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (CEQA, § 21061.1.) Under this definition, concerns about whether a specific mitigation measure "will actually work as advertised," whether it "can ... be carried out," and whether its "success ... is uncertain" go to the *feasibility* of the mitigation measure, [***623] not to whether its formulation has been improperly deferred. Similarly, concerns about whether it is "realistically foreseeable that [a mitigation] measure will actually be carried out as outlined" do not raise an issue of improper deferral. [***37] If the agency has identified one or more mitigation measures and has committed to mitigating the impact those measures address, then the principles forbidding deferral of mitigation are not implicated.

[**588] In its challenge to the EIR in the trial court (as well as in its comments on the EIR), the Society did not argue that the offsite mitigation measures the City proposed were not feasible or that the City had not fully committed to implementing those measures. Instead, as the trial court described it, the issue the Society raised was "whether mitigation of impacts on vernal pools, wetlands, and associated animal species, improperly [were] deferred." Under the case law on which the Society relied, the answer to that question is "no."

The Society argues that regardless of *Sundstrom*, *SOCA*, and *Gentry*, the City improperly deferred mitigation of the loss of vernal pool and seasonal wetland habitat in violation of principles the California Supreme Court recently set out in *Vineyard*. We are not persuaded.

Vineyard involved the EIR relating to the Sunrise Douglas Community Plan, which contemplates the development of a master planned community (of which the Project here is a part) with "more than [***38] 22,000 residential units, housing as many as 60,000 people, together with schools and parks, as well as office and commercial uses occupying about 480 acres of land." (*Vineyard*, *supra*, 40 Cal.4th at pp. 421-422.) The primary issue the Supreme Court addressed on review

was the adequacy of the EIR's water supply analysis. (*Id.* at pp. 427-447.) The plaintiffs in *Vineyard* complained the EIR was "deficient in that it 'fail[ed] to identify the actual source of most of the water needed to fill the project's long-term demand,' an analytical gap that 'serve[d] to obscure the undisclosed environmental impacts of the project.'" (*Id.* at p. 427.) As the Supreme Court put it, "The principal disputed issue [wa]s how firmly future water supplies for a proposed project must be identified or, to put the question in reverse, what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan." (*Id.* at p. 428.)

In addressing this issue, the Supreme Court discussed "several [Court of Appeal] decisions [that] specifically addressed the sufficiency of an EIR's [***624] analysis of future water supplies" and from which the Supreme Court distilled "certain principles for analytical [***39] adequacy under CEQA" of an "analysis of future water supplies." (*Vineyard*, *supra*, 40 Cal.4th at pp. 428-430.) One of the cases the Supreme Court discussed was *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182 [55 Cal. Rptr. 2d 625]. As relevant here, the Supreme Court offered this summary of the *Stanislaus* decision: "Before approving a specific plan for an entire development, the decision makers must be informed of the intended source or sources of water for the project, 'what the impact will be if supplied from a particular source or possible sources and if that impact is adverse how it will be addressed.' [Citation.] CEQA, the court recognized, permits the environmental analysis for long-term, multipart projects to be 'tiered,' so that the broad overall impacts analyzed in an EIR at the first-tier programmatic level need not be reassessed as each of the project's subsequent, narrower phases is approved, but tiering 'is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause.' [Citation.] Nor can the unanalyzed impacts of unknown water sources be mitigated by providing that if water [***40] proves unavailable, the project's future phases will not be built: 'While it might be argued that not building a portion of the project is the ultimate mitigation, [***589] it must be borne in mind that the EIR must address the project and assumes the project will be built.'" (*Vineyard*, at p. 429, fn. omitted, quoting *Stanislaus Natural Heritage Project v. County of Stanislaus*, *supra*, 48 Cal.App.4th at pp. 199, 206.)

Without further discussing the *Vineyard* decision, the Society sets out the Supreme Court's summary of the *Stanislaus* decision and relies on that summary to argue that "[t]he Supreme Court ruled in *Vineyard* that a failure to identify and disclose with specificity 1) likely sources of off-site environmental resources that may be required to fully implement a proposed project, and 2) how the use of those resources in furtherance of the Project may,

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

in turn, result in significant, adverse environmental effects, constitutes a violation of CEQA's mandatory procedures."

This argument is deficient for several reasons. First, the portion of the *Vineyard* case the Society quotes does not contain any *holding* or *ruling* by the Supreme Court; rather, it contains the Supreme Court's summary of an [***41] earlier Court of Appeal decision. Furthermore, the Society makes no attempt to show that the Supreme Court's ruling in *Vineyard* was consistent with its summary of the *Stanislaus* decision. Second, even if we assume such consistency, the Society makes no attempt to show or explain why the reasoning in *Vineyard* and *Stanislaus*--both of which dealt specifically with the sufficiency of an EIR's analysis of future water supplies--can or should [*625] be extended to the sufficiency of an EIR's formulation of mitigation measures involving offsite habitat replacement. Because the Society's abbreviated discussion of *Vineyard* does not include any attempt to identify the underlying principles that drove either the *Vineyard* decision or the *Stanislaus* decision, we cannot discern whether those principles compel an extension of the holding of those cases from the water supply context to the offsite mitigation context.

In summary, the Society has failed to persuade us that the *Vineyard* decision on the adequacy of an EIR's analysis of future water supplies supplants or in any way alters the principles of deferred mitigation set forth in *Sundstrom*, *SOCA*, and *Gentry*. And because we have concluded already [***42] that the EIR here did not violate those principles, we likewise conclude the trial court erred when it determined otherwise.

The question remains, however, whether the trial court's ultimate ruling regarding the EIR as it relates to the issue of offsite mitigation can nonetheless be sustained on the alternate ground the trial court decided the Society had properly raised in the administrative proceedings, namely, "whether the finding that proposed off-site mitigation measures would reduce the impacts on vernal pools to a 'less than significant level' was supported by substantial evidence." We turn our attention to that issue.

3. Sufficiency of the Evidence

[HN6] (4) Under CEQA, "If the agency decides to approve a project despite its significant adverse impacts, the agency must issue findings which specifically state how the agency has responded to the significant impacts identified in the EIR." (*SOCA*, *supra*, 229 Cal.App.3d at p. 1034; see CEQA, § 21081; CEQA Guidelines, § 15091.) One such finding is that "[c]hanges or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment." (CEQA, § 21081, subd. (a)(1); see [***43] CEQA Guidelines, § 15091, subd. (a)(1).) Any

such finding must be supported by substantial [**590] evidence in the record. (CEQA Guidelines, § 15091, subd. (b).)

Here, the Society argued in the trial court that "the evidence in the certified record of proceedings does not support the City's findings that the project's potentially significant, adverse environmental effects will be reduced to 'less than significant' levels." More specifically, the Society argued the City's finding of mitigation was not supported by the evidence in the record because "[t]he state and federal agencies with the requisite expertise, and jurisdiction [*626] by law, over these resources (USFWS, USACE, USEPA and CDFG) [11] reviewed and commented (several times) on the mitigation measures proposed in the EIR and adopted in the City's findings" and "unanimously informed the City that, in their professional judgment, and based on their expertise and the facts before them, adoption of the EIR's proposed mitigation measures, would 'result in significant impacts to, and loss of' listed species and the habitats upon which they depend." The Society repeats these arguments nearly verbatim in its brief on appeal.

11 USFWS is the Service, USACE is the Corps, and [***44] CDFG is the California Department of Fish and Game.

[HN7] Pointing out that other agencies disagreed with the City's finding that its chosen mitigation measures would reduce the adverse impacts of the Project on the vernal pool and seasonal wetland habitats to less than significant does not show there was insufficient evidence in the record to support the City's finding. As we have noted, the burden is on the party challenging the EIR to show it is inadequate. (*Barthelemy v. Chino Basin Mun. Water Dist.*, *supra*, 38 Cal.App.4th at p. 1617.) Given that "[s]ubstantial evidence challenges [under CEQA] are resolved much as substantial evidence claims in any other setting ..." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945 [91 Cal. Rptr. 2d 66]), the burden was on the Society to *affirmatively show* there was no substantial evidence in the record to support the City's findings, and the Society could not carry that burden by simply pointing to portions of the administrative record that favored its position. (See, e.g., *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573-1574 [43 Cal. Rptr. 3d 741] [apply rules of substantial evidence review in criminal case].) Rather, the Society needed to set forth in its challenge [***45] to the EIR all of the evidence material to the City's finding, then show that that evidence could not reasonably support the finding. (See *id.* at p. 1574.) The Society did not do this.

As the City points out, "The main premise of [the Society's] argument is ... that the federal agencies disagree with the City's evidence and conclusions and

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

have a different vision for the area. ... [T]his disagreement does not constitute a basis for overturning the City's decision." We would add only this: Pointing to evidence of a disagreement with other agencies is not enough to carry the burden of showing a lack of substantial evidence to support the City's finding. Thus, the Society's challenge to the sufficiency of the evidence fails. [*627]

C

Incorporation of the Sunrise Douglas Community Plan EIR

The EIR here noted that "the City, through incorporation by reference, is using the Master EIR [i.e., the EIR for the Sunrise Douglas Community Plan] in a [*591] manner similar to what would be accomplished through tiering: relying largely on existing information about broad, area wide or regional issues and impacts, while updating that information where necessary and focusing on site specific issues not addressed [***46] previously."

When this action was commenced in the trial-court in September 2006, the *Vineyard* case, which involved challenges to the Sunrise Douglas Community Plan EIR, was pending in the California Supreme Court. Anticipating the Supreme Court's ruling in *Vineyard* might have a bearing on the validity of the EIR here, the Society asserted generally in its statement of issues (CEQA, § 21167.8, subd. (f)) in January 2007 that the City's approval of the Project "must be set aside because the [EIR] incorporates and relies upon analysis and conclusions in the overlying Sunrise Douglas Community Plan EIR that may be invalidated by the Supreme Court."

After the *Vineyard* decision came out in February 2007, the Society included more specific arguments in its opening brief (filed in March 2007) based on that decision. Specifically, the Society argued the Project EIR had incorporated the "discussion and analysis" in "two key portions of the [Sunrise Douglas Community Plan] EIR": specifically, "long-term water supply impacts" and "impacts to the Cosumnes River." The Society contended that because the Supreme Court had invalidated the Sunrise Douglas Community Plan EIR for failure to adequately [***47] consider these impacts, the Project EIR had to be invalidated on this basis as well.

In its opposition, the City argued that administrative remedies had not been exhausted on this issue because "the record does not disclose so much as a statement of concern over the EIR's water supply analysis or over potential impacts on the Cosumnes River by anyone during the administrative proceedings," let alone any "claim that the EIR was defective because it improperly incorporated or relied too extensively upon the [Sunrise

Douglas Community Plan] EIR."

The trial court first observed that "[t]he essence of the exhaustion doctrine is notice" and thus "[t]he key issue here ... is whether [the City] had notice that the [Project] EIR ... was questionable insofar as it relied upon portions of the EIR for the [Sunrise Douglas Community Plan] that were in litigation and might eventually be ruled invalid." The court relied on the fact that when [*628] the City certified the Project EIR and approved the Project, the action involving the validity of the Sunrise Douglas Community Plan EIR was already pending before the California Supreme Court and the City was a party to that action. In the trial court's view, [***48] by virtue of these facts the City "had actual notice that, to the extent that the [Project] EIR expressly relied upon portions of the earlier EIR that were the subject of litigation, such reliance was questionable" and the City "had the opportunity to avoid any problems arising out of such reliance before approving the [Project] and its EIR." Thus, the court found "the purpose of the exhaustion doctrine has been served in this case."

On the merits, the trial court determined the EIR was not invalid based on its discussion of long-term water supply impacts of the Project because "the discussion of cumulative water supply impacts in the project EIR does not appear to be based on the discussion of that issue in the [Sunrise Douglas Community Plan] EIR" and because the "contribution [of the Project] to the impacts of long-term water supplies might even be described as essentially non-existent."

[**592] The trial court reached a different conclusion, however, with respect to impacts on the Cosumnes River. The court noted that the Supreme Court had invalidated the Sunrise Douglas Community Plan EIR in part because the final EIR had disclosed for the first time a potentially substantial new impact [***49] on salmon in the Cosumnes River. (*Vineyard, supra*, 40 Cal.4th at p. 449.) The Supreme Court concluded in *Vineyard* that the Sunrise Douglas Community Plan EIR had to be recirculated for public comment on this issue. (*Ibid.*) The trial court here noted that the Project EIR did "not include the disclosure of the potential impact on the Cosumnes River that appeared in the [Sunrise Douglas Community Plan] EIR" and thus "suffers from the same defect that was found in the *Vineyard* ... case, that of failing to disclose this impact to the public for comment." Thus, the court directed the issuance of a writ of mandate "to require the Draft EIR to be revised and recirculated with regard to this issue."

On appeal, the City and Jaeger contend the trial court erred in determining that the Society was not required to exhaust administrative remedies on its arguments related to the Project EIR's reliance on the Sunrise Douglas Community Plan EIR. In the alternative, they contend the court erred in invalidating the Project

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

EIR based on its failure to disclose the potential impact of the Project on the salmon in the Cosumnes River because, based in part on information that was not available when the [***50] Sunrise Douglas Community Plan EIR was prepared, there was substantial evidence in the record that the Project would not have any such impact. [*629]

For its part, in its cross-appeal, the Society contends the trial court erred in determining the EIR was not invalid based on its discussion of long-term water supply impacts of the Project.

Once again, we begin our discussion with the exhaustion issue. As will be seen, since the exhaustion issue is dispositive of these challenges to the EIR, we need not reach either side's arguments on the merits of the challenges related to the Project EIR's reliance on the Sunrise Douglas Community Plan EIR.

(5) We have explained the fundamental principles of the exhaustion doctrine already. What is most important in applying that doctrine here is the language of subdivision (a) of CEQA section 21177, which expressly provides that [HN8] "[n]o action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance [***51] of the notice of determination." [HN9] By its plain language, this statute requires that the alleged grounds for noncompliance with CEQA a party seeks to raise in a CEQA action must have been presented to the public agency by someone during the administrative proceeding.

The purpose of the exhaustion doctrine is to ensure the administrative agency "will have had an opportunity to act and render the litigation unnecessary." (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894 [236 Cal. Rptr. 794].) That is why CEQA section 21177 requires someone to have presented to the administrative agency in the administrative proceeding the alleged ground for noncompliance with CEQA that a litigant later seeks to raise in a CEQA action--so the agency knows about the claimed problem and has an opportunity to fix it before legal action is [**593] commenced. To satisfy the exhaustion requirement, objections a party seeks to raise in a CEQA action must have been made "known in some [***52] fashion, however unsophisticated[, in the administrative proceeding]. Otherwise, the [agency] would have no opportunity to respond to those objections prior to judicial review--which is the 'essence of the exhaustion doctrine.'" (*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1449 [35 Cal. Rptr. 2d 334].)

Here, in the trial court the Society challenged the

Project EIR's reliance on and incorporation of the Sunrise Douglas Community Plan EIR's discussion and analysis of "long-term water supply impacts" and "impacts to the Cosumnes River," which the Supreme Court found were inadequate in *Vineyard*. To satisfy the exhaustion doctrine, someone had to have raised [*630] these challenges--or something like them at least--in front of the City during the administrative proceeding. That did not happen.

(6) To the extent the Society relies on the Project EIR's incorporation by reference of the Sunrise Douglas Community Plan EIR and the fact that the administrative record includes a copy of the latter EIR to satisfy the exhaustion doctrine, that reliance is misplaced. The Society offers no authority for its argument that by incorporating the analyses of "long-term water supply" and "impacts to biological resources [***53] in the Cosumnes River" from the Sunrise Douglas Community Plan EIR into the Project EIR, "The City, by definition, incorporated the objections that were raised to the adequacy of" these analyses in comments on the Sunrise Douglas Community Plan EIR. The suggestion that an agency must treat as a comment on a current EIR any comment received on an earlier EIR that the current EIR relies on or incorporates by reference has no support in the law, as far as we can determine, presumably because [HN10] an agency is entitled to know exactly what objections members of the public have to the current EIR. If one of those objections is that the current EIR incorporates a faulty or insufficient analysis from an earlier EIR, then the agency is entitled to notice of this objection, so that it can correct the deficiency or explain why it believes there is no deficiency. An objector cannot simply sit back and wait for the earlier EIR to be invalidated, then belatedly assert after the administrative proceeding is complete (as happened here) that the current EIR is defective because it relied on the earlier EIR that has now been invalidated.

Nor is it sufficient, as the Society suggests, that the agency had "notice" [***54] of the alleged deficiencies in the earlier EIR at the time it relied on that EIR in preparing the current EIR. If the Legislature had wanted mere "notice" to be the applicable standard, it could have written CEQA section 21177 to provide for that. Instead, the Legislature incorporated into that section a traditional exhaustion requirement, which demands that any deficiency a litigant seeks to raise in a CEQA action must have been raised before the agency in the administrative proceeding.

Here, the Society points to only one purported "comment" on the Project presented to the City during the administrative proceeding to satisfy the exhaustion doctrine. As we will explain, the Society has failed to show that that "comment" raised the issues the Society sought to raise in the trial court and therefore the Society

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

has failed to show the exhaustion doctrine was satisfied by this "comment."

According to the Society, USEPA, "in commenting on the Project, ... objected to the Project's reliance on 'conjunctive use' and the City's proposal to use groundwater from the North Vineyard well field [**594] to meet long-term [**631] water supply." The "comment" the Society refers to is a paragraph entitled "Groundwater [***55] Supply" that appears in a document entitled "Detailed USEPA Concerns" that was an attachment to a letter dated December 7, 2001, from USEPA to a district engineer for the Corps relating to another project in the Sunrise Douglas Community Plan area. This earlier letter was submitted to the City in connection with this Project in October 2004 when USEPA attached the letter to its response to the notice of preparation for the Project EIR.

In the "Groundwater Supply" paragraph, the "Detailed USEPA Concerns" document drew information from the Sunrise Douglas Community Plan EIR about the water supply for the Sunrise Douglas Community Plan area. The document noted that "[t]he FEIR's water supply plan proposes sole reliance on groundwater to meet the demands generated in the short-term by anticipated build-out within the Specific Plan area, [12] with reliance on 'conjunctive use' to meet demands that grow over the long-term. Initially, it appears that groundwater will be drawn from a well field in the North Vineyard area, and the proposed project would draw groundwater from the Elk Grove area aquifer--an aquifer where overdraft already appears to be a serious problem. We expect that further [***56] draw-down of this aquifer will have severe, adverse impacts on the aquatic resources of the Cosumnes River watershed and, therefore, the Bay/Delta ecosystem."

12 The "Specific Plan" refers to "the SunRidge Specific Plan," which "detail[ed] the proposed development of a substantial portion of the [Sunrise Douglas] project--2,600 acres" of the "more than 6,000 ... acres" encompassed in the Sunrise Douglas project as a whole. (*Vineyard*, *supra*, 40 Cal.4th at pp. 421-422.) The Sunrise Douglas Community Plan area EIR addressed the likely environmental consequences of *both* plans. (*Id.* at p. 422.)

Unfortunately, the Society's argument based on this paragraph is abbreviated--amounting to little more than a reference to where the material appears in the administrative record, accompanied by a mischaracterization of the material as an "object[ion to] ... the City's proposal to use groundwater from the North Vineyard well field to meet long-term water supply." Because it does not develop its argument, the Society fails to explain how USEPA supplying this earlier

document to the City in response to the notice of preparation of the Project EIR satisfied the exhaustion doctrine with respect to [***57] the arguments the Society ultimately sought to pursue here, specifically, arguments regarding the propriety of the Project EIR's reliance on the faulty discussion and analysis of "long-term water supply impacts" and "impacts to the Cosumnes River" in the Sunrise Douglas Community Plan EIR. For our part, we note that nothing in this material even purported to criticize the contents of the Sunrise Douglas Community Plan EIR, let alone the incorporation of that EIR into the Project EIR. Thus, we are at a loss to understand how it could have satisfied the exhaustion requirement with respect to the Society's arguments. [**632]

The Society relies on *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373 [116 Cal. Rptr. 2d 54] to support its contention that the Project EIR has to be invalidated because of its incorporation by reference of material in the Sunrise Douglas Community Plan EIR the Supreme Court found inadequate in *Vineyard*. That reliance is misplaced.

In *Friends*, Division Four of the Second Appellate District concluded a tiered EIR was invalid because the prior EIR from [**595] which it was tiered had been decertified as the result of an opinion by this court (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892 [100 Cal. Rptr. 2d 173]) [***58] finding the prior EIR inadequate and because CEQA "authorizes tiering [only] where the previous EIR was certified." (*Friends of the Santa Clara River v. Castaic Lake Water Agency*, *supra*, 95 Cal.App.4th at pp. 1375-1376, 1384, 1387; see CEQA, § 21094, subd. (a).) What is significant about *Friends* here is that the case from this court decertifying the prior EIR was not decided until the challenge to the EIR in the *Friends* case was on appeal. (*Friends of the Santa Clara River*, at p. 1375.)

(7) To the extent the Society, by relying on *Friends*, means to imply that the exhaustion requirement did not have to be met here because, as in *Friends*, the grounds for invalidating the EIR arose from another case that was not decided until after the administrative proceedings were complete, we reject that argument. First, *Friends* did not address the exhaustion doctrine, and [HN11] "cases, of course, are not authority for propositions not there considered." (*People v. Ceballos* (1974) 12 Cal.3d 470, 481 [116 Cal. Rptr. 233, 526 P.2d 241].) Second, had the exhaustion issue been raised in *Friends*, it would have been true that the defect there--decertification of the prior EIR--could not have been raised in the administrative proceeding because the [***59] prior EIR was not decertified until even after the trial court proceedings concerning the tiered EIR had concluded

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

and the matter was on appeal. Whether recognition of an impossibility exception to the exhaustion requirement might have been justified under those circumstances is a question we need not answer here because the circumstances in this case are markedly different. The Society does not seek to invalidate the Project EIR simply because the Sunrise Douglas Community Plan EIR was invalidated; rather, the Society seeks to invalidate the Project EIR because it allegedly incorporated faulty analysis and discussion from the earlier EIR. But nothing prevented the Society from presenting this argument to the City during the administrative proceedings on the Project EIR. It is true the Society would not have had the benefit of the *Vineyard* decision in arguing the analysis and discussion in the earlier EIR was faulty, but the Society could have made that argument nevertheless based [*633] on the very same reasoning and authorities used by the parties who eventually prevailed in *Vineyard*. Thus, even assuming recognition of an impossibility exception to the exhaustion requirement might be appropriate [***60] in certain circumstances, no such circumstances exist here.

Under the circumstances of this case, we conclude the trial court erred in determining the exhaustion doctrine was satisfied with respect to the Society's complaints about the Project EIR's reliance on the Sunrise Douglas Community Plan EIR. Because this issue was not exhausted at the administrative level, the trial court had no authority to consider it and thus erred in invalidating the Project EIR based on its alleged failure to disclose the potential impact of the Project on the salmon in the Cosumnes River. "

13 The Society has requested that we take judicial notice of the judgment and peremptory writ of mandate issued by the trial court following the appeal in the *Vineyard* case. Because we have concluded the Society's challenge to the EIR here based on the City's reliance on the Sunrise Douglas Community Plan EIR was not preserved for review by the exhaustion of administrative remedies, what has happened to the Sunrise Douglas Community Plan EIR on remand from the Supreme Court in the *Vineyard* case is of no consequence to our decision. Accordingly, we deny the Society's request for judicial notice.

[**596] D

Compliance With and Amendment of Mitigation Measures from the Sunrise Douglas Community Plan EIR

The [***61] Sunrise Douglas Community Plan included a mitigation measure (BR-2) that required any future project proponent to "submit a wetland delineation

for the proposed development area, and a detailed plan which describes the specific methods to be implemented to avoid and/or mitigate any project impacts upon wetlands" "[i]n conjunction with the filing and processing of applications for future development entitlements (such as tentative subdivision maps or development plans)." The Sunrise Douglas Community Plan also contained another mitigation measure (BR-4) that required project applicants to obtain various necessary permits from other agencies "[p]rior to approval of any future development projects (such as tentative subdivision maps, development plans, improvements plans)."

The Project applicants here proposed to change those mitigation measures to allow the required actions to be delayed so that they would have to be taken only "[p]rior to approval of any improvement plans or grading permits." The City approved the change and amended the Sunrise Douglas Community Plan accordingly along with its approval of the Project.

In the trial court, the Society argued the City violated CEQA by approving [***62] the Project without requiring compliance with mitigation measures BR-2 and [*634] BR-4 in their unamended form. Essentially the Society's argument was that CEQA did not allow the City to amend the mitigation measures once they were final. In its opposition, the City argued (among other things) that neither the Society nor any other party had raised this issue in the administrative proceedings. The trial court agreed that administrative remedies had not been exhausted on this issue. In reaching this conclusion, the court determined the Society's comments were not sufficient to preserve the issue and specifically noted that the Society had "not cited any evidence in the record demonstrating that any other party raise th[is] issue[] in a manner that could preserve [it] for judicial review."

In its cross-appeal, the Society asserts the trial court erred on this point. In support of its argument, the Society does not rely on any comment it made in the administrative proceeding. Instead, the Society identifies (for the first time) comments made by USEPA and the Service that it claims were sufficient to satisfy the exhaustion doctrine. As the City points out, however, the comments on which the Society [***63] relies do not mention mitigation measures BR-2 and BR-4, nor do those comments tend to suggest in any manner that the City violated CEQA by amending those mitigation measures.

The Society asserts that "[b]ased on these comments, the City was on notice that the Project did not meet the relevant agenc[ies'] permitting requirements, as mandated by ... mitigation measures BR-2 and BR-4." But even if this is true, it does not assist the Society on the exhaustion issue. Assuming the City could determine,

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

based on these comments, that the two federal agencies did not believe their permitting requirements would be met by the Project, such information would not have given the City notice of any alleged problem with its amendment of mitigation measures BR-2 and BR-4, let alone notice of the specific assertion the Society later sought to raise in the trial court--that the City violated CEQA by amending the mitigation [**597] measures. As we have previously observed, CEQA section 21177 requires that someone must have presented the alleged ground of noncompliance with CEQA to the public during the administrative proceeding. That did not happen here with respect to the Society's complaints about the [***64] amendment of mitigation measures BR-2 and BR-4. Accordingly, the trial court correctly determined that administrative remedies were not exhausted on this issue.

(8) In summary, we conclude the trial court erred in finding the City violated CEQA in its certification of the Project EIR and approval of the Project. The Society failed to establish any such violation on which administrative remedies were exhausted. Accordingly, the trial court should have ruled in favor of the City and Jaeger on the first four causes of action in the Society's second amended petition and erred in doing otherwise. [*635]

II

The Project's Consistency with the City's General Plan

In the trial court, the Society argued the approval of the Project had to be set aside because the Project was "inconsistent with, or will frustrate the implementation of, the City[s] ... General Plan." In support of this argument, the Society invoked the following provisions from the natural resources element of the plan: Policy NR.1.1 provides that the City will "[p]rotect rare, threatened, and endangered species and their habitats in accordance with State and federal law." To effectuate this policy, Action NR.1.1.2 provides the City will "[r]eview [***65] projects through the entitlement process and CEQA analysis to ensure that they comply with this policy if the site contains unique habitat, creeks, and/or wooded corridors." Action NR.1.1.3 provides that "[a]s part of the consideration of development applications for individual Planning Areas containing habitats that support special-status plant and animal species that are planned to be preserved, the City shall require that these preserved habitats have interconnections with other habitat areas in order to maintain the viability of the preserved habitat to support the special-status species identified. The determination of the design and size of the 'interconnections' shall be made by the City, as recommended by a qualified professional, and will include consultation with the California Department of Fish and Game and U.S. Fish

and Wildlife Service."

Policy NR.1.7 provides that "[p]rior to project approval the City shall require a biological resources evaluation for private and public development projects in areas identified to contain or possibly contain listed plant and/or wildlife species based upon the City's biological resource mapping provided in the General Plan EIR or other [***66] technical materials." To implement this policy, Action NR.1.7.1 provides that "[f]or those areas in which special-status species are found or likely to occur or where the presence of species can be reasonably inferred, the City *shall* require mitigation of impacts to those species that *ensure* that the project does not contribute to the decline of the affected species populations in the region to the extent that their decline would impact the viability of the regional population. Mitigation *shall* be designed by the City *in coordination with* the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG), and shall emphasize a multi-species approach to the maximum extent feasible. This may include development or participation in a habitat conservation plan."

[**598] Based on the foregoing provisions, the Society argued the Project was inconsistent with the City's general plan because the City did not coordinate with the Service in designing mitigation for the impacts of the Project on [*636] special-status species. The Society noted the Service had "objected repeatedly to the biological resource mitigation measures proposed in the EIR and adopted by the City." The Society [***67] also argued the City's mitigation measures were inadequate to ensure the Project would not impact the viability of regional populations of special-status species because the Service and other agencies had "unanimously informed the City that the mitigation measures proposed in the EIR and adopted by the City *are not* adequate to support such a finding." Finally, the Society argued approval of the Project was inconsistent with the general plan provision requiring interconnection of habitat preserves determined in consultation with the Service "because the federal agencies have set forth, with specificity, the minimum habitat connectivity required *within* and *across* the [Sunrise Douglas Community Plan] area required to 'maintain the viability of the preserved habitat to support the special-status species identified'" and "because implementation of this project will *destroy* the central hub of connectivity for the wetland and vernal pool habitats in the [Sunrise Douglas Community Plan] area." In making this argument, the Society again emphasized the position taken by the Service and other agencies in opposition to the Project.

The trial court agreed with the Society, concluding that "the project [***68] is not consistent with, and does not comply with, mandatory requirements of [the City's] General Plan regarding interconnection of preserved

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

habitat areas that support special-status plant and animal species, and regarding mitigation of impacts on such species to ensure that the project does not contribute to the decline of the affected species population, i.e., there is no substantial evidence to support a finding that the project is consistent with, and complies with, such mandatory requirements of the General Plan."

[HN12] (9) "Every county and city must adopt a 'comprehensive, long-term general plan for the physical development of the county or city ...' (Gov. Code, § 65300.) [HN13] 'The general plan has been aptly described as the "constitution for all future developments" within the city or county. ... "[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements" [statutorily required elements include land use, circulation, housing, conservation, open space and noise].' [Citations.] 'The consistency doctrine has been described as "the linchpin of California's land use and development laws; it [***69] is the principle which infuse[s] the concept of planned growth with the force of law." ...' (*Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 [74 Cal. Rptr. 2d 1] (*FUTURE*)).

Specifically with reference to development projects like the one here involving a subdivision, the Planning and Zoning Law provides that [HN14] "[n]o [***637] local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan" (Gov. Code, § 66473.5.)

On appeal, the City first contends "the trial court erred by using the incorrect standard of review" in assessing the Society's argument that the Project is inconsistent with the City's general plan. [***599] According to the City, "the trial court here mistakenly applied CEQA's 'substantial evidence' test," when "[t]he proper analysis ... 'is whether the decision is arbitrary, capricious, *entirely lacking in evidentiary support*, unlawful, or procedurally unfair."

The City's argument fails for two reasons. First, [HN15] because we--like the trial court--review [***70] the agency's decision, not the trial court's decision, it does not matter what standard of review the trial court used because we will use the correct standard in any event. Second, there is no difference between the two standards of review, at least when it comes to determining whether the agency's finding of consistency with the general plan has the requisite evidentiary support in the record. Division Three of the Fourth Appellate District explained this very point in the decision on which the City relies--*Endangered Habitats*

League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777 [32 Cal. Rptr. 3d 177]. There, the court explained that [HN16] "[w]e review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it." (*Id.* at p. 782.) In a footnote, however, the court also explained [***71] as follows: "We note some cases review consistency with a general plan under the abuse of discretion standard applicable to administrative mandamus, inquiring if the agency has proceeded as required by law and the decision is supported by substantial evidence. Under the substantial evidence prong, a common formulation asks if a reasonable person could have reached the same conclusion on the evidence. [Citation.] Since this is the same test used under the arbitrary and capricious standard for factual findings, for purposes of this case we see no inconsistency." (*Id.* at p. 782, fn. 3.) We agree with this analysis. Thus, the question for us--just like it was for the trial court--is whether the City's finding of consistency with the general plan was reasonable based on the evidence in the record.

[HN17] (10) "A project is consistent with the general plan "if, considering all its aspects, it will further the objectives and policies of the general plan and not [***638] obstruct their attainment." [Citation.] A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, [***72] general land uses and programs specified in the general plan." (*FUTURE, supra*, 62 Cal.App.4th at p. 1336.)

[HN18] In addressing the Society's claims of inconsistency between the Project and the City's general plan, it is important to keep in mind the deferential nature of our review. It is not for us to substitute our judgment for that of a local agency in making a determination of consistency; rather, the agency's determination "comes to this court with a strong presumption of regularity." (*Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717 [29 Cal. Rptr. 2d 182].) "Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. [Citation.] [***600] It is, emphatically, *not* the role of the courts to micromanage these development decisions." (*Id.* at p. 719.) Thus, as long as the City reasonably could have made a determination of consistency, the City's decision must be upheld, regardless of whether we would have

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

made that determination in the first instance.

We begin with the claimed inconsistency of the Project with Action NR.1.1.3. No one disputes [***73] the Project site "contain[s] habitats that support special-status plant and animal species that are planned to be preserved." As we have noted, the Project includes an approximately 90-acre open space/wetland preserve located in the southwest portion of the Project site that apparently encompasses 5.61 acres of habitat for the vernal pool fairy and tadpole shrimp that are to be preserved as part of the Project. The question remaining with regard to Action NR.1.1.3 is whether the City could have reasonably determined that this preserved habitat has "interconnections with other habitat areas in order to maintain the viability of the preserved habitat to support the special-status species identified" and that the City's "determination of the design and size of the 'interconnections'" "include[d] consultation with the ... Service." The Society argued the answer to this question was "no," but we are not persuaded.

Essentially the Society's position was that the interconnection between the habitat to be preserved onsite and adjacent habitat areas was insufficient to maintain the viability of the preserved habitat to support the vernal pool fairy and tadpole shrimp because the design of [***74] the Project was inconsistent with the federal agencies' conceptual-level strategy for the Sunrise Douglas Community Plan area as a whole. In the Society's view, because the conceptual-level strategy "set forth ... the minimum habitat connectivity" the federal agencies concluded was acceptable, the Project could not provide [*639] the interconnectivity required by the City's general plan because of the Project's inconsistency with what the federal agencies deemed necessary.

As we have previously observed, however, in responding to the Society's substantial evidence argument under CEQA, showing evidence of a disagreement between the City and other agencies is not enough to carry the burden of showing a lack of substantial evidence to support the City's finding. Here, where the essential question is one of reasonableness, the Society--as the party challenging the City's determination--bore the burden of showing that the City's determination was unreasonable. In other words, the Society had to show why, based on all of the evidence in the record, the City could not have reasonably determined that the interconnectivity it was requiring between the habitat to be preserved onsite and adjacent [***75] habitat areas would be sufficient to maintain the viability of the preserved onsite habitat to support the vernal pool fairy and tadpole shrimp. To carry this burden, it was not enough for the Society to simply point to the fact that the Service and other agencies viewed the interconnectivity as insufficient for this purpose; the Society had to show that the City's contrary conclusion

was not reasonable based on *all* the evidence before the City at the time of its determination. The Society did not do this. Accordingly, the Society failed to carry its burden on this point.

To the extent the Society's claim of inconsistency between the Project and Action NR.1.1.3 in the City's general plan rested on the suggestion that the City's "determination of the design and size of the 'interconnections'" did not "include consultation with the ... Service," the [**601] claim fails on that ground as well. The question is whether the City reasonably could have decided, in approving the Project, that its determination regarding interconnectivity included the "consultation" with the Service required by the general plan. One of the meanings of the word "consult" is "to ask the advice or opinion of." (Merriam-Webster's [***76] Collegiate Dict. (11th ed. 2006) p. 268, col. 1.) Here, it is undisputed that the City solicited public comment on the Project and that the City received and responded to comments from the Service on the Project. Given the meaning of the word "consult" we have noted, the City reasonably could have determined that by soliciting and considering comments from the Service, it engaged in the "consultation" with the Service required by the general plan. Accordingly, the Society's claim of inconsistency between the Project and Action NR.1.1.3 in the City's general plan fails.

That brings us to the claim of inconsistency with Action NR.1.7.1. No one disputes the Project site is an area "in which special-status species are found or likely to occur or where the presence of species can be reasonably inferred." Thus, under this general plan provision, the City had to "require [*640] mitigation of impacts to those species that *ensure* that the project does not contribute to the decline of the affected species populations in the region to the extent that their decline would impact the viability of the regional population." In addition, the required mitigation was to "be designed by the City *in coordination* [***77] with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG)."

Did the City "require mitigation of impacts" to the special-status species found or likely to occur on the Project site? Unquestionably it did; the mitigation measures the City required have been discussed extensively above. That left two questions for the City in determining whether the Project was consistent with Action NR.1.7.1: (1) was the required mitigation sufficient to ensure the Project did "not contribute to the decline of the affected species populations in the region to the extent that their decline would impact the viability of the regional population"? and (2) was the required mitigation "designed ... *in coordination with* the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG)"?

172 Cal. App. 4th 603, *, 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

In arguing the Project was inconsistent with Action NR.1.7.1 because the City's mitigation measures were insufficient to ensure the Project would not "contribute to the decline of the affected species populations in the region to the extent that their decline would impact the viability of the regional population," the Society asserted the Service and [***78] other agencies had "unanimously informed the City that the mitigation measures proposed in the EIR and adopted by the City are not adequate to support such a finding." As we have observed, however, showing evidence of a disagreement between the City and other agencies is not enough to carry the Society's burden in attacking the City's finding of consistency. To carry its burden of showing that the Project was inconsistent with the City's general plan in this regard, the Society had to show, based on *all* the evidence before the City regarding the mitigation measures the City required, that the City could not have reasonably determined those measures would prevent the Project from impacting the viability of the regional populations of vernal pool fairy and tadpole shrimp. Merely pointing to what other agencies thought on this point was not enough to carry that burden. Accordingly, this aspect of the Society's claim that the Project is inconsistent with [***602] Action NR.1.7.1 in the City's general plan fails.

That leaves us with the Society's challenge to the consistency of the Project with the provision in Action NR.1.7.1 that required the mitigation to be "designed ... 'in coordination with' [***79] the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG)." According to the Society, "The City did not coordinate with [the Service]. It approved the Project over [the Service's] repeated objections that the proposed biological resource mitigation measures were inadequate." [***641]

In response, the City argues this provision in the general plan was satisfied because the Service was "consulted and [its] views made known during the EIR process." The City argues that to "coordinate" means "to 'negotiate with others in order to work together effectively,'" and "[t]he City satisfied its obligation of trying to work together with [the Service]" by "solicit[ing], carefully consider[ing], and respond[ing] to comments from [the Service]."

The definition of "coordinate" the City cites is a valid one (see New Oxford Dict. (2001) p. 378, col. 2), but we believe that even under this definition the concept of "coordination" means more than *trying* to work together with someone else. Even under the City's definition of the word, "coordination" means negotiating with others *in order to work together effectively*. To "coordinate" is "to bring into a common action, movement, [***80] or condition"; it is synonymous with "harmonize." (Merriam-Webster's Collegiate Dict.,

supra, at p. 275, col. 1.) Indeed, the very dictionary the City cites for the definition of the word "coordinate" defines the word "coordination" as "cooperative effort resulting in an effective relationship." (New Oxford Dict., *supra*, at p. 378, col. 3.)

Although the City suggests "coordination" is synonymous with "consultation"--and therefore the City satisfied its "coordination" obligation under the general plan at the same time it satisfied its "consultation" obligation under the plan--that is not true. While the City could "consult" with the Service by soliciting and considering the Service's comments on the draft EIR, the City could not "coordinate" with the Service by simply doing those things. The City may be correct in asserting "[c]onsultation is not a synonym for 'agreement,'" but Action NR.1.7.1 required more than "consultation" with the Service; it required "coordination," and by definition "coordination" implies some measure of cooperation that is not achieved merely by asking for and considering input or *trying* to work together. Had the City intended the obligation under Action [***81] NR.1.7.1 to be one of mere "consultation," it could have used that word, as it did in Action NR.1.1.3. The fact that it did not do so supports the conclusion that the City intended "coordination" to have a different meaning than "consultation," consistent with the dictionary definitions of those words.

That the word "coordination," as used in the City's general plan, implies a measure of cooperation is apparent not only from the dictionary definition of the word, but also from the context in which the word is used in the plan. Essentially, the plan provides that when development projects will occur in areas where special-status species are found or likely to occur, the City will require mitigation for the impacts of development on those species, and the mitigation will be designed in coordination with the Service. Cooperation is important in this context--particularly with regard to this Project--because, [***642] as the City admitted in its response to the Service's comments on the draft EIR, "If the City [***603] approves the project, the applicants still need to obtain Clean Water Act permits from the Corps ... , which will consult with the ... Service, pursuant to Section 7 of the Endangered [***82] Species Act, as part of its process of considering those permits." Because the Service will have a role in the issuance of later permits for the Project, "coordination" between the City and the Service in designing mitigation for the impacts of the Project on special-status species like the vernal pool fairy and tadpole shrimp serves the laudable purpose of minimizing the chance the City will approve the Project, only to have later permits for the Project denied because of the Service's disapproval of the mitigation measures the City imposed on the Project in the absence of "coordination" with the Service.

Unlike the City, we do not read this "coordination"

172 Cal. App. 4th 603, *; 91 Cal. Rptr. 3d 571, **;
2009 Cal. App. LEXIS 430, ***

requirement as "requir[ing] the City to *subordinate* itself to state and federal agencies by implementing their comments and taking their direction." At the same time, however, we cannot reasonably deem this "coordination" requirement satisfied by the mere solicitation and rejection of input from the agencies with which the City is required to coordinate the design of mitigation measures for the Project. [HN19] Although our standard of review on the interpretation of the general plan is highly deferential, "deference is not abdication." [***83] (*People v. McDonald* (1984) 37 Cal.3d 351, 377 [208 Cal. Rptr. 236, 690 P.2d 709].) Because we conclude the City's interpretation of the word "coordination" in this context is unreasonable, deference to the City's interpretation of its general plan in this instance is unwarranted. Thus, we conclude the trial court ultimately did not err in determining the City violated the Planning and Zoning Law because the Project is inconsistent with Action NR.1.7.1 in the City's general plan.

III

Conclusion

For the reasons stated above, the trial court erred in concluding the certification of the Project EIR and the

approval of the Project violated CEQA. The trial court did not err in concluding the approval of the Project violated the Planning and Zoning Law, but the only valid basis for this conclusion is that the City could not have reasonably determined the mitigation for impacts of the Project on the vernal pool fairy and tadpole shrimp was designed "in coordination" with the Service. Because our conclusion will require the trial court to direct the issuance of a different writ of mandate to the City, the present judgment in favor of the Society must be reversed. We leave it to the trial court in the first instance to determine [***84] the terms of the judgment to be entered on remand consistent with this opinion. [*643]

DISPOSITION

The judgment is reversed and the trial court is instructed to enter, consistent with this opinion, a new and different judgment granting in part and denying in part the Society's petition for writ of mandate. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

Nicholson, Acting P. J., and Hull, J., concurred.

1
2
3
4
5
6
7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SACRAMENTO**
10

11 CALIFORNIA NATIVE PLANT SOCIETY,

12 Petitioner,

13 vs.

14 CITY OF RANCHO CORDOVA et al.,

15 Respondents,
16

17 JAEGER ROAD 530, LLC,

18 Real Party in Interest.
19
20
21
22
23
24
25
26
27
28
29
30

Case No. 06CS01311

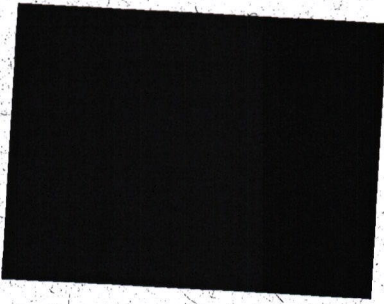
PEREMPTORY WRIT OF MANDATE

Date: Friday, Sept. 11, 2009

Time: 1:30 p.m.

Dept.: 19

Judge: Patrick Marlette



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

PEREMPTORY WRIT OF MANDATE

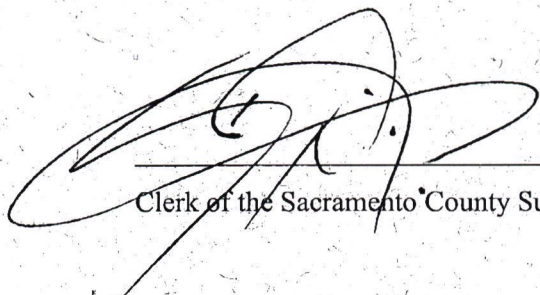
The Court, in its final judgment in this case, has commanded the issuance of a peremptory writ of mandate. By authority of the Court's final judgment, respondents City of Rancho Cordova and the Rancho Cordova City Council are hereby directed to set aside and vacate the following resolutions and ordinances regarding the Preserve at Sunridge Project:

- Resolution, No. 105-2006 certifying an EIR, and adopting findings, a statement of overriding considerations, and a mitigation monitoring plan for the Project.
- Ordinance No. 40-2006 approving a Special Planning Area Rezone for the Project.
- Resolution No. 108-2006 a Tentative Subdivision for the "Preserve at Sunridge", subject to Conditions of Approval, Sections 1 and 2 and formal adoption August 7, 2006 Regular City Council Meeting.
- Ordinance No. 41-2006 accepting the terms of draft Development Agreement RC-03-052 for the Project.

The City shall file a return demonstrating compliance with this peremptory writ within sixty (60) days of the writ's issuance.

BY ORDER OF THE COURT

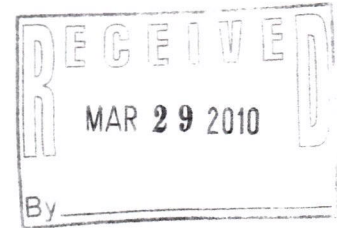
Date: SEP 28 2009


Clerk of the Sacramento County Superior Court



Hwang's Family
P.O. Box 2175
Los Gatos, CA 95031

CC: Ted
Joe
~~micah~~
Curt



February 8, 2010

City of Rancho Cordova
Mayor Ken Cooley and City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670

Re: 10447 Folsom Blvd.

Dear Mayor Cooley and City Council,

With countless hours and innumerable sleepless nights devoted to addressing this matter, I write to you today in hopes that you and the City Council of Rancho Cordova would approach this matter with sincere and grave consideration and with a keen sense of justice.

FIRST The property the City of Rancho desires to take, located at 10447 Folsom Blvd., Rancho Cordova, CA 95670, is what my family and my brother's family have been dreaming about and diligently working towards for the past 30 years. On September 19, 2006, our hard work, personal sacrifice, and dedication to achieving this dream became a reality when we purchased at fair market value the property located at 10447 Folsom Blvd., Rancho Cordova, CA 95670.

SECOND Our purchase (of 10447 Folsom Blvd.) is the epitome of the American Dream. The "American Dream" is admired word wide, and one that all immigrants, like my family and my brother's family, spend our entire lives struggling to accomplish. My family and my brother's family suffered a multitude of losses, tearfully and painfully sacrificing all that we had during the past 30 years to achieve *our* American Dream. Ultimately, we invested everything that we had into the purchase of 10447 Folsom Blvd.

THIRD Specifically, we financed \$1,000,000.00 (one million dollars) from Shin Han Bank to purchase this building. For this million-dollar finance, my family and my brother's family had to secure with the bank the houses we and our families currently own and reside in.

FOURTH We entered the purchase of this property with a plan to remodel the front of the building and to build five additional separate stores. This was not a speculative investment, but rather was planned as a long term family business enterprise that would

secure our families and our children's future. Thus, on September 27, 2006, we met with the City's Economic Development Director, Curt Haven, to hear his suggestions and to follow the City's requirements. After our meeting, we received a partial approval to begin construction. Thus, construction began.

FIFTH I submitted our planning deposit and fee in January of 2007. However, approximately two weeks after this submission, I was notified by the City's Planning Department that the zoning at 10447 Folsom Blvd. had changed, and was instructed to resubmit amended blueprints per the City's requirements. We (the City and I) came to a mutual agreement on August, 2008 that permitted me to build a retail store in front of the building, and a 4500 sq ft duplex in the back. This was not our original business plan, but we believed that our American Dream could still be realized (although injured) while at the same time accommodating this last minute change imposed by governmental authority.

SIXTH Following this, in April 2008 an individual by the name of Roy Hill called informing me that he had a client who was interested in purchasing our property, located at 10447 Folsom Blvd. While I would not have considered selling our "dream" prior to the City's change of permitted use, now with that experience, we decided that our "dream" could be in jeopardy and that if we could recover our full investment, it might be better to move on. Therefore, I informed him that the purchasing price was \$1,200,000.00 (1.2 million dollars).

SEVENTH On October 30, 2008, Mr. Roy Hill sent me an email stating that he and his client would soon have a purchasing contract for me. However, such a contract was never sent nor received.

EIGHTH On November 12, 2008, as requested by Director Curt Haven from the City's Economic Department, a meeting was held. There were a total of seven individuals at this meeting, which included five individuals from the City of Rancho Cordova, my project manager, and myself. At this meeting, I was informed that a new developer, who's identity was not revealed, was planning to purchasing 10447 Folsom Blvd. The new developer along with the City of Rancho Cordova, were seeking a new use for the building.

NINTH It was agreed at the closure of this meeting that Director Curt Haven would have a final decision regarding the purchase within 90 days.

TENTH However, Director Curt Haven, the City of Rancho Cordova, nor this new developer kept the promise, and no decision was made at the end of the 90 days. I sent numerous letters and left telephone messages countless times, yet not one individual from the City responded to my letters nor returned my calls. The City did not follow through with the promise, namely a decision. Time marches on and property values continue to erode.

ELEVENTH Approximately 8 months later in August 2009, We received an unexpected letter from Mr. Roy Hill stating that his client and the City would like to purchase the property, and attached to this letter was an appraisal. Being that we had never received the contract that was discussed by Mr. Roy Hill in his October 30, 2008 email, we were surprised to receive an appraisal nearly ten months later. More importantly, we were shocked by the ridiculous appraisal value of my property at \$375,000.00 (three-hundred seventy-five thousand dollars), which is a mere 31% of our investments and of the total worth of the property. We called him immediately, letting him know that we cannot sell it for \$375,000, and that we would fight with the City if he pursued this.

TWELVETH We don't understand why the City suddenly contracted with a private company in order to take our property and exploit our development and our dream. There are a multitude of empty lots and buildings in good condition around the 10447 Folsom Blvd. building. The fact that the City has partnered with Mr. Roy Hill, the individual who approached me about purchasing our property back in April 2008, makes these actions appear highly suspicious, unethical. It smells like government corruption (it reminds me of the country that I fled 30 years ago).

THIRTEENTH Dear Mayor and City Council, I immigrated to this country more than 30 years ago. When I left my homeland, I came to America with a dream, and anticipated public peace. My homeland was a country where the government oppressed and confiscated from its citizens.

FOURTEENTH It appears that "American Justice" is actually a myth, and not part of the "American Dream" that is the envy of the world. My right to freedom, private property, happiness, and prosperity – all of which are declared in the U.S. Constitution – are currently being taken by your city and your friends. Ultimately, the plan of action proposed by the City of Rancho Cordova to take my property, 10447 Folsom Blvd., is leading my family and my brother's family to a verge of death. Is this truly what *this* country, and more specifically this City, is consciously willing to do to a fellow citizen?

FIFTEENTH I would like to ask you this. What is the purpose of a country? I learned while studying to become a citizen that the purpose of a country is to protect its citizens and to guarantee their freedom and happiness. Is it not?

SIXTEENTH However, by exercising the power of the government in order to take our property and our dream, without any real justification, you are stripping us of our freedom and happiness, and ultimately, our life's earnings. Yes, you have manipulated and used the "law" in order to protect yourselves and the city, but that same "law" is destroying this citizens' happiness and public peace. This is "bad law." Even, gangsters do everything to keep peace and happiness among their members, yet you and your city do everything to bring about pain and sorrow? America is the last great hope of human justice and prosperity. America was founded on the ideals of democracy and with the expressed purpose of protecting her citizens from the government. What has

happened????? America is the country of freedom and peace. However, the City of Rancho Cordova's attempt to take my property is an indication that the America I once knew and believed in is collapsing.

SEVENTEETH Dear Mayor and City Council, American history shows that one-sided "law" and injustice existed back in the 17th, 18th and 19th Centuries. During those times, Americans extorted lands from the Native Americans – stripping them of their lands and destroying their ways of life. Because of such heartless actions, America today is a country where fear of all kinds are present and rampant – nature is deteriorating, peace is no longer present, and terrorism affects daily activities.

EIGHTEENTH What is a human being's life worth? Human beings are gifted with different talents and abilities from God. To live this life, we have to strive and work with our individual talents and abilities. How are we able to live even the simplest life when we are being extorted by those who inappropriately use the power organized by the country? Must we, the citizens, suffer and die helplessly sitting still? Or, must we fight for our lives grievously against the very power that was enacted to protect us? How are we supposed to approach this predicament? I would like your answer.

NINETEENTH Dear Mayor and City Council, we have never said nor agreed that we would sell our property, *our life-land*, to the City. We had a clear purpose for 10447 Folsom Blvd. at the time of purchase, and we purchased it at fair market value at the time and at the asking price with the intent to start developing it upon the City's approval. The building was vacant for many years and you never acted. The present actions of the City against our investments clearly indicate that it carried a good value all along.

TWENTIETH The "million dollar question" is: Why does the City want to, and feel that it can, purchase a privately owned building at such an absurd price? America is a capitalist country, and you very well know that the foundation of capitalism is a market economy. If the City desires to purchase my building, the City must fairly compensate the rightful owners for their full expenses. The City, the Mayor, and all Council Members should not abuse the authority of government by using and abusing the law in order to take a personal asset, certainly not without "fair" compensation.

TWENTY-FIRST Dear Mayor and City Council, please consider this. What if you and your family were placed in the same predicament that my family is currently in because of the unethical and immoral practices of the City Council of your city? What if you were to lose your home and as a result were to live on the street because the authority of a government chooses to unfairly enforce "power."

TWENTY-SECOND Dear Mayor and City Council, the crux of this matter is that the City is trying to destroy my family's dream and take our life long earnings. If the City is planning on taking our property, the City should compensate us the entire amount that we invested in the enterprise. How is anything else fair or just? How will you sleep at night with the knowledge that you have ruined the lives of your fellow citizens?

TWENTY-THIRD Dear Mayor and City Council, due to the fact that the City has decided to exercise the power and the authority of the government in order to take our property and our American Dream (without just compensation), my family has appointed a lawyer to protect us and our rights. This adds to our initial investment. Therefore the total price has now become \$1,800,000.00 (1.8 million dollars). As more time passes, our costs and therefore this amount will increase. In addition, your costs will further increase as the City has also hired a lawyer.

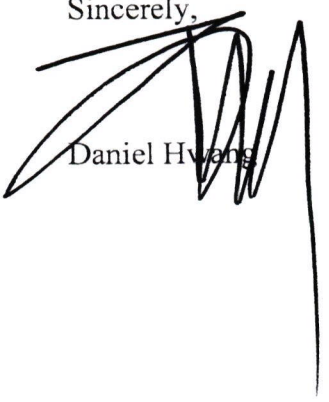
TWENTY-FOURTH Dear Mayor and City Council, my family invested 30 years of our immigrant lives into purchasing and developing 10447 Folsom Blvd., and during those 30 years we relentlessly strived sacrificing everything to make our living. However, the City's surreptitious actions have destroyed our dreams, and my family and my brother's family are now on the verge of losing our homes.

TWENTY-FIFTH Dear Mayor and City Council, I ask you to gravely consider my family's predicament at this time due to the City's actions, and ask that fair and proper actions are taken to address and justly resolve this matter.

TWENTY-SIXTH Your actions are putting my family and my brother's family under severe stress and financial hardship. The power of the government is awesome and fearsome, but we cannot give up because we have no other path available to us. I sincerely ask that this matter does not bring any more tragedy to my family.

TWENTY -SEVENTH Dear Mayor and City Council of Rancho Cordova, this matter does not require further review by the "law" or by a third party. This matter requires the application of the fundamental principle of true American Justice. The City needs to reimburse us for the investments our families have made to this day relative to 10447 Folsom Blvd. It then requires no more disputes. If you build housing for seniors after taking one's freedom and assets and abusing the authority of a country, do you truly believe that the senior citizens will live happily? When the very foundation is based on deceit and wrongful doings, only sinful outcomes will arise. Please do not let your actions destroy our families, thereby bringing further rage and hatred to the world.

Sincerely,


Daniel Hwang

610 Fulton Avenue, Suite 200, Sacramento, 95825
 Phone: (916) 487-5500 Fax: (916) 487-5858
BUYERS/BORROWERS CLOSING STATEMENT
Final

Buyer/Borrower: **Land IDM, Inc.**

Jung Do Hwang
Sonia H. Hwang

Escrow No: **12451252-804 MJB**

Close Date: **09/19/2006**

Proration Date: **09/19/2006**

Date Prepared: **09/19/2006**

Property: **10447 Folsom Boulevard**
Rancho Cordova, CA 95670

Description	Debit	Credit
TOTAL CONSIDERATION:		
Total Consideration	\$850,000.00	
Deposit		10,000.00
Deposit		10,000.00
Closing funds		235,700.67
NEW AND EXISTING ENCUMBRANCES:		
Principal Amount of Loan from Shinhan Bank America		595,000.00
Principal Amount of Loan from Shinhan Bank America		200,000.00
NEW LOAN CHARGES:		
Appraisal Fee to Shinhan Bank America (POC \$2,500.00)		
Credit Report to Shinhan Bank America (POC \$30.00)		
Loan fee to Shinhan Bank America (POC \$2,975.00)		
Flood Zone rating to Shinhan Bank America (POC \$14.00)		
Tax Service fee to Shinhan Bank America (POC \$120.00)		
Environmental site Assess to Shinhan Bank America (POC \$125.00)		
Documentation to Shinhan Bank America (POC \$250.00)		
Interest reserve to Shinhan Bank America (POC \$20,000.00)		
Loan fee to 2nd loan (POC \$1,000.00)		
Flood certification to 2nd loan (POC \$14.00)		
Documentation fee to 2nd loan (POC \$250.00)		
Interest reserve to 2nd loan (POC \$20,000.00)		
Undisbursed funds to Shinhan Bank America	200,000.00	
ESCROW CHARGES		
Escrow Fee to Alliance Title Company 1/2	685.00	
Document Preparation to Alliance Title Company 1/2	50.00	
RECORDING FEES:		
Recording Fees to Alliance Title Company	171.00	
PRORATIONS AND ADJUSTMENTS:		
County Taxes From 07/01/06 To 09/19/06		1,509.68
Based on the Semi - Annual amount of \$3,483.88		
TITLE CHARGES:		
Lenders Policy \$595,000.00 to Alliance Title Company	654.00	
Lender's policy 2nd DT to Alliance Title Company	392.00	
Delivery/Courier Deliveries to Alliance Title Company	20.00	
Wire Processing to Alliance Title Company	25.00	
Notary fee to Select Signings	100.00	
Sub Totals	1,052,097.00	1,052,210.35
Refund Due Buyer/Borrower	113.35	
Totals	\$1,052,210.35	\$1,052,210.35

RECORDING REQUESTED BY

T.D. SERVICE COMPANY

and when recorded mail to
T.D. SERVICE COMPANY
1820 E. FIRST ST., SUITE 210
P.O. BOX 11988
SANTA ANA, CA 92711-1988

The following copy of "Notice": the original of which was filed for record on January 11, 2010 in the office of the County Recorder of said County, is sent to you inasmuch as an examination of the title to said trust property shows you may have an interest in the Trustee's Sale proceedings.

SPACE ABOVE THIS LINE FOR RECORDERS USE

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

"IMPORTANT NOTICE"



T.S. No: L507196 CA Unit Code: L Loan No: 130012/HWANG
AP #1: 654-51-040
Property Address: 3671 DEEDHAM DR, SAN JOSE, CA 95148

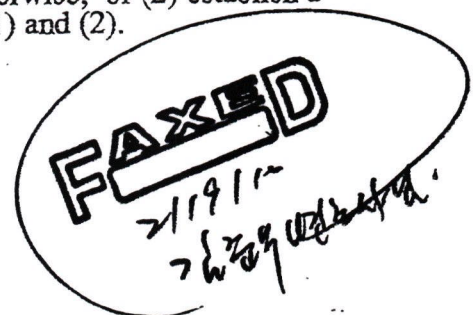
IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$310,746.46, As of January 15, 2010

and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).



NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

T.S. No: L507196 CA Unit Code: L Loan No: 130012/HWANG
AP #1: 654-51-040

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Chang H Hong
Shinhan Bank America
3000 W. Olympic Blvd.
Los Angeles, CA 90006
(213) 251-3002

If you have any questions, you should contact a lawyer or the government agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION**

NOTICE IS HEREBY GIVEN THAT T.D. SERVICE COMPANY is duly appointed Trustee under the following described Deed of Trust:

Trustor: DANIEL T. HWANG, HWA Y. HAN, HUSBAND AND WIFE AS JOINT TENANTS

Recorded October 19, 2006 as Instr. No. 19148463 in Book --- Page --- of Official Records in the office of the Recorder of SANTA CLARA County, CALIFORNIA

Said Deed of Trust secures certain obligations including one Note for the sum of **\$200,000.00** AND A CHANGE IN TERMS AGREEMENT DATED 09/19/07, AND A CHANGE IN TERMS AGREEMENT DATED 10/24/08, CORP. RESOLUTION TO BORROW/GRANT COLLATERAL DATED 10/24/08, COMMERCIAL SECURITY AGREEMENT DATED 10/24/08, AGREEMENT TO PROVIDE INSURANCE DATED 10/24/08, DISBURSEMENT REQUEST AND AUTHORIZATION DATED 10/24/08

That the Beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:
THE PRINCIPAL SUM OF \$300,000.00, WHICH BECAME DUE SEPTEMBER 1, 2009, WITH INTEREST DUE THEREON FROM AUGUST 1, 2009.

That by reason thereof, the present Beneficiary under such Deed of Trust has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.
DATED 01/08/10

T.D. SERVICE COMPANY AS AUTHORIZED AGENT FOR THE BENEFICIARY BY
ServiceLink, as Agent for T.D. Service Company

BY _____ BY _____

We are assisting the Beneficiary to collect a debt and any information we obtain will be used for that purpose whether received orally or in writing.

UNDERSTAND YOUR OPTIONS

*** STOP FORECLOSURE NOW ***

Foreclosure Profile ReportPresented By: **ALAN HUYNH** DRE# 01334577
408-828-3776
ALAN@WELLSREO.COM**3671 DEEDHAM DR****SAN JOSE, CA 95148**County **SANTA CLARA**Parcel Number **654-51-040**Thomas Guide **835-F7**RadarID **24065244**

Legal Description

TRACT 6173 LOT 325**Property Details**

Year Built	1981	Zoning	R15
Type	SFR	Units	1
Beds	4	Baths	2.5
SqFt	2,124	Lot Size	10,454
Rooms	9	Stories	2
Garage	0	HVAC	H
Pool	0	Fireplace	0

Value & Equity

Value	\$671,033	\$316/sf (01/22/10)
Loans	\$500,000	75%
Equity	\$171,033	25%
Rent	\$2,276	Cap Rate 4.07%

Tax Assesment

Assessed Yr	2009	Annual Taxes	\$5,286
Total	\$380,502	Est. Tax Rate	1.39%
Land	\$133,768	Delinquent Tax	\$0
Improved	\$246,734	Delinquent Yr	0

Owner Name & Mailing Address

HAN,HWA Y
PO BOX 2175
LOS GATOS, CA 95031
Phone:

Foreclosure Stage: Preforeclosure

Projected Sale Date	05/11/10	Estimated Bid	\$310,746
Default Amount	\$310,746	Notice Date	01/11/10
Default Date	01/15/10	Document #	20572389

Loan Date	10/19/06	Loan Amount	\$200,000
Loan Doc #	19148463	Loan Position	2

Trustee **TD SERVICE CO**
1820 E 1ST ST 210
SANTA ANA, CA 92705

TS Number **L507196-CA**

Lender **CHANG H HONG**
3000 W OLYMPIC BLVD
LOS ANGELES, CA 90006
213-251-3002

Transaction History

Type	#	Date	Doc #	Grantee	Amount
QCL		07/22/93	12013008	HWNAG,HWA	\$0
Loan	3rd	09/21/04	18012907	LOANCITY COM	\$300,000
Loan	2nd	10/19/06	19148463	SHINHAN BANK	\$200,000
- NOD		01/11/10	20572389	TD SERVICE CO	\$310,746
QCL		07/30/09	20370608	HAN,HWA Y	\$0

Notes