

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Monday, February 6, 2023

3:00 PM – Special Meeting/Work Session

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code 54950-54963), the City has declared a state of emergency relating to COVID-19 and imposed measures to promote social distancing.

Join the Meeting Via Zoom Link:

<https://cityofranhocordova.zoom.us/j/82858040173?pwd=Q01DM1FSSnpPOXdtWWIkY3hSRytEUT09>

Join the Meeting via the Zoom Phone Number

Zoom Phone Number: +1 669 900 6833, +1 253 215 8782, 888 475 4499 (Toll Free)

Webinar ID: 828 5804 0173

Password: 903041

Instructions to Make Public Comment

Submitting Public Comment via Email

Members of the public who wish to provide public comment via email will need to submit written comments to CityClerk@cityofranhocordova.org no later than 3:00 p.m. on Monday, February 6, 2023. Written comments received no later than 3:00 p.m. will be distributed to the Council, filed in the record, and will not be read aloud. All comments submitted later than 3:00 p.m. will be distributed to the Council.

Listening to a Zoom Meeting by Zoom Video Conference

To make a public comment using the Zoom platform, please use the “raise hand” feature at the bottom center of the screen. Please make sure to enable audio controls once access has been

given by the City Clerk's office to speak. Please wait to be called upon by the City Clerk.

Listening to a Zoom Meeting by Phone Only

You can join a Zoom meeting via teleconferencing/audio conferencing using a cell phone or traditional landline phone. To request to make a public comment by phone press *9 to raise your hand. Please wait to be called upon by the City Clerk.

All public comments will be limited to three-minutes.

If you have questions related to the City Council Meeting or the use of Zoom, please contact the City Clerk's Office at (916) 851-8720 before Monday, February 6, 2023, at 3:00 p.m.

AGENDA

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge.

2. PUBLIC COMMENT

At a special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any item not on the agenda.

3. SPECIAL MEETING

- 3.1. **Subject:** Update on Ethics, Transparency, and Governance: Semi-Annual AB1234 Ethics Training.

Recommendation: Receive information and training.

4. ADJOURNMENT OF SPECIAL MEETING

Mayor Budge will adjourn the special meeting to the regular meeting in the David B. Roberts Council Chambers.

5. REGULAR MEETING - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

6. METRO CABLE TV TELEVISION ANNOUNCEMENT

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

7. PLEDGE OF ALLEGIANCE

The Mayor will call on someone in attendance to lead the Pledge.

8. INVOCATION

Dan DeShong with River City Christian Church will give the invocation.

9. PRESENTATIONS

- 9.1. Soil Born Farms Presentation.
- 9.2. Employee Milestone Anniversary Presentation.
- 9.3. Celebration of Council Member Terry's Birthday on February 8, 2023.

10. PUBLIC COMMENT

Citizens wishing to address the Council for any matter not on the agenda may do so at this time via teleconference or by completing and submitting a Speaker Card to the City Clerk.

If you want to make a public comment via teleconference, please use the "raise hand" feature at the bottom center of the screen. If you are participating by telephone and you want to make a public comment, please press *9 to raise your hand.

For those participating by Zoom or telephone, please wait to be called upon by the City Clerk. For items on the agenda, speakers will be called 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.

Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any item not on the agenda 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.

11. COUNCIL REPORTS

12. CITY MANAGER'S REPORT

13. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

- 13.1. **Subject:** Meeting Minutes from the Regular City Council Meeting of January 17, 2023 and the Special Meetings of January 24 & 25, 2023.
Recommendation: Adopt the Minutes.
 - 13.2. **Subject:** A Resolution of the City Council of the City of Rancho Cordova and on Behalf of Commissions and Committees Created by the City Council Pursuant to Government Code Section 54952(b) Confirming the State of Emergency Under Government Code Section 8625, Recognizing Continued Measures to Promote Social Distancing, and Re-authorizing Remote Teleconference Meetings of the City Starting February 6, 2023.
Recommendation: Adopt the Resolution.
 - 13.3. **Subject:** A Resolution Authorizing the City Manager to Execute Contract No. 2023-06 Between the County of Sacramento and the City of Rancho Cordova for Maintenance of Shared Transportation Facilities and Undeveloped Lot Adjacent to Citrus Road.
Recommendation: Adopt the Resolution.
- 14. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE**
- 14.1. **Subject:** A Resolution Declaring a Protest Hearing and Authorizing the Mailing of Property Owner Ballot Relating to the Imposition of the Annual Stormwater Utility Fee for the Rancho Cordova Storage Project.

Recommendation: Approve the Resolution.

15. PUBLIC HEARING ITEMS

- 15.1. **Subject:** Logisticenter at Rancho Cordova Major Design Review - Project No. PLND-1021-0015.

Recommendation: Continue to the February 21, 2023 City Council Meeting

16. REGULAR CALENDAR ITEMS

- 16.1. **Subject:** Proposed Municipal Code Amendments Permitting Short-Term Rental Property.

Recommendation: Receive presentation by staff, discussion and direction regarding regulating short-term rental property.

17. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

18. ADJOURN TO CLOSED SESSION

Mayor Budge will adjourn the meeting to closed session.

19. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

20. CLOSED SESSION

Council will meet in closed session to discuss the following item:

- 20.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (One Case, relating to Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023).

21. OPEN SESSION - REPORT FROM CLOSED SESSION

The City Attorney will report on action taken in closed session.

22. ADJOURNMENT

ADDITIONAL INFORMATION

Special Meetings listed below are subject to change/cancellation without further notice.

Unless the Council adopts a motion to extend the meeting, any item that is not initiated before 11:00 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 or Fridays prior to the Regular City Council Meeting.

UPCOMING MEETINGS

February 21, 2023	5:30 PM Regular Meeting
February 28, 2023	5:30 PM Special Meeting/Work Session
March 6, 2023	4:00 PM Special Meeting/Regular Meeting
March 20, 2023	5:30 PM Regular Meeting
April 3, 2023	4:00 PM Special Meeting/Regular Meeting
April 11, 2023	5:30 PM Special Meeting/Work Session
April 17, 2023	5:30 PM Regular Meeting
May 1, 2023	4:00 PM Special Meeting/Work Session

If you have any technical questions related to the agenda items, please contact City Hall at (916) 851-8700.

The Rancho Cordova City Council meeting will be videotaped in its entirety and will be cablecast without interruption on Metro Cable 14, the Government Affairs Channel on the Comcast, Consolidated Communications and AT&T U-Verse Systems. Closed Captioning will be available on the playback cablecast. A DVD copy is available from the City Clerk's Department and a webcast of this meeting will be available for viewing via video streaming from the City's website within 48 hours of adjournment of this meeting.

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, Stacy Leitner, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the February 6, 2023 Regular Meeting of the Rancho Cordova City Council was posted and available for review on February 2, 2023 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 website at www.cityofranhocordova.org.

Signed February 2, 2023 at Rancho Cordova, California.



Stacy Leitner, CMC
City Clerk

ITEM 3.1.



ATTACHMENT 1

***City of Rancho Cordova
City Council***

AB 1234 Ethics Training

Adam Lindgren, City Attorney

meyers | nave
A Professional Law Corporation

February 6, 2023

California state law (AB 1234)

Cal. Govt. Code Sec. 53235.1

- Mandates ethics training within first year of appointment
- All local elected officials or members of legislative bodies who receive any compensation or expense reimbursements
- And employees designated by the legislative body

**Must receive
2 hours
of training
every 2 years**

- **I. Personal Financial Gain by Public Officials**

- A. Conflicts of Interest Under the Political Reform Act
- B. Contractual Conflicts of Interest (Gov't Code § 1090)
- C. Conflicts of Interest and Campaign Contributions
- D. Conflicts of Interest When Leaving Office
- E. Bribery

- **II. Laws Regarding Claiming Perquisites of Office**

- A. Limitations on Receipt of Gifts
- B. Honoraria Ban
- C. Misuse of Public Funds
- D. Prohibitions Against Gifts of Public Funds
- E. Mass Mailing Restrictions
- F. Prohibitions Against Free or Discounted Transportation by Transportation Companies

- **III. Government Transparency Laws**

- A. Economic Interest Disclosure under the Political Reform Act
- B. Brown Act
- C. Public Records Act

- **IV. Laws Relating to Fair Processes**

- A. Common Law Bias Prohibitions
- B. Due Process Requirements
- C. Doctrine of Incompatible Offices
- D. Incompatible Activities
- E. Competitive Bidding Requirements for Public Contracts
- F. Disqualification from Participating in Decisions Affecting Family Members (Anti-Nepotism Laws)

**GOOD TO
KNOW**



I. Personal Financial Gain by Public Officials

ITEM 3-1

ATTACHMENT 1

- A. Conflicts of Interest under the Political Reform Act (PRA)
- B. Contractual Conflicts of Interest (Gov't Code § 1090)
- C. Conflicts of Interest and Campaign Contributions
- D. Conflicts of Interest when Leaving Office
- E. Bribery



- Values such as transparency, trustworthiness, respect, fairness and responsibility promote public trust in government, advance the reputation of the City
- **Important to avoid even the appearance of impropriety**
 - Ethics laws merely set minimum standards for conduct
- Ethics goes beyond legal requirements
 - About doing what we ought to do,
 - Doing more than what's minimally required
 - **Set a higher standard**



A. Conflicts of Interest under PRA

Basic Rule

- Public officials* have a disqualifying conflict of interest under the Political Reform Act of 1974 when a decision has a:
 - Reasonably foreseeable material financial effect on an official's economic interest
 - Different from the effect on the public generally



* For purposes of this rule, a “Public Official” is every member, officer, or employee and certain consultant of a state or local government agency

What is an “Economic Interest” under the PRA?

- \$ Business investments of \$2,000 or more
- \$ Business management positions or employment in for-profit entities
- \$ Real property Interests of \$2,000 or more
- \$ Sources of income of \$500 or more (within previous 12 months)
- \$ Sources of gifts of \$590 or more (within previous 12 months)



How do you determine if the “Economic Interest” qualifies as a Conflict of Interest under the PRA?

Four-Part Test

- 1: Is the financial effect “reasonably foreseeable”?
- 2: Is it material?
- 3: Is the effect on the official the same as on the “public generally”?
- 4: Is the official “making, participating in the making, or using their position to influence” the governmental decision from which the financial effects result?



I. Personal Financial Gain by Public Officials

ITEM 3/1

ATTACHMENT 1

Conflicts of Interest under PRA

STEP 1:

*Is the
financial effect
“reasonably foreseeable?”*

STANDARD:

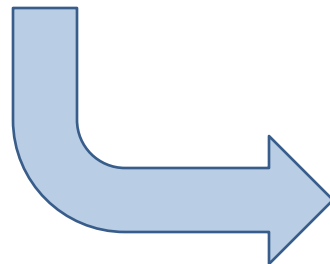
*“Realistic possibility
and more than
hypothetical or
theoretical”*

Conflicts of Interest under PRA

STEP
2

Q: Is it material?

A: Determine correct “materiality standard”



- Materiality is a measure of “how important” it is.
- Rules vary by type of interest.
- In general, materiality is presumed when the public official's financial interest is a party to, or the subject of, the governmental decision.

Conflicts of Interest under PRA



Is the effect on the official the same as on the “public generally”?

- Effect on official is indistinguishable from its effect on the public generally if:
 - Significant segment of public is affected (i.e., **25%** of all businesses, real property or individuals); and
 - Effect on their interest is not unique compared to the effect on a significant segment (e.g., Decision would have a disproportionate effect on development potential of official’s real property or on an official’s business due to its proximity to project that is subject of the decision).

Conflicts of Interest under PRA



Is the official “making, participating in the making, or using their position to influence” the governmental decision from which the financial effects result?

Determine if the official is:

- Making a decision
- Participating in a decision
- Using official position to attempt to influence a decision

Official may still participate if an exemption applies

A. Conflicts of Interest under PRA: Recusal

- Public official with a disqualifying interest must:
 - Publicly identify interest in sufficient detail
 - Recuse self from discussions or acting on matter
 - Leave room, unless matter on consent agenda

May speak during public comment on certain personal interests.

Exception

ITEM 3.1. Penalties for Violations of Political Reform Act ATTACHMENT 1

- **Administrative Fine** - \$5,000 fine per violation imposed by FPPC
- **Civil Remedy** - If official derived economic benefit from decision, fine could amount to 3 times the benefit received
- **Criminal Sanctions** - If the official knowingly or willingly violated the law: misdemeanor conviction, fine of \$10,000 or 3 times value of benefit conferred (whichever is greater, and the official disqualified from public office for 4 years)

I. Personal Financial Gain by Public Officials

ITEM 3-1

ATTACHMENT 1

B. Conflicts of Interest in Contracts

Basic Rule (Gov. Code Section 1090)

- Prohibits public officials and employees from having financial interests...
- In *contracts*...
- Made by them in their official capacities

Applies Broadly

- Applies to renewals, extensions, and oral contracts
- Financial interests in contracts are broadly construed

B. Conflicts of Interest in Contracts

Legislative body deemed to make all agency contracts

- Legislative body members are deemed to have participated in making all contracts of the agency, except where an exception applies
 - Prevents the **agency** from entering into a contract in which a member of the agency's board or commission has a financial interest



Employees can avoid prohibition by not participating in the making of the contract
Abstention does not always address a 1090 conflict. Tell staff and CA as early as possible.

B. Conflicts of Interest in Contracts

Remote Interest Exceptions

- Public official does not have an interest in a contract if:
 - ✓ the interest is “remote”
 - ✓ the interest is disclosed to the legislative body and noted in official records
 - ✓ and the official does not vote (applies only to multi-member bodies)



B. Conflicts of Interest in Contracts

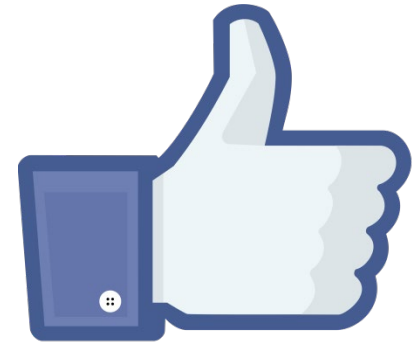
Remote Interest Exceptions - Examples

- Employee or officer of non-profit
- Landlord or tenant of contracting party
- Salary or per diem from a directly involved government department
- Engineer, geologist, architect, or planner employed by a consulting engineering or architectural firm
- Owner/partner of a firm who serves as appointed member of unelected board or commission
- Supplier of same goods and services for 5 years prior to election/appointment
- Employee of private party if:
 - 10 or more employees, and
 - Employed more than 3 years

B. Conflicts of Interest in Contracts

Non-Interest Exceptions

- Public official is deemed not interested and may participate in making of the contract.
- Examples:
 - Ownership of less than 3% of stock, constituting less than 5% of income
 - Spouse of officer/employee of public agency, if the office holding or employment has existed at least one year prior to the spouse's election/appointment
 - Salary or per diem from a non-directly involved government department
 - Non-salaried member of non-profit, with disclosure and noting records



B. Conflicts of Interest in Contracts

Consequences of Violations

- Contract is void and unenforceable
 - Payments made to the contracting party must be returned to the public agency
 - Public agency may keep benefit of the contract
- Willful violations are criminal
 - Permanently disqualified from holding office
- FPPC now has jurisdiction and can issue administrative fines
 - Offering section 1090 advice



No Execution = No Violation

- If the prohibited contract is never executed, there is no violation of Section 1090
- If a potential Section 1090 conflict is discovered, City **doesn't allow the contract to be executed**

C. Conflicts of Interest in Campaign Contributions

- City council members were previously excluded from the Levine Act, which prohibits certain state and local officers from voting on matters where the officer received a contribution from the applicant.
- Local elected officials, such as city council members are now included under the Levine Act starting this year. It will not apply to financial interests from 2022.

Basic Rule

- If a party (or an agent or employee) has made a campaign contribution of \$250 or more within the preceding 12 months to a member of a city council, that member will be required to recuse herself or himself from voting on a matter involving a license, a contract, a permit or other entitlement if the council member knows or has reason to know that the participant has a financial interest in the matter. The official may also not accept, solicit, or direct a campaign contribution from the party during the proceeding, and for 12 months after the decision.



D. Conflicts of Interest When Leaving Office

Lobbying Former Agency

- One year ban on lobbying former agency
- Applies to elected officials, executives, and general managers
- Applies only if compensated and representing another person

Decisions Involving Prospective Employers

- Public officials and employees are prohibited from being involved in governmental decisions directly relating to a prospective employer

E. Bribery

Basic Rule

- Elements of the crime
 - A governmental official (elected, appointed, employed);
 - Requests, takes, or agrees to take a bribe; and
 - Represents that the bribe would unlawfully influence vote decision, or opinion.
Representation can be ***express*** or ***implied***.
- ***Must have corrupt intent that official duty would be unlawfully influenced***



“anything of value or advantage, present or prospective”

Quiz

- The Planning Commission will be attending a conference and they want City Planning staff to contract with a vendor to make City of Rancho Cordova pins that they can all wear to the conference.
- Planning Commission member owns a business manufacturing decorative pins and offers to provide the pins at a discount.



*Can the
City enter into an
agreement
with the
business?*

- **No**, the City cannot enter into an agreement with the Commission member's business even though the pins will be provided at a discount.

- City Council Member Davis has a conflict of interest on a residential development project (“New Ridge”).
- A City Council meeting ends at 10:14 p.m.
- After the meeting, Council Member Davis is walking out and says to the Planning Director, I need to talk with you immediately for ten or fifteen minutes about New Ridge, let’s go back to your office.

***Is this a
violation?***

- Yes, when the Council Member has a conflict, he must not only recuse himself from the final decision, he also must not use his position to influence the decision.
- The Planning Director does take off-hour conversations or meetings with Council Members, but she would not take a meeting with a member of the public at 10:15 p.m. after a long meeting. The Council Member is using or appears to be using their position and status for special access to staff and to potentially influence over the New Ridge Project.

Can the City Council Member participate in consideration of the Project?

A developer seeks a contract for services from the City.

The City Council Member received a \$200 campaign contribution from the Developer 10 months ago.



- Yes, the threshold for a City Council Member to abstain from a vote involving their contributor is \$250.

II. Laws Relating to Claiming Perquisites of Office

ITEM 3.1.

ATTACHMENT 1

- A. Limitations on the receipt of gifts
- B. Honoraria ban
- C. Misuse of public funds
- D. Prohibitions against gifts of public funds
- E. Mass mailing restrictions
- F. Prohibitions against acceptance of free or discounted transportation from transportation companies



A. Gifts

Basic Rule

- Gift Limit Prohibition:
 - ✓ Public officials and employees...
 - ✓ May not accept...
 - ✓ Gifts...
 - ✓ From a single source...
 - ✓ During a calendar year...
 - ✓ In excess of \$590.

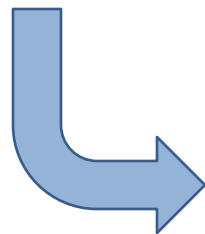
CAUTION

- Gifts received in excess of \$50 from a single source in a calendar year must be reported
- Public Officials may not accept a gift in excess of \$590 from a single source in a calendar year.

A. Gifts

What is a Gift?

- Anything of value that provides a personal benefit for which the donor does not receive equivalent consideration



Includes rebates or discounts
unless given in the regular course
of business to members of the public

A. Gifts

When is a Gift received?

- The public official has actual possession of the gift; or
- When the official takes any action exercising direction or control over the gift, including discarding the gift or turning it over to another person.



*Give it back
or donate it
to charity*

A. Gifts

Numerous Exceptions

- Gifts Returned
- Gifts donated to charity (without claiming a deduction)
- Gifts from family members
- Informational material
- Inheritance
- Leave credits
- Disaster relief provisions
- Travel and subsistence as part of campaign activities
- Entrance to an event while performing a ceremonial role (includes one guest)
- Prizes received in a bona fide competition

A. Gifts

Numerous Exceptions to Gift Rule

- Benefits received as a guest attending a wedding
- Bereavement offerings
- Acts of neighborliness
- Reciprocal exchanges in a social relationship
- Personalized plaques or trophies valued at less than \$250
- Bona fide date or dating relationship
- Acts of human compassion
- Gifts from long-term, close personal friends



A. Gifts

Limitations on Receipt of Gifts

- Special Exceptions for Travel Payments
 - Some payments are not subject to limits and not reportable
 - Payments by government agency or non-profit
 - Others are not subject to limits but are reportable
 - Travel rules are very specific; check with legal counsel if your travel will be paid for by a third party

B. Honoraria Ban

Basic Rule

Elected officials, city managers, and city attorneys, may not accept any payment for:

- Giving a speech,
- Publishing an article, or
- Attending a public or private conference, convention, meeting, social event, meal, or similar gathering.



B. Honoraria Ban

Exceptions

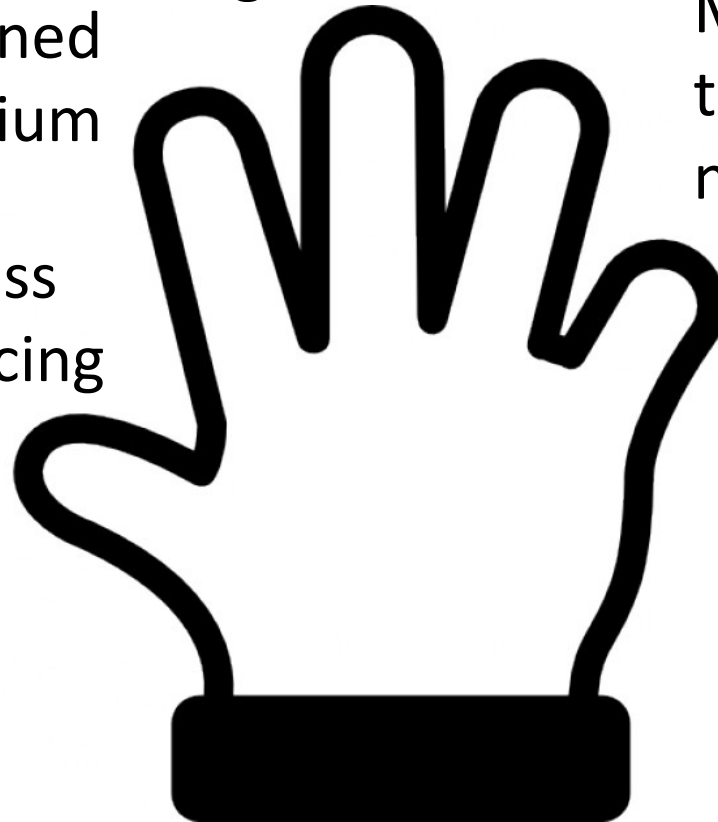
Donated to agency
general fund

Made directly
to a bona fide
non-profit

Returned
honorarium

Bona fide business
(teaching, practicing
law, banking,
medicine)

Campaign
contributions
(but must be
reported)



C. Misuse of Public Funds

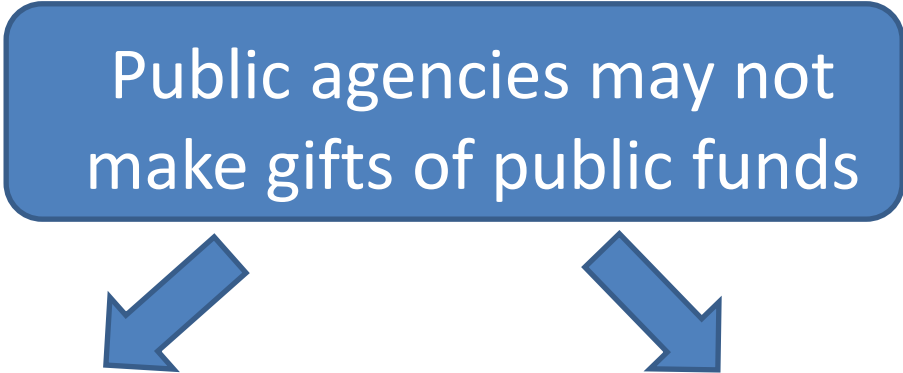
Basic Rule

- Public officials and employees may not use public resources for any private gain
 - *Whether financial or political*
- Government cannot expend resources to promote a partisan position in an election campaign
 - *But it can educate about ballot measures*

D. Gifts of Public Funds

Constitutional Prohibition

Public agencies may not
make gifts of public funds



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graph TD; A[Public agencies may not make gifts of public funds] --> B[An expenditure is not a gift if it serves a public purpose, even if it benefits a private party]; A --> C[Legislative body's determination of a public purpose is given great deference]
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- An expenditure is not a gift if it serves a public purpose, even if it benefits a private party
- Legislative body's determination of a public purpose is given great deference

E. Mass Mailing Prohibition

Basic Rule

- A “mass mailing” is:
 - A tangible item sent or delivered
 - To 200 or more people within a calendar month
 - That “features” an elected officer by:
 - Including the photograph or signature, or
 - Singling out the officer by the manner of display of name or office in the layout, such as headlines, captions, type size, or type color
 - For which the costs of design, production, and printing exceed \$50 and are paid with public monies



F. Acceptance of Free or Discounted Travel

From Travel Companies

- California Constitution prohibits public officers (not all employees) from accepting free passes or discounts from a transportation company
- One who accepts **forfeits his/her office**
- Prohibition does not apply to discounts offered to the general public



Quiz

- Your neighbor, a local developer, is going on vacation and gives you two tickets to the 49ers game. Face value on each ticket is \$200.



Can you accept the tickets?

- Yes, the combined value of the tickets is less than \$590.
- Assuming your neighbor has not given you any other gifts such that you have received more than \$590 from them in the calendar year, you can accept the tickets.
- However, as the gift is in excess of \$50, you will need to disclose the gift.

- A. Economic interest disclosure under the Political Reform Act
- B. Brown Act
- C. Public Records Act



Public Policy Considerations

- *Economic Interest Disclosure*
 - Public has right to know public officials' economic interests that may affect their official decisions
- *Right to access/information*
 - People have a right to access information that enables them to monitor the functioning of government.
- *Brown Act*
 - The people have a right to be informed about the conduct of their business, and for deliberations to be conducted and actions to be taken openly (absent an exception).

A. Economic Interest Disclosure

Under the Political Reform Act

- A Form 700 must be filed by enumerated public officials including those listed in an agency's Conflict of Interest Code
- Filed upon taking office, leaving office, and on an annual basis
- Requires disclosure of personal financial interests



It's a public document!

Form 700

Key Points

- Remember to list spouse/domestic partner income

Statement of
Economic Interests



Form 700
A Public Document

Also available on the FPPC website:

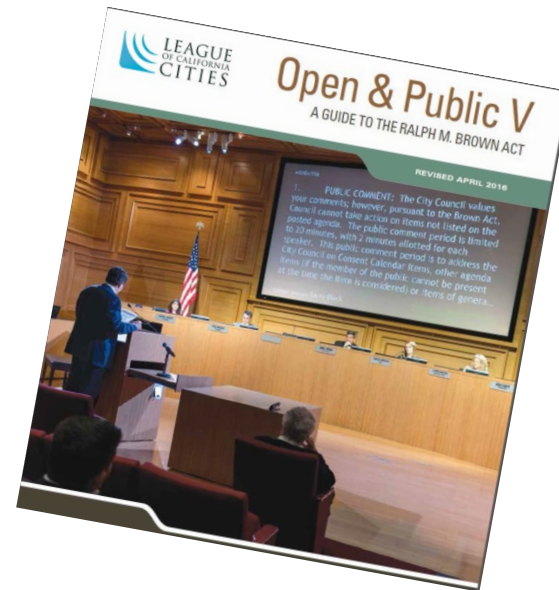
- **Form 700 in Excel format**
- *Reference Pamphlet for Form 700*

California Fair Political Practices Commission
428 J Street, Suite 620 • Sacramento, CA 95814
Email Advice: advice@fppc.ca.gov
Toll-free advice line: 1 (866) ASK-FPPC • 1 (866) 275-3772
Telephone: (916) 322-5660 • Website: www.fppc.ca.gov

December 2014

Ralph M. Brown Act

Government Code sections 54950 et seq.



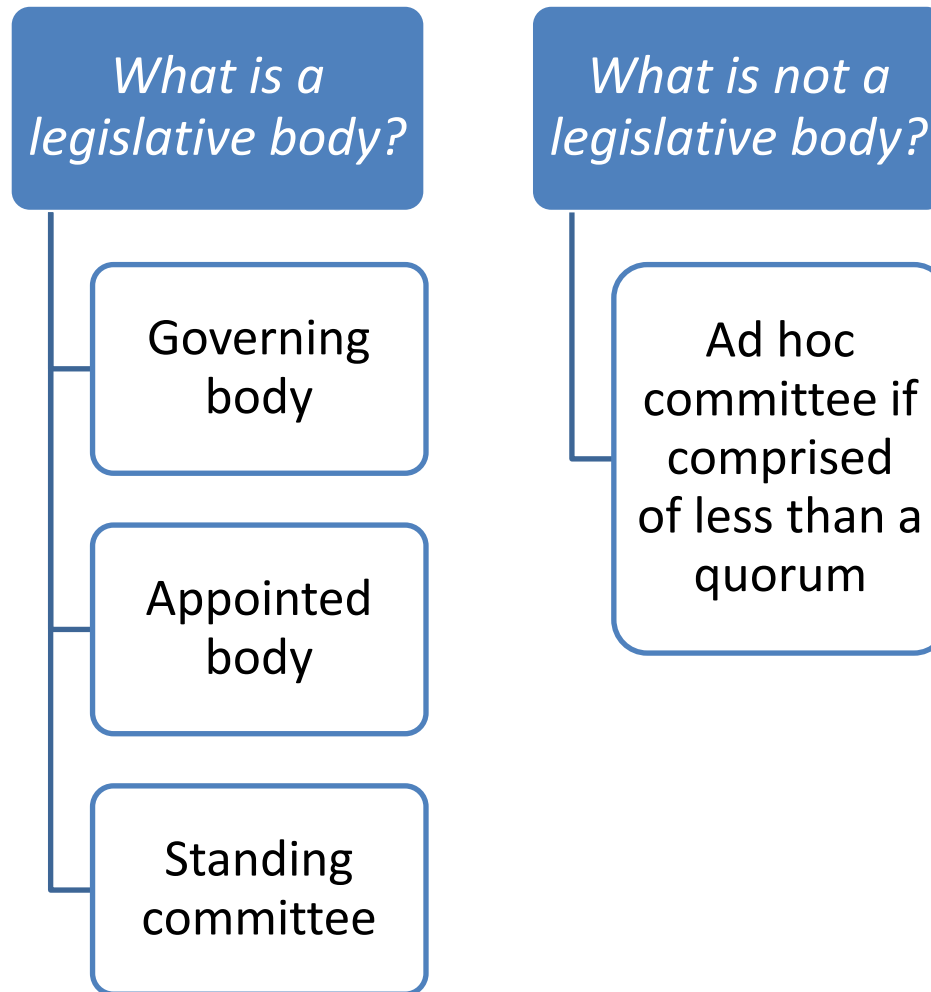
B. Brown Act

Open Meeting Requirements

- Meetings...
- Of Legislative Bodies...
- *Shall be open and public*



Legislative Bodies



B. Brown Act Definition of “Meetings”

- A congregation of a majority of the members at the same time and place to hear, discuss, or deliberate on an item of business **within the agency’s subject matter jurisdiction**
- Exceptions:
 - Conferences
 - Community meetings
 - Social or ceremonial occasions
 - Individual contacts
 - Standing committees
 - Meetings of other legislative bodies

III. Government Transparency Laws

B. Brown Act— Avoiding “Serial Meetings”

- A majority may not, outside a meeting, use a series of communications to discuss, deliberate, or take action on any item of business



- Does not prevent employees and officials from engaging in separate conversations outside of a meeting provided that the comments or positions of other members are not communicated

B. Brown Act—Avoiding “Serial Meetings”

Examples

Hub and spoke

A staff member (the hub) communicates with members of a legislative body (the spokes) one-by-one for input on a proposed action and in the process reveals members' positions to other members.



B. Brown Act—Avoiding “Serial Meetings”

Examples

Daisy Chain

Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated or taken action on an item within the legislative body’s subject matter jurisdiction.



B. Brown Act—Avoiding “Serial Meetings”

Examples

Emails

Informal nature of email communication is ripe for inadvertent Brown Act violations

>>>> Sent: Monday, June 06, 2016 12:40 PM
 >>>> To: Donald Trump Jr.
 >>>> Subject: Re: Russia - Clinton - private and confidential
 >>>>
 >>>> Hi Don
 >>>> Let me know when you are free to talk with Emin by phone about this
 >>>> Hillary info - you had mentioned early this week so wanted to try
 >>>> to schedule a time and day Best to you and family Rob Goldstone
 >>>>
 >>>> This iPhone speaks many languages
 >>>>
 >>>> On Jun 3, 2016, at 10:53, Donald Trump Jr. wrote:
 >>>>
 >>>> Thanks Rob I appreciate that. I am on the road at the moment but perhaps I just speak to Emin first. Seems we have some time and if it's what you say I love it especially later in the summer. Could we do a call first thing next week when I am back?
 >>>> Best,
 >>>> Don
 >>>>
 >>>> Sent from my iPhone
 >>>>
 >>>> On Jun 3, 2016, at 10:36 AM, Rob Goldstone wrote:
 >>>>
 >>>> Good morning
 >>>> Emin just called and asked me to contact you with something very interesting.
 >>>> The Crown prosecutor of Russia met with his father Aras this morning and in their meeting offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father.
 >>>> This is obviously very high level and sensitive information but is part of Russia and its government's support for Mr. Trump - helped along by Aras and Emin.
 >>>> What do you think is the best way to handle this information and would you be able to speak to Emin about it directly?
 >>>> I can also send this info to your father via Rhona, but it is ultra sensitive so wanted to send to you first.
 >>>> Best
 >>>> Rob Goldstone
 >>>>
 >>>> This iPhone speaks many languages
 >>>>
 >>>> This e-mail message, and any attachments to it, are for the sole use of the intended recipients, and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email message or its attachments is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, while the company uses virus protection, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

III. Government Transparency Laws

B. Brown Act

AB 992 (Social Media)



- Amends Government Code section 54952.2 to clarify that most communications on social media are permissible.
- **Bright-line rule:** Members of a legislative body may not respond directly to any communications posted on the internet by other members of the same legislative body regarding a matter within the jurisdiction of the legislative body.
- This includes “liking” posts on social media.

B. Brown Act

Closed Sessions

- Closed session discussions are confidential
- Required to publicly report certain actions taken in closed session

Permissible Closed Session Topics:

- Real estate negotiations
- Pending or threatened litigation
- Initiation of litigation
- Personnel
- Labor negotiations
- Public security



B. Brown Act

*May take action only
on items on posted agenda*

- Posting requirements:
 - **Regular meetings** must be posted **72** hours before meeting
 - **Special meetings** must be posted **24** hours before meeting



- **Exceptions**
 - Emergency
 - Urgency → need for immediate action came to agency's attention after posting the agenda

B. Brown Act

Public Participation Rights

- Regular meetings must provide an opportunity for the public to speak regarding on any matter within the body's jurisdiction
 - Legislative body may briefly discuss these items and refer matters to staff, ***but cannot take action***
- Public can address the legislative body on matters on the agenda before or during consideration of the item



III. Government Transparency Laws

B. Brown Act

Public Participation Rights



Quiz

- A Commission member e-mails a newspaper article pertaining to an upcoming agenda item to the other four Commission members.
- The Commission member indicates support for the agenda item based on the article and three members respond back to the email and indicate that they also support the item and that the information was very helpful.



Was this a Brown Act violation?

- Yes, the Commission members participated in a discussion of an item within the jurisdiction of the body that was not noticed, open or public.

C. Public Records Act

Transparency



Privacy



III. Government Transparency Laws

C. Public Records Act

Basic Rule

- All non-exempt, state and local government agency records in any form or medium are subject to public inspection during office hours or copying upon payment of duplication costs

Record
defined
broadly

- Any tangible thing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

C. Public Records Act

Duty to Assist Requestors

- Agencies are required to
 - **Assist** requestors with identifying records and information that are responsive to requests or to the purpose of the requests
 - **Describe** the information technology and physical location in which the records exist
 - **Provide** suggestions for overcoming any practical basis for denying access to the records or information sought.



C. Public Records Act

Exemptions

- Drafts
- Pending litigation
- Personnel records
- Medical, dental, and other insurance records
- Closed session minutes and legal memoranda and other materials distributed in a closed session
- Records protected by the attorney-client privilege



III. Government Transparency Laws

C. Public Records Act

- ***Emails and text messages*** about public business on personal phones, devices, or accounts
 - » CA Supreme Court held that these records *are subject to disclosure* in response to a Public Records Act request.
(*City of San Jose et al. v. Superior Court*)

- **Other Resources:**
- Confer with legal counsel
- FPPC Website: Economic Disclosure Fact Sheet.
www.fppc.ca.gov
- Open & Public IV: A User's Guide to the Ralph M. Brown Act

IV. Laws Relating to Fair Processes

- A. Common law bias prohibitions
- B. Due process requirements
- C. Doctrine of Incompatible Offices and Incompatible Activities
- D. Disqualification from participating in decisions affecting family members (anti-nepotism laws)
- E. Competitive bidding requirements for public contracts



IV. Laws Relating to Fair Processes

A. Common Law Bias Prohibition

- ***Elements:***

- A public officer...
- Must exercise the powers conferred on him or her with disinterested skill, zeal, and diligence, and primarily for the benefit of the public
 - No pre-determined, unchangeable positions for or against a particular party or individual

- ❖ *One cannot be tempted by personal or pecuniary interests*
- ❖ *Applies to non-financial interests*
- ❖ *Disqualifies one from participating*

IV. Laws Relating to Fair Processes

B. Due Process Requirements

- Applies only to “quasi-judicial” matters (i.e., those involving the application of existing rules to a specific set of facts)
- “Procedural due process” gives those with a property interest a right to:
 - Notice and opportunity to be heard by
 - A **fair and impartial decision maker**
- Bias was found where a Council Member exchanged emails, had meetings, and said that “he had the votes” to deny the CUP. This demonstrated that he pre-judged the matter — that he had a pre-hearing commitment to an outcome. (*Petrovich Development Co. LLC v. City of Sacramento.*)



IV. Laws Relating to Fair Processes

C. Doctrine of Incompatible Offices

- Government Code § 1099
- *Elements*
 - A person may not hold two public offices simultaneously
 - If the potential for conflict or overlap in the functions or responsibilities in the office exist
- *Forfeiture of first office*
- *Often requires individual analysis of specific offices*
- *Common law rule often overridden by statute*



IV. Laws Relating to Fair Processes

C. Incompatible Activities

- *Elements* (Gov't Code § 1126):
 - Agency officers and employees
 - Shall not engage in any employment, activity, or enterprise
 - For compensation
 - Which is inconsistent, incompatible, in conflict with, or inimical to his or her duties



IV. Laws Relating to Fair Processes

D. Anti-Nepotism Laws and Policies

- Disqualification from participating in decisions affecting family members (anti-nepotism laws)
 - Political Reform Act requires recusal when decisions have a material impact on one's spouse or dependent children.
 - Common law bias will require recusal in many cases.



IV. Laws Relating to Fair Processes

E. Competitive Bidding Requirements

- Public works projects above a certain amount must be awarded to lowest responsible bidder
 - *Generally, applies only to construction projects*



IV. Laws Relating to Fair Processes

Competitive Bidding Requirements



Quiz

- A Council member's best friend is applying for a design review permit.
- The Council member knows that their best friend will be very upset if she does not vote for the application and it could affect their relationship.



Can the Council member participate in the decision?

- It depends. If, despite the personal relationship, the Council member can exercise their powers with disinterested skill, zeal, and diligence, and primarily for the benefit of the public, then she may participate in the decision. If the Council member believes that the personal relationship would affect their ability to exercise their duties impartially, then she may have a common law conflict of interest and recusal is appropriate.

- A member of the Planning Commission is elected to the Folsom Cordova Unified School District Board.



May the individual serve in both roles?

- No, these are incompatible offices. There is a possibility of a significant clash of duties between the two offices. Upon being sworn into the FCUSD Board, the Planning Commissioner will be deemed to have vacated the position on the Planning Commission.

- Contact the City Attorney and staff as soon as you identify the potential conflict
- Contact the FPPC
 - *Toll-free advice line: 1 (866) ASK-FPPC*
 - *Email advice: advice@fppc.ca.gov*



ITEM 13.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Tuesday, January 17, 2023

4:30 PM - Special Meeting/Closed Session

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code 54950-54963), the City has declared a state of emergency relating to COVID-19 and imposed measures to promote social distancing.

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the special meeting to order in the David B. Roberts Council Chambers at 4:36 p.m.

Council Members Present: Garrett Gatewood (Arrived during closed session), Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren, Stacy Leitner, Persephonie Riley, and Micah Runner

2. PUBLIC COMMENT

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

3. ADJOURN TO CLOSED SESSION

Mayor Budge adjourned the meeting to closed session at 4:37 p.m.

4. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

ITEM 13.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Tuesday, January 17, 2023

Mayor Budge called closed session to order at 4:38 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren and Micah Runner

5. **CLOSED SESSION**

Council met in closed session to discuss the following item:

- 5.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (One Case).

6. **OPEN SESSION - REPORT FROM CLOSED SESSION**

City Attorney Adam Lindgren reported that staff was given direction and no reportable action was taken in closed session.

7. **ADJOURN TO REGULAR MEETING**

Mayor Budge adjourned closed session to the Regular meeting at 5:46 p.m.

8. **REGULAR MEETING - CALL TO ORDER/ROLL CALL**

Mayor Budge called the Regular meeting to order in the David B. Roberts Council Chambers at 5:46 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None.

Staff Members Present: Adam Lindgren, Stacy Leitner, Persephonie Riley, and Micah Runner

9. **METRO CABLE TV TELEVISION ANNOUNCEMENT**

The City Clerk read the meetings recordings and playback schedule.

10. **PLEDGE OF ALLEGIANCE**

Ken Cooley led the pledge.

11. **INVOCATION**

Tammy Hartman with the Law Enforcement Chaplaincy Sacramento gave the invocation.

12. **PRESENTATIONS**

- 12.1. Presentation of Proclamation in Recognition of Retired Assemblyman Ken Cooley.

13. **PUBLIC COMMENT**

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Tera Kolvenbach
2. Carl Salmonsén

ITEM 13.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Tuesday, January 17, 2023

3. James Garcia

Mayor Budge closed the public comment period.

14. COUNCIL REPORTS

Council reported on events since the last meeting.

15. CITY MANAGER'S REPORT

City Manager Micah Runner gave his report.

16. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

ACTION: Motion to approve items 16.1 through 16.6 by Pulipati second by Gatewood;
Motion passed with a 5:0 vote.

- 16.1. **Subject:** Meeting Minutes from the Regular City Council Meeting of January 3, 2023.

Recommendation: Adopt the Minutes.

- 16.2. **Subject:** A Resolution Authorizing the City Manager to Execute Contract No. 2022-281 with American Pavement Systems, Inc. in an Amount not to Exceed \$943,772 for the Rancho Cordova Surface Treatment Project.

Recommendation: Adopt the Resolution.

- 16.3. **Subject:** A Resolution Declaring the City's Intention to Impose an Annual Stormwater Utility Fee for the Maintenance of Storm Drainage and Flood Protection Systems for the Rancho Cordova Storage Project.

Recommendation: Adopt the Resolution designating a time and place for hearing protests in connection with the annual Stormwater Utility Fee for the Rancho Cordova Storage project.

- 16.4. **Subject:** A Resolution Authorizing the City Manager to Execute Construction Contract Amendment 2021-75-11 with Teichert Construction to Increase the Contract Amount from \$11,949,145.95 to an Amount not to Exceed \$12,440,317.95 for the Construction of White Rock Road - Fitzgerald Road to 0.5 Mile East of Rancho Cordova Parkway Project.

Recommendation: Adopt the Resolution

- 16.5. **Subject:** A Resolution authorizing the City Manager to execute a First Amendment to On-Call Professional Services Agreement with Upavanti Inc. increasing the On-Call Contract Amount from \$100,000 to \$1,500,000 to Provide Building Plan Review and Inspection Services.

Recommendation: Adopt the Resolution

- 16.6. **Subject:** A Resolution of the City Council of the City of Rancho Cordova and on Behalf of Commissions and Committees Created by the City Council Pursuant to Government Code Section 54952(b) Confirming the State of Emergency Under Government Code Section 8625, Recognizing Continued Measures to Promote Social Distancing, and Re-authorizing Remote Teleconference Meetings of the City for the Period from January 17, 2023 through February 16, 2023.

Recommendation: Adopt the Resolution.

17. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

ITEM 13.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Tuesday, January 17, 2023

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

ACTION: Motion to approve item 17.1 by Pulipati second by Gatewood;
Motion passed with a 5:0 vote.

- 17.1. **Subject:** A Resolution Approving the City of Rancho Cordova's Adjusted Storm Drainage Impact Fee Schedule for 2023.

Recommendation: Adopt the Resolution approving the Storm Drainage Impact Fee Schedule.

18. PUBLIC HEARING ITEMS

- 18.1. **Subject:** Logisticcenter at Rancho Cordova Major Design Review - Project No. PLND-1021-0015.

Recommendation: There is no Staff recommendation at this time. Staff is providing a response to Council's concerns that were raised at the December 5th Council meeting and responding to additional information from the applicant and the applicant's attorney. Staff will be seeking additional direction from Council for this project. The public hearing will be continued to a future Council date. At that time, staff may bring back documents for possible final action based upon Council's direction.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. James Garcia
2. Marilyn Metzger
3. Jen Laret
4. Eric Winegar
5. Giovanni Ottolini
6. Selina Wong
7. Dave Huhn
8. Greg Muilenburg
9. Troy Fennel
10. Fayzah Mughal
11. Barbara Kropacek
12. Gloria Smith
13. Marilyn Metzger (2 Emailed Submissions)
14. Paul Carroll (2 Emailed Submissions)
15. Kate Carroll
16. David Furguson
17. Eric Winegar (2 Emailed Submissions)
18. Sharon Muilenburg
19. Brenda Gustin
20. James Garcia

Mayor Budge closed the public comment period.

RECESS 7:20 p.m. - 7:32 p.m.

ACTION: Motion to continue item 18.1. to February 6, 2023 by Terry second by Gatewood;
Motion passed with a 5:0 vote.

ITEM 13.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Tuesday, January 17, 2023

19. REGULAR CALENDAR ITEMS

- 19.1. **Subject:** Residential Waste Collection And Street Sweeping Contract Options For The Term Beginning January 1, 2025.

Recommendation: Receive the presentation and provide direction to staff on the preferred option to develop and execute a new residential waste collection and street sweeping contract for the term beginning on January 1, 2025.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Tony Perez
2. Helen Whelan-Bashaw
3. Dave Sikich
4. Jennifer Garcia

Mayor Budge closed the public comment period.

ACTION: Motion to approve option one of item 19.1. by Pulipati second by Gatewood;
Motion passed with a 3:2 vote.

AYES: Gatewood, Sander, and Terry

NOES: Pulipati and Budge

ABSENT: None

ABSTAIN: None

20. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

None.

21. ADJOURNMENT

Mayor Budge adjourned the meeting at 8:29 p.m.

Stacy Leitner, CMC
City Clerk

ITEM 13.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING Tuesday, January 24, 2023

January 24, 2023 1:00 PM – Special Meeting/Work Session

City Hall, American River Room
2729 Prospect Park Drive, Rancho Cordova

Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code 54950-54963), the City has declared a state of emergency relating to COVID-19 and imposed measures to promote social distancing.

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Special meeting to order in the American River Room at 1:13 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander (arrived 1:16 p.m.), Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren, Persephonie Riley, Micah Runner, and Kelly Thompson

2. PUBLIC COMMENT

Mayor Budge stated that public comment would be taken throughout the meeting as topics were discussed.

3. SPECIAL MEETING ITEMS

3.1. **Subject:** Fiscal Year 2023-25 Budget Kickoff and Major Project Discussion.

Recommendation: Receive presentation and provide direction.

RECESS 2:51 p.m. - 3:05 p.m.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

ITEM 13.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Tuesday, January 24, 2023

1. Jim Garcia
2. Paul Carroll

Mayor Budge closed the public comment period.

ACTION: Input was received regarding Fiscal Year 2023-25 Budget Kickoff and Major Project Discussion. Council Member Pulipati did not participate in the CHIPS Act portion of the Special meeting due to a potential conflict of interest.

4. ADJOURNMENT

Mayor Budge adjourned the meeting at 5:30 p.m.

Stacy Leitner, CMC
City Clerk

ITEM 13.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING Wednesday, January 25, 2023

January 25, 2023 2:30 PM – Special Meeting/Work Session

**City Hall, American River Room
2729 Prospect Park Drive, Rancho Cordova**

Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code 54950-54963), the City has declared a state of emergency relating to COVID-19 and imposed measures to promote social distancing.

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Special meeting to order in the American River Room at 2:46 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren, Persephonie Riley, Micah Runner, and Kelly Thompson

2. PUBLIC COMMENT

Mayor Budge stated that public comment would be taken throughout the meeting as topics were discussed.

3. SPECIAL MEETING ITEMS

3.1. Subject: Fiscal Year 2023-25 Budget Kickoff and Major Project Discussion.

Recommendation: Receive presentation and provide direction.

RECESS 3:52 p.m. - 4:03 p.m.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

ITEM 13.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Wednesday, January 25, 2023

1. Mary Gorak

Mayor Budge closed the public comment period.

ACTION: Input was received regarding Fiscal Year 2023-25 Budget Kickoff and Major Project Discussion. Council Member Pulipati did not participate in the CHIPS Act portion of the Special meeting due to a potential conflict of interest.

4. **ADJOURNMENT**

Mayor Budge adjourned the meeting at 5:30 p.m.

Stacy Leitner, CMC
City Clerk

ITEM 13.1.

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING
Wednesday, January 25, 2023

5:30 PM – Special Meeting/Closed Session
American River Room

City Hall
2729 Prospect Park Drive, Rancho Cordova

Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code 54950-54963), the City has declared a state of emergency relating to COVID-19 and imposed measures to promote social distancing.

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Special meeting to order in the American River Room at 5:57 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren, Persephonie Riley, Micah Runner, and Kelly Thompson

2. PUBLIC COMMENT

Mayor Budge opened the public comment period. Seeing no speakers. Mayor Budge closed the public comment period.

3. ADJOURN TO CLOSED SESSION

Mayor Budge adjourned the meeting to closed session at 5:58 p.m.

4. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Mayor Budge called closed session to order at 6:00 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry,

ITEM 13.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Wednesday, January 25, 2023

and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren and Micah Runner

5. CLOSED SESSION

Council met in closed session to discuss the following item:

- 5.1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION: City Manager: Pursuant to Government Code Section 54957.

6. OPEN SESSION - REPORT FROM CLOSED SESSION

City Attorney Adam Lindgren reported that staff was given direction and no reportable action was taken in closed session.

7. ADJOURNMENT

Mayor Budge adjourned the meeting at 7:35 p.m..

Stacy Leitner, CMC
City Clerk

MEMORANDUM



ITEM 13.2.

DATE: February 6, 2023
TO: Honorable Mayor and Council Members
FROM: Adam Lindgren, City Attorney
SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AND ON BEHALF OF COMMISSIONS AND COMMITTEES CREATED BY THE CITY COUNCIL PURSUANT TO GOVERNMENT CODE SECTION 54952(B) CONFIRMING THE STATE OF EMERGENCY UNDER GOVERNMENT CODE SECTION 8625, RECOGNIZING CONTINUED MEASURES TO PROMOTE SOCIAL DISTANCING, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY STARTING FEBRUARY 6, 2023**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would allow the City Council and the City's other legislative bodies to continue to meet via teleconference ("virtually") in a manner substantially similar to the manner in which they have met during the COVID-19 pandemic, if a proclaimed State of Emergency remains in effect and other requirements are satisfied.

BACKGROUND

All meetings of the City Council and the City's other legislative bodies are open and public, as required by the Ralph M. Brown Act, Government Code section 54950 et seq., so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business. On March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow local legislative bodies to conduct virtual meetings to slow the spread of COVID-19. As a result of Executive Order N-29-20, City Staff set up virtual meetings for the City Council and other City legislative bodies. On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which, effective September 30, 2021, ended the provisions of Executive Order N-29-20 that allowed local legislative bodies to conduct meetings telephonically or by other means.

On September 16, 2021, Governor Newsom signed Assembly Bill 361 ("AB 361"), which allows local legislative bodies to continue to conduct meetings via teleconferencing under specified conditions. AB 361 took effect upon the expiration of Executive Order N-29-20 on October 1, 2021. On September 20, 2021, the City Council held a meeting in compliance with AB 361's

requirements for remote meetings.

In order for AB 361 to remain effective for meetings of the City's legislative bodies, the City Council is required to make specified findings every 30 days. AB 361 allows a legislative body to continue holding meetings utilizing teleconferencing without complying with the standard teleconferencing requirements if a State of Emergency is proclaimed under Government Code section 8625, the City has reconsidered the emergency conditions, and if the local Public Health Officer continues to recommend social distancing measures to protect the public's health and safety during local government meetings. These conditions are present.

Governor Newsom's March 4, 2020 Proclamation of Emergency related to the COVID-19 pandemic is still in effect. The potential spread of COVID-19 continues to threaten public health and safety during indoor public gatherings, including indoor gatherings of the Rancho Cordova City Council and other Rancho Cordova legislative bodies. In addition, the Sacramento County Public Health Officer continues to recommend teleconferencing or social distancing to protect the public's health and safety during local government meetings.

SUMMARY

The attached Resolution makes the required findings that the current conditions exist to allow teleconference meetings pursuant to AB 361 for the City Council and on behalf of all of the legislative bodies commissions and committees created by the City Council pursuant to Government Code section 54952(b). This will allow members of the public to safely observe and participate in local government meetings during the pandemic.

If a meeting is held via teleconference under AB 361, the following requirements apply:

1. Notices and agenda requirements remain the same under the Brown Act;
2. No physical location is required for public attendance or public comment. However, the public must be able to access and participate in the meeting through a call-in or an internet-based service, and instructions for how to participate must appear in the posted notices or agenda;
3. Teleconference meetings must protect the statutory and constitutional rights of the parties and the public;
4. If there is any disruption of the call-in or internet-based service, the agency must suspend the meeting until the problem is fixed;
5. Legislative bodies may allow public comments to be submitted prior to a meeting but must also allow the public to participate in real time through call-in or internet-based service;
6. If an internet-based service requires registration through a third-party, individuals can be required to register with the third-party to participate in the meeting; and
7. When providing a public comment period, whether after each item or during a general comment period, a legislative body must allow reasonable time for members of the public to comment and must also include reasonable time for members to register with a third-party host if applicable.

FISCAL IMPACT AND FUNDING SOURCE

The cost of continued remote access to Council meetings and the meetings of other City committees.

ATTACHMENT(S)

1. Resolution

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AND ON BEHALF OF COMMISSIONS AND COMMITTEES CREATED BY THE CITY COUNCIL PURSUANT TO GOVERNMENT CODE SECTION 54952(b) CONFIRMING THE STATE OF EMERGENCY UNDER GOVERNMENT CODE SECTION 8625, RECOGNIZING CONTINUED MEASURES TO PROMOTE SOCIAL DISTANCING, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS STARTING FEBRUARY 6, 2023

WHEREAS, the City is committed to preserving and promoting public access and participation in meetings of the legislative bodies; and

WHEREAS, all meetings of the City are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the City conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on September 20, 2021 the City held a meeting during a state of emergency under Government Code section 8625 and during a period of recommended social distancing by state and local officials while complying with Government Code section 54953(e)(2); and

WHEREAS, the City is required to make certain findings every thirty (30) days to continue teleconferencing under Government Code section 54953(e)(3), including reconsideration of the state of emergency declared by the Governor pursuant to Government Code section 8625, and State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City continues to experience emergency conditions due to COVID-19, specifically, the highly transmissible SARS-CoV-2 B.1.617.2 (“Delta”) continues to threaten public health and safety during indoor public gatherings; and

WHEREAS, the City Council has considered the circumstances of the Governor’s state of emergency proclamation pursuant to Government Code section 8625, which remains active; and

WHEREAS, on July 30, 2021, the Sacramento County Health Officer issued an order requiring all individuals, regardless of vaccination status, to wear a mask while indoors in public spaces; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) continues to recommend physical distancing of at least six feet (6’) from others outside of the household; and

WHEREAS, the Sacramento County Health Officer’s order incorporates the CDC’s guidance for vaccinated and unvaccinated people; and

WHEREAS, the City Council, acting as a legislative body pursuant to Government Code section 54952(a) and for the benefit of the commissions, committees, and other bodies that were created by the City Council pursuant to Government Code section 54952(b) (collectively referred to as the “Legislative Bodies”), does hereby find that the Legislative Bodies shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that the Legislative Bodies shall continue to comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953 as a consequence of the ongoing state of emergency and the continued social distancing measures required by local officials.

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

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Affirmation that Local Emergency Persists. The City Council hereby considers the conditions of the state of emergency pursuant to Government Code section 8625 and proclaims that a local emergency persists throughout the City, affirms the Sacramento Health Order’s required and recommended measures to promote social distancing, and finds that the conditions continue to exist pursuant to Government Code section 54953(e)(3) to allow the Legislative Bodies to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings.

Section 3. Remote Teleconference Meetings. City Staff are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) March 7, 2023 (ii) such time the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of City may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953, or (iii) until such time that the State of Emergency is no longer in effect.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova, this 6th day of February 2023, by the following vote:

ITEM 13.2.

ATTACHMENT 1

AYES:

NOES:

ABSENT:

ABSTAIN:

Linda Budge, Mayor

ATTEST:

Stacy Leitner, CMC
City Clerk

MEMORANDUM



ITEM 13.3.

DATE: February 6, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT NO. 2023-06 BETWEEN THE COUNTY OF SACRAMENTO AND THE CITY OF RANCHO CORDOVA FOR MAINTENANCE OF SHARED TRANSPORTATION FACILITIES AND UNDEVELOPED LOT ADJACENT TO CITRUS ROAD**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute Contract No. 2023-06 with the County of Sacramento for maintenance of shared transportation facilities and undeveloped lot adjacent to Citrus Road.

BACKGROUND

The City of Rancho Cordova (City) and the County of Sacramento (County) share jurisdictional boundaries that commonly run along the centerline of shared roads. It is inefficient for either agency to maintain only half of a road, and as such, City and County entered into an agreement in 2012 to clearly designate which roads, and associated infrastructure, are to be maintained by which agency. The agreement does not transfer ownership of the right-of-way, only designates maintenance responsibility in a fair and equitable manner for improved efficiency of both agencies. The agreement does not involve any exchange of funds. The roadway responsibilities agreed to in 2012 are summarized in Attachment 2.

Staff recommends entering into a new agreement that modifies the 2012 agreement including:

- Transfer maintenance responsibility of portions of the following roads from the City to the County: Femoyer Street, Macready Avenue, Bullard Street, Norden Avenue, and Debellevue Street.
- Transfer maintenance responsibility of the following road from the County to the City: Citrus Road generally from US 50 to Coloma Road.
- The County will install a fence adjacent to the County owned parcel east of Citrus Road, during and after which City will be responsible for Code and Police enforcement of the parcel. Following installation of the fence, the City will be responsible for future operations and maintenance. This transfer of responsibility is intended to provide the City greater ability to address issues which may occur in the County owned lot and affect City residents living west of

Citrus Road.

The proposed agreement does not transfer ownership of the right-of-way or exchange funds. The agreement only designates maintenance responsibility in a fair and equitable manner for improved efficiency of both agencies. The roadway and associated infrastructure responsibilities proposed in this agreement are summarized in Attachment 3. The location of the County owned parcel east of Citrus Road is identified in Attachment 4. The complete proposed agreement is included as Attachment 5.

FISCAL IMPACT AND FUNDING SOURCE

There is no impact to City's General Fund.

ATTACHMENT(S)

1. Resolution
2. 2012 Responsibilities to be Superseded
3. Proposed Responsibilities This Agreement
4. Location of County Parcel
5. Contract No. 2023-06

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT 2023-06 BETWEEN THE COUNTY OF SACRAMENTO AND THE CITY OF RANCHO CORDOVA FOR MAINTENANCE OF SHARED TRANSPORTATION FACILITIES AND UNDEVELOPED LOT ADJACENT TO CITRUS ROAD

WHEREAS, COUNTY and CITY share boundary lines and have ownership of various facilities within those boundary lines, such as bridges, roads, landscape areas, street lights, markings and traffic signals; and

WHEREAS, COUNTY and CITY have furnished transportation-related maintenance and operation services for such facilities, and previously entered into an agreement for the maintenance of Joint Transportation Facilities on August 21, 2012 (County Contract No. 52346; City Contract No. 53-2012) to delineate their respective responsibilities and obligations with respect to the maintenance of the facilities pursuant to Streets and Highways Code section 1680, which authorizes the extension of aid by COUNTY for roadway maintenance within CITY limits; and

WHEREAS, COUNTY and CITY desire to enter into this Agreement (County Contract No. 52547; City Contract No. 2023-06) to supersede and replace the 2012 Agreement; revise the designated roadways to be maintained by each jurisdiction; clarify and update their respective responsibilities concerning Citrus Road; and assign maintenance responsibility for roadways and roadway segments in a fair and equitable manner as designated herein; and

WHEREAS, there is no impact to the general fund.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize the City Manager to execute Contract No. 2023-06 with the County of Sacramento for maintenance of shared transportation facilities and the undeveloped lot adjacent to Citrus Road, substantially in the form of this agreement and in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 6th day of February 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

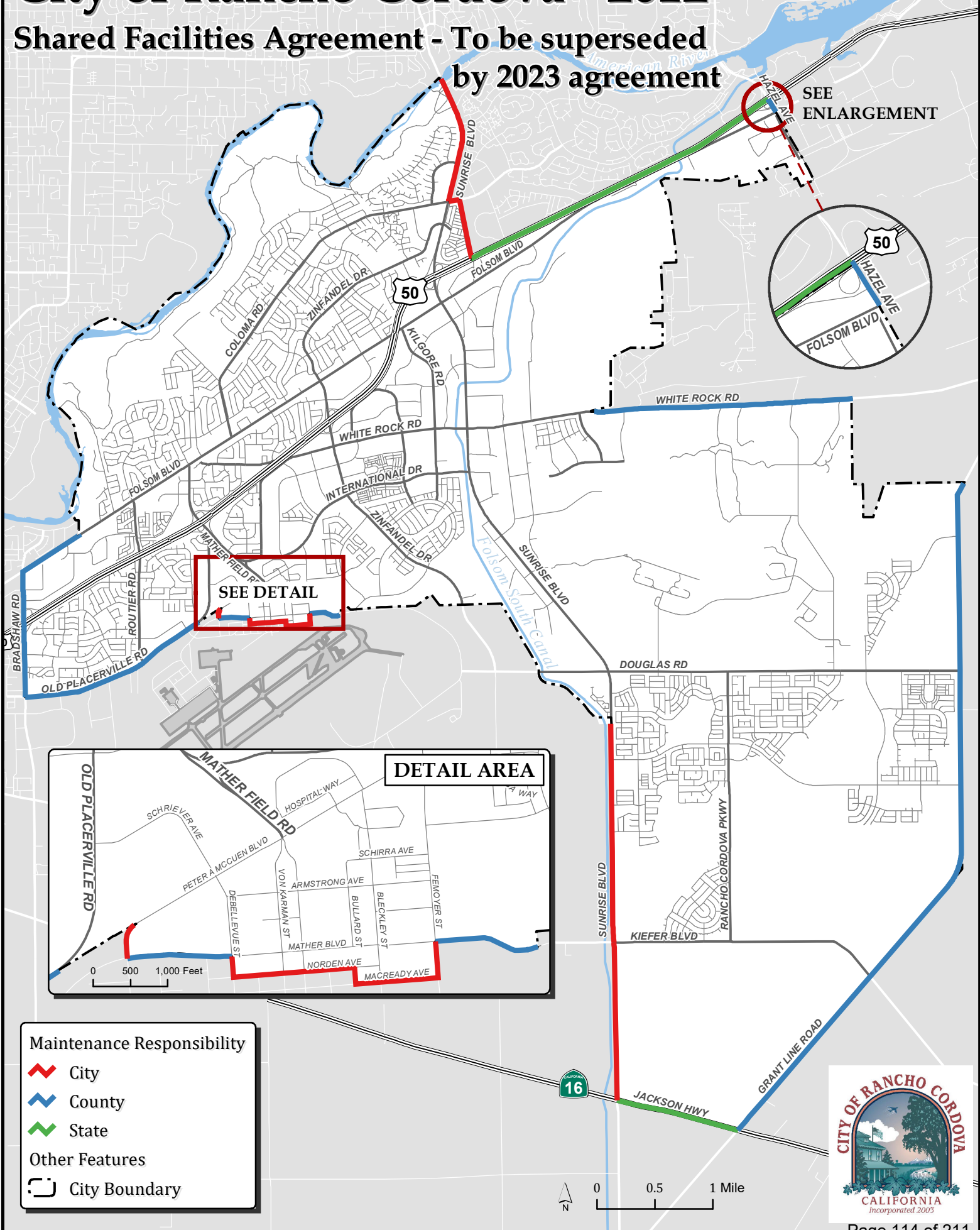
ITEM 13.3.

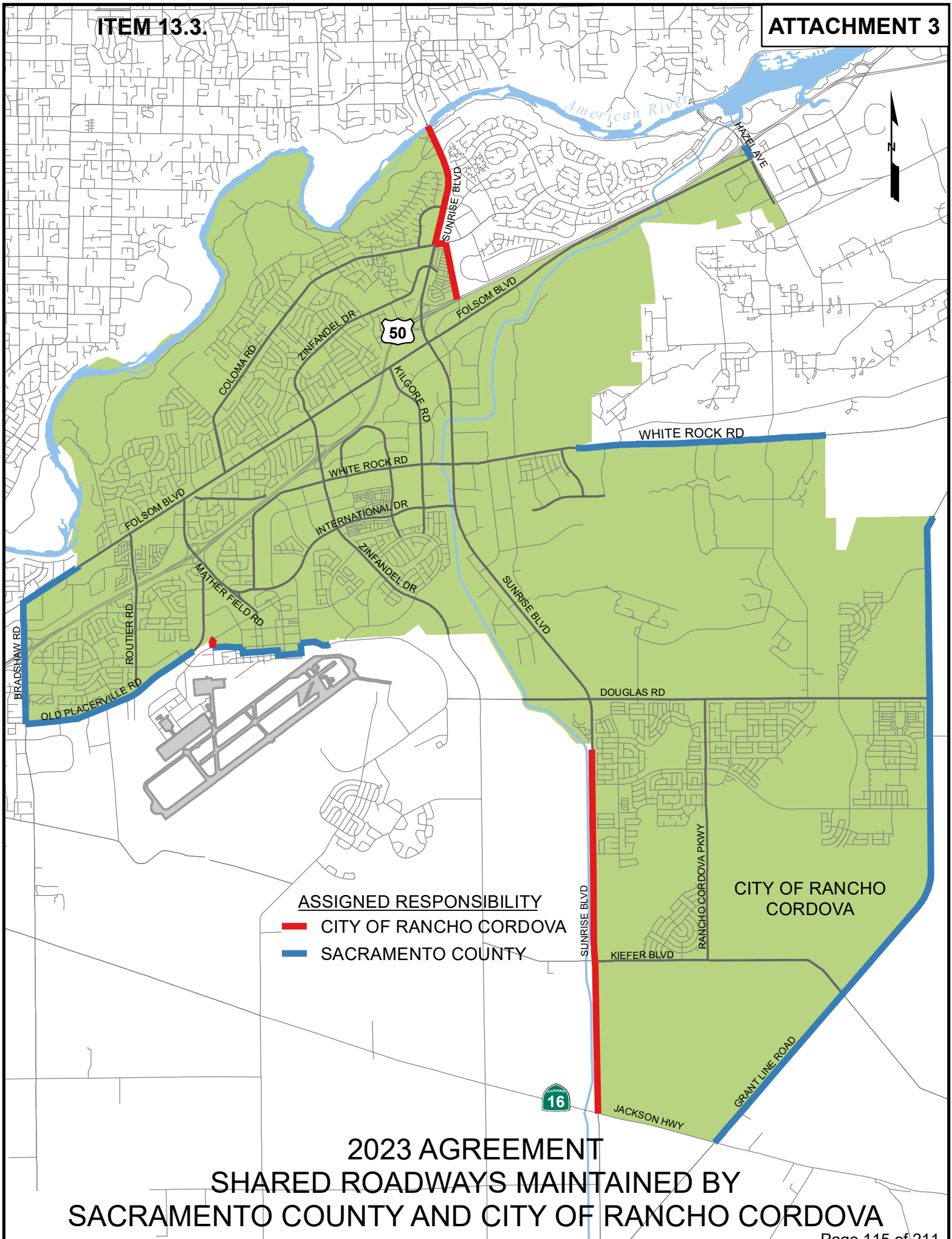
ATTACHMENT 1

Stacy Leitner, CMC
City Clerk

City of Rancho Cordova - 2012

Shared Facilities Agreement - To be superseded
by 2023 agreement







**AGREEMENT FOR MAINTENANCE AND OPERATIONS OF SHARED
TRANSPORTATION FACILITIES BETWEEN THE COUNTY OF
SACRAMENTO AND THE CITY OF RANCHO CORDOVA**

This Agreement for Maintenance of Shared Transportation Facilities ("Agreement") is made and entered into on February 8, 2023, by and between the County of Sacramento, a political subdivision of the State of California ("COUNTY"), and the City of Rancho Cordova, a municipal corporation organized and existing under the laws of the State of California ("CITY").

RECITALS

- A. COUNTY and CITY share boundary lines and have ownership of various facilities within those boundary lines such as bridges, roads, landscape areas, street lights, markings and traffic signals.
- B. COUNTY and CITY have furnished transportation-related maintenance and operation services for such facilities, and previously entered into an agreement for the maintenance of Joint Transportation Facilities on August 21, 2012 (County Contract No. 52346; City Contract No. 53-2012; the "2012 Agreement") to delineate their respective responsibilities and obligations with respect to the maintenance of the facilities pursuant to Streets and Highways Code section 1680, which authorizes the extension of aid by the COUNTY for roadway maintenance within CITY limits.
- C. COUNTY and CITY also entered into an agreement for transportation operations and maintenance services on July 1, 2004 and amended on August 21, 2012 (County Contract No. 70572, City Contract No. 35-2004-1; "Traffic Operations Agreement") pursuant to which COUNTY provides bridge maintenance and traffic signal maintenance and operations within CITY boundaries. The Traffic Operations Agreement was amended on July 26, 2022.
- D. COUNTY and CITY desire to enter into this Agreement to supersede and replace the 2012 Agreement; revise the designated roadways to be maintained by each jurisdiction; clarify their respective responsibilities concerning Citrus Road;

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City of Rancho Cordova Contract No.2023-06

and assign maintenance responsibility for roadways and roadway segments in a fair and equitable manner as designated herein.

- E. This Agreement is not intended to prohibit either party from separately contracting with the other to perform maintenance for street segments identified as joint maintenance responsibilities.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereafter set forth, the COUNTY and CITY hereby agree as follows:

1. **INCORPORATION OF BACKGROUND**

The forgoing recitals are true and correct and are hereby incorporated by reference.

2. **ASSIGNMENT OF SHARED ROADS FOR MAINTENANCE RESPONSIBILITY**

A. **COUNTY** shall be responsible for maintenance, as further described in Sections 3 through 12 of this Agreement, of the following shared roads and the various assets within the right-of-way of the roads:

- i. **White Rock Road** - Approximately 570 (FT) east of Rancho Cordova Parkway to approximately 8,000. (FT) west of Grant Line Road.
- ii. **Grant Line Road** - From Jackson Road north to 638 (FT) north of the bend.
- iii. **Mather Boulevard** -
 - a. From Debellevue Street west to Lemay Street.
 - b. From Femoyer Street east to 1,420. (FT) east of Femoyer Street.
- iv. **Old Placerville Road** -
 - a. From Bradshaw Road to Routier Road west.
 - b. From Routier Road to 710 feet east of Macready Avenue.

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- v. **Bradshaw Road** - From Old Placerville Road north to Folsom Boulevard.
- vi. **Folsom Boulevard** - From Bradshaw Road east to 680 (FT) of Paseo Rio Way.
- vii. **Hazel Avenue** - From US-50 south to Folsom Boulevard.
- viii. **Femoyer Street** - From Macready Avenue to Mather Boulevard south.
- ix. **Macready Avenue** - From Bullard Street to Feymoyer Street.
- x. **Bullard Street** - From Macready north to Norden Avenue.
- xi. **Norden Avenue** - From Debellevue Street to Bullard Street west.
- xii. **Debellevue Street** - From Norden Avenue north to Mather Boulevard.

CITY shall have no obligation to compensate or reimburse COUNTY for maintenance and operations work performed on the aforementioned street segments.

When necessary to perform maintenance properly, or ensure structural integrity of the road and appurtenances, COUNTY may perform maintenance twenty (20) feet or further past the ends of the road limits described above. Refer to Exhibit A for shared roadways between CITY AND COUNTY.

- B. **CITY** shall be responsible for maintenance, as further described in Sections 3 through 12 of this Agreement, of the following roads and the various assets within the right-of- way of the roads.
 - i. **Sunrise Boulevard** -
 - a.) From Jackson Road (SR-16) north to 1,630 (FT) north of Chrysanthy Boulevard.
 - b.) From Coloma Road to American River Bridge south.
 - ii. **Peter A. McCuen Boulevard** - From Mather Boulevard north to approximately 495 (FT) north of Mather Boulevard.

- iii. **Coloma Road** - From Sunrise Boulevard east to Citrus Road.
- iv. **Citrus Road** – From US-50 to Coloma Road pursuant to Exhibit B.

COUNTY shall have no obligation to compensate or reimburse CITY for maintenance and operations work performed on the aforementioned street segments and County owned parcel (APN 069-0031-004-0000).

Although CITY shall have underlying responsibility for maintenance of aforementioned street segments pursuant to this Agreement, parties agree that CITY may separately contract with COUNTY to perform maintenance and operations services on the street segments identified in this Section 2(B).

When necessary to perform maintenance properly, or ensure structural integrity of the road and appurtenances, CITY may perform maintenance twenty (20) feet or further past the ends of the road limits described above. Refer to Exhibit A for shared roadways between CITY AND COUNTY.

3. **BRIDGE AND GUARDRAIL MAINTENANCE**

For any shared road assigned solely to CITY and/ or COUNTY it will be that agency's responsibility to provide bridge and guardrail maintenance, including any required inspections by the State of California or other agency.

4. **PAVEMENT AND ROADSIDE MAINTENANCE**

For any shared road assigned solely to CITY and/or COUNTY it will be that agency's responsibility to provide pavement and roadside maintenance, including sweeping and sidewalk maintenance. The roads with bike lanes shall be swept a minimum of twice per month.

5. **TRAFFIC SIGNS, STRIPING AND MARKINGS**

For any shared road assigned solely to CITY or COUNTY, it will be that agency's responsibility to provide signs, striping and markings maintenance to those roads and any public roads that approach and intersect with the assigned road.

6. TRAFFIC SIGNAL INTERSECTION MAINTENANCE

For any shared road assigned solely to City or County, it will be that agency's responsibility to provide traffic signal and related traffic signal component maintenance. In addition, the responsible agency will maintain all asset infrastructures within an assigned traffic signal intersection, such as safety lights, pavement maintenance, roadside maintenance, signs, striping, markings, etc. The assigned agency will also be responsible for all electric costs associated with traffic signals and safety lights.

7. TRAFFIC SIGNAL OPERATIONS

CITY and COUNTY will be responsible for traffic signal operations of any traffic signal intersections within their assigned roads. Both agencies may meet to discuss proposed operations programming changes prior to changes being implemented.

8. TRAFFIC SIGNAL CAMERAS

CITY and COUNTY will be responsible for the maintenance and operations of any traffic signal cameras within their assigned roads.

9. TREE, VEGETATION AND LANDSCAPE MAINTENANCE

For any shared road assigned solely to CITY or COUNTY, it will be that agency's responsibility to provide tree and vegetation trimming and landscape maintenance.

All work performed by either agency shall meet the intent of the Tree Pruning Guidelines of the Official Publication of the International Society of Arboriculture.

10. CONTRACT LANDSCAPE

Any shared road assigned solely to CITY or COUNTY, will be that agency's responsibility to provide contract landscape.

The landscaped area shall be fully maintained consistent with the landscape as designed and the irrigation system shall remain functional as designed. Any degradation of the facility shall be repaired and corrected in a timely manner.

11. STREET AND SAFETY LIGHTS

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It shall be the responsibility of each agency to provide street light maintenance for those facilities which the agency collects revenues to maintain, including sections that may be a shared road, as identified in Section 2 of this Agreement. The responsibility of maintenance and operation of street and highway safety lights outside of the shared roadways, as identified in Section 2 of this Agreement, shall be guided by the Agreement for Transition of Operations and Maintenance of Street Lights and Highway Safety Lights in the City of Rancho Cordova (Detachment from CSA-1)("County Contract No. 52369"). The executed County Contract No. 52369 shall detail all operational matters as negotiated by the agencies.

12. HAZARDOUS MATERIALS RESPONSE

Each jurisdiction shall be responsible for providing hazardous materials response and abatement ("HMRA") for shared facilities as assigned to that jurisdiction under this Agreement. The assigned jurisdiction shall be responsible for all costs associated with HMRA. The assigned jurisdiction shall perform HMRA of each incident in its entirety in accordance with all applicable laws and regulations.

The assigned jurisdiction shall advise the other jurisdiction as soon as practicable of any detours, road closures, severe traffic congestion, or excavations that may affect the other agency as a result of HMRA activities.

In the event that a hazardous materials incident occurs within the boundaries of one jurisdiction and flows, drifts, wafts, or blows into the boundary of the other jurisdiction, the first responding jurisdiction is hereby granted permission to perform hazardous materials abatement however far is necessary to abate the emergency. The County and City will work cooperatively in the event of hazardous materials incident that crosses boundary lines or when directed by a hazardous materials scene commander.

13. EMERGENCY AND AFTER HOURS RESPONSES

- A. Assigned agencies are responsible for providing emergency and after-hours responses on assigned roadways specified in Exhibits A and B, both during work hours and after work hours.
- B. The assigned agency will perform emergency maintenance as it deems necessary to correct the problem or render the scene safe

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until proper Maintenance can be performed, such as unplugging a clogged drainage inlet or a plugged driveway culvert.

- C. The assigned agency will advise the other jurisdiction as soon as practicable of any detours, road closures, severe traffic congestion, or excavations that may affect the other agency as a result of emergency response activities.

14. **ADVANCE COOPERATION, MEDIA ALERT AND PUBLIC NOTIFICATIONS**

Assigned agencies are responsible for notifying each other, consistent with section 33 below, at least ten (10) business days in advance of any scheduled Maintenance, and cooperatively working out a traffic plan to minimize traffic delays, severe traffic congestion, detours, and road closures that may be caused as a result of any such work.

15. **ENCROACHMENT PERMITS**

It is each agency's responsibility to issue and inspect encroachment permits within its jurisdiction. If the encroachment(s) affects both agencies on a shared roadway, the encroachment permit must be coordinated between the two agencies for review, approval, and inspection.

16. **GENERAL SERVICE PLANS AND AS-BUILT PLANS**

Both agencies will share general service plans and as-built plans on assigned assets for Maintenance, if requested by the other.

17. **OWNERSHIP, CONTROL AND SUPERVISION**

- A. Notwithstanding the Maintenance, repairs and operational functions performed by either agency in the jurisdiction of the other, each agency retains full ownership, control and supervision of the roadways and facilities within its jurisdiction. This Agreement does not transfer roadways or roadway facility ownership control or supervision from one agency to the other.
- B. If either agency becomes aware of a need for urgent or emergency maintenance repair, or operations modification to any existing shared asset which is subject to this Agreement, such agency shall immediately notify the other in writing to correct the problem. If the assigned agency does not correct the problem within a reasonable time frame requested in writing, the other agency may perform the necessary work to either assure

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County of Sacramento Contract No. 52547
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protection of public safety and/ or return the shared asset(s) aesthetically to a condition acceptable to both agencies. The assigned agency will be invoiced accordingly for any such work performed by the other agency.

18. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the agencies will attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein will preclude either agency's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

19. PRIOR AGREEMENTS

This Agreement constitutes the entire agreement between the assigned agencies regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between the assigned agencies regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement. This Agreement supersedes, replaces, supplants, and terminates the 2012 Agreement between the parties.

20. INVOICE AND PAYMENT

Each agency shall bear the costs of its assigned responsibilities for maintenance, emergency response, and HMRA as described in this Agreement.

21. TERM

This Agreement is effective and commences as of the date first written above and shall remain in effect until terminated in accordance with the Termination provision of this Agreement.

22. TERMINATION

Either agency may terminate this Agreement for any reason and without cause during the term thereof by providing 180 days prior written notice of such termination to the other agency.

23. ADMINISTRATION

The CITY's Public Works Director shall administer this Agreement on behalf of the CITY and the COUNTY's Deputy County Executive of the

Community Services Agency ("Deputy County Executive") shall administer the Agreement on behalf of COUNTY.

24. **MAINTENANCE OF RECORDS AND AUDITS**

Assigned agencies will maintain adequate financial records during the term of this Agreement to document its costs of providing maintenance services pursuant to this Agreement. Each party will make their records available for inspection and audit by the other party upon reasonable notice. Pursuant to Government Code section 8546.7, CITY and the COUNTY Records will be subject to examination and audit by the State Auditor for a period of three (3) years after final payment pursuant to this Agreement. CITY AND COUNTY will retain all records relating to the performance of this Agreement for this three (3) year period, except that records pertaining to any audit then in progress, or any claims or litigation, will be retained beyond such three (3) year period until final resolution of such audit, claim or litigation.

25. **INDEMNIFICATION**

To the fullest extent permitted by law, each of the Parties shall indemnify, defend and hold harmless each of the other Parties, their respective governing boards, officers, directors, officials, employees, and authorized volunteers and agents from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, and reasonable attorneys' fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the their respective governing boards, officers, directors, officials, employees, volunteers, agents, or contractors.

It is the intention of the Parties that the provisions of this indemnity be interpreted to impose on each Party responsibility for the acts and omissions of their respective governing boards, officers, directors, officials, employees, volunteers, agents or contractors. It is also the intention of the Parties that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any Claims attributable to the fault of that Party, its governing board, officers, directors, officials, employees, volunteers, agents, or contractors.

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This indemnity shall not be limited by the types and amounts of insurance or self-insurance maintained by the Parties.

Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity shall survive the expiration or termination of the Agreement.

26. INSURANCE

Each agency, at its sole cost and expense, shall carry insurance – or self-insure – its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance to cover its potential liabilities hereunder. Each agency agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

27. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

28. ASSIGNMENT

Neither party hereto shall assign, or transfer any interest in this Agreement hereunder, without the prior written consent of the other party, and no assignment shall be of any force or effect whatsoever unless and until the other party furnishes such consent in writing, signed by both parties to this Agreement.

28. AMENDMENTS

This Agreement may be modified or amended, or any of its provision waived, only by a subsequent written amendment executed by the COUNTY's Deputy County Executive and CITY's Director of Public Works.

29. CONSTRUCTION AND INTERPRETATION

ITEM 13.3.**ATTACHMENT 5**

County of Sacramento Contract No. 52547
City of Rancho Cordova Contract No.2023-06

It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

30. WAIVER

The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

31. SEVERABILITY

The invalidity, illegality or unenforceability or any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal, provided that such invalidity does not materially affect the respective rights and obligations of the parties.

32. SUCCESSORS AND ASSIGNS

This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, provided that the required consent has been obtained pursuant to Section 20 above.

33. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail or e-mail, addressed as follows:

TO COUNTY:
Attn: Division Chief M&O
Department of Transportation
4111 Branch Center Road
Sacramento, CA 95827

TO CITY:
Attn: Public Works Director
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice

designating a change of address to the other party, which shall be effective upon receipt.

34. **AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each agency represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

35. **DUPLICATE COUNTERPARTS**

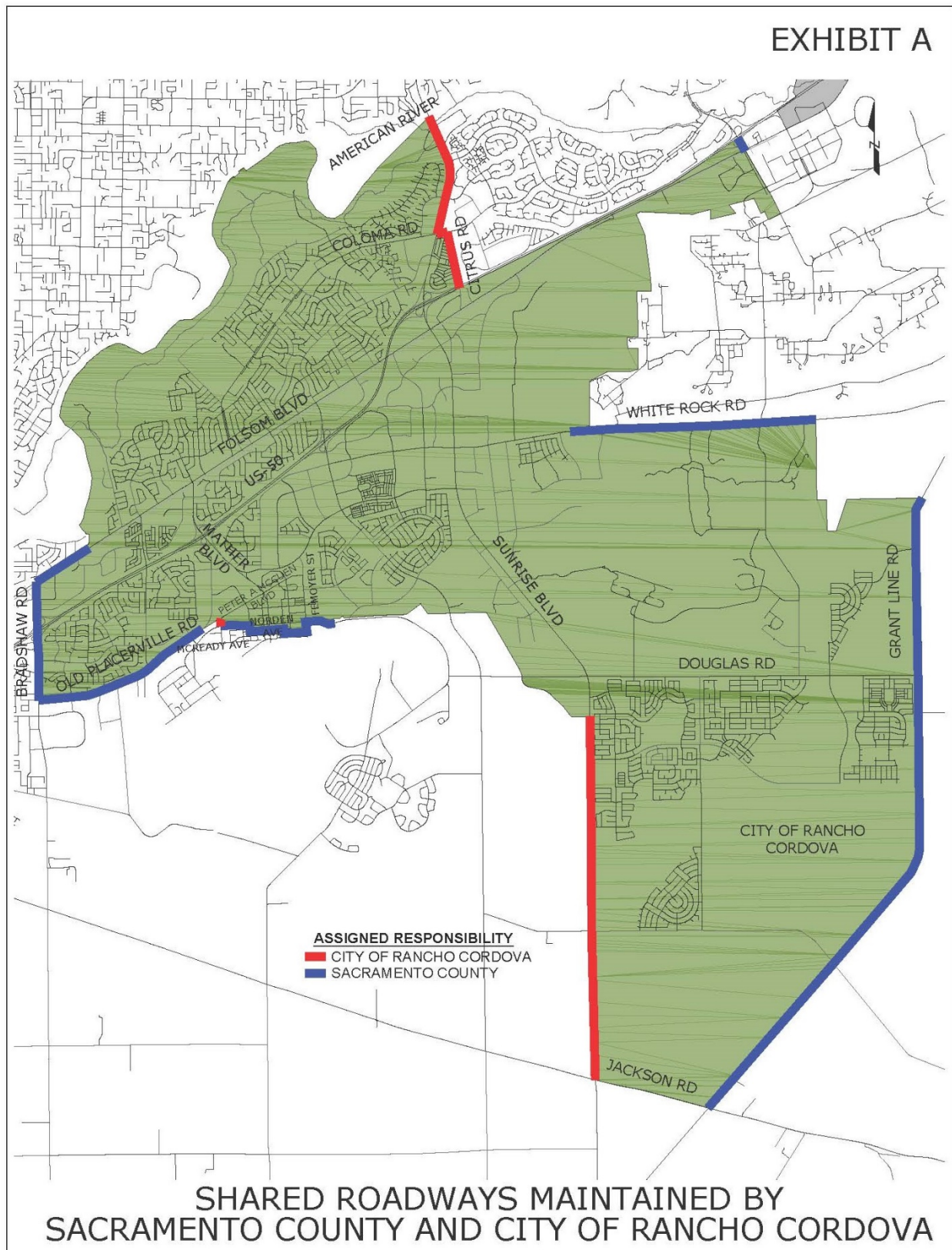
This Agreement may be executed in counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

Signatures scanned and transmitted electronically shall be deemed original signatures for purposes of this Agreement, with such scanned signatures having the same legal effect as original signatures. This Agreement may be executed through the use of an electronic signature and will be binding on each party as if it were physically executed.

ITEM 13.3.

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City of Rancho Cordova Contract No.2023-06



ITEM 13.3.

ATTACHMENT 5

County of Sacramento Contract No. 52547
City of Rancho Cordova Contract No.2023-06

IN WITNESS WHEREOF, the parties hereto have executed this Agreement
the day of the year first written above.

CITY OF RANCHO CORDOVA, a municipal corporation

Dated: _____

By: _____

Micah Runner, City Manager

(SEAL)

Attest: _____

Stacy Leitner, CMC, City Clerk

REVIEWED AND APPROVED BY CITY ATTORNEY

By: _____

Adam Lindgren, City Attorney

COUNTY OF SACRAMENTO, a political subdivision of the State of California

Dated: _____

By: _____

David Defanti, Deputy County
Executive

Agreement approved by the Board of
Supervisors with authority delegated to the
Deputy County Executive to sign

Agenda Date: _____

Item No: _____ Resolution No. _____

(4/5th Vote)

REVIEWED AND APPROVED BY COUNTY COUNSEL

By: _____

ITEM 13.3.

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County of Sacramento Contract No. 52547
City of Rancho Cordova Contract No.2023-06

Katrina Nelson, Supervising Deputy County Counsel

EXHIBIT B**MAINTENANCE AND OTHER OBLIGATIONS RELATED TO CITRUS ROAD BIKE PATH AND COUNTY PARCEL (APN: 069-0031-004-0000)**

The Parties agree that Citrus Road between US-50 and Coloma Road, as depicted below, is unique because it is a designated bikeway with no vehicular traffic. It abuts a COUNTY-owned parcel (APN 069-0031-004-0000) on one side ("County Parcel"), and stretches between US-50 and Coloma Road. Given Citrus Road's unique, open-space character, several homeless encampments have located within the shared bikeway and on the County Parcel, which has contributed to degradation of the bikeway and public health and safety concerns. In order to preserve this shared facility, the Parties agree as follows:

1. COUNTY shall, at its expense, fence off its parcel as depicted in the map below. COUNTY shall utilize tubular fencing to separate the Citrus Road bikeway located between US-50 and Coloma Road from the County Parcel. The estimated cost for fencing the parcel is \$500,000. COUNTY to pay to contract the installation of the fence with three 32-foot wide locked gates, install no trespassing signs, and provide 13 fence panels (8 feet per panel) to CITY. COUNTY shall provide minimum three week (21 day) written notice to the CITY of the date that COUNTY will commence fence installation.
2. Prior to installation of the fence, CITY shall perform enforcement, and remove debris and hazardous materials to allow installation of the fence. If CITY requires additional support, CITY will coordinate with County Department of Homeless Initiatives. Following installation of the fence, County will perform a final cleanup including, but not limited to, tree trimming, mowing, weed abatement, and litter and debris removal.
3. Following installation of the fence and final cleanup by COUNTY, CITY shall accept full maintenance responsibility for the upkeep of the fence. This includes but not limited to the maintenance and/ or

ITEM 13.3.**ATTACHMENT 5**

County of Sacramento Contract No. 52547
City of Rancho Cordova Contract No.2023-06

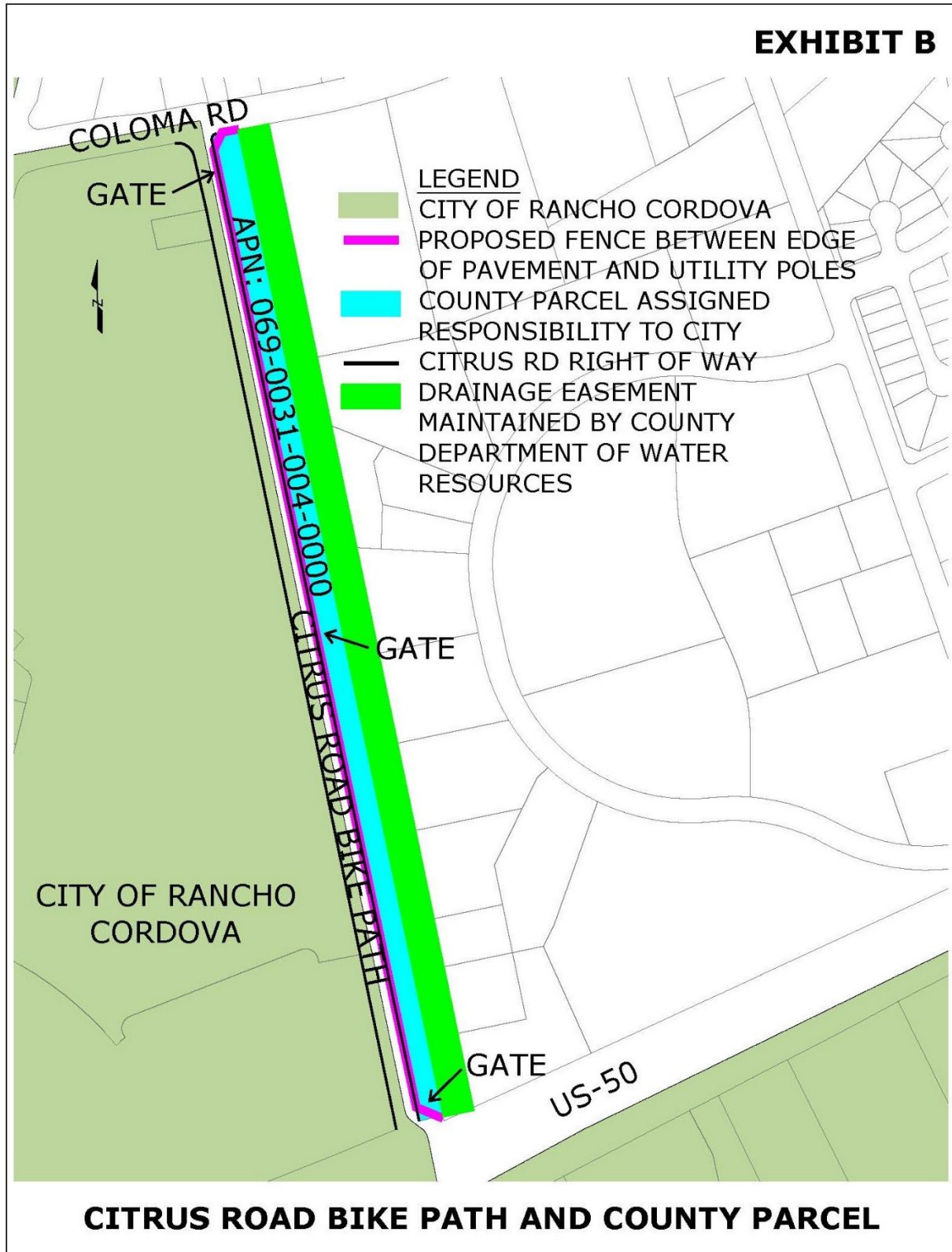
replacements of the fence posts, panels, gates, signs, gate locks, and post footings. CITY further agrees to perform all maintenance of Citrus Road as contemplated in this Agreement, the County Parcel, and the entrance gates to Citrus Road.

4. Following installation of the fence and final cleanup by COUNTY, CITY shall conduct all necessary enforcement, future abatement, clean up, removal, and relocation activities to preserve peace, public safety, and public health within Citrus Road and the County Parcel. Any input, coordination, recommendation, or decision requested by CITY from COUNTY concerning the matters described in this Exhibit B shall be directed to COUNTY's Deputy County Executive or their designee.
5. CITY will provide access to the County Parcel to fire department and utility companies, as needed.
6. As consideration for CITY's performance of the tasks and functions described in this Exhibit B, COUNTY shall pay and contract installation of the fence, and perform Maintenance of following shared roadway facilities as contemplated in this Agreement and shown in Exhibit A.
 - i. Femoyer Street – from Macready Avenue to Mather Boulevard south.
 - ii. Macready Avenue – from Bullard Street to Femoyer Street.
 - iii. Bullard Street – from Macready Avenue north to Norden Avenue.
 - iv. Norden Avenue – from Debellevue Street to Bullard Street west.
 - v. Debellevue Street – from Norden Avenue north to Mather Boulevard.

ITEM 13.3.

ATTACHMENT 5

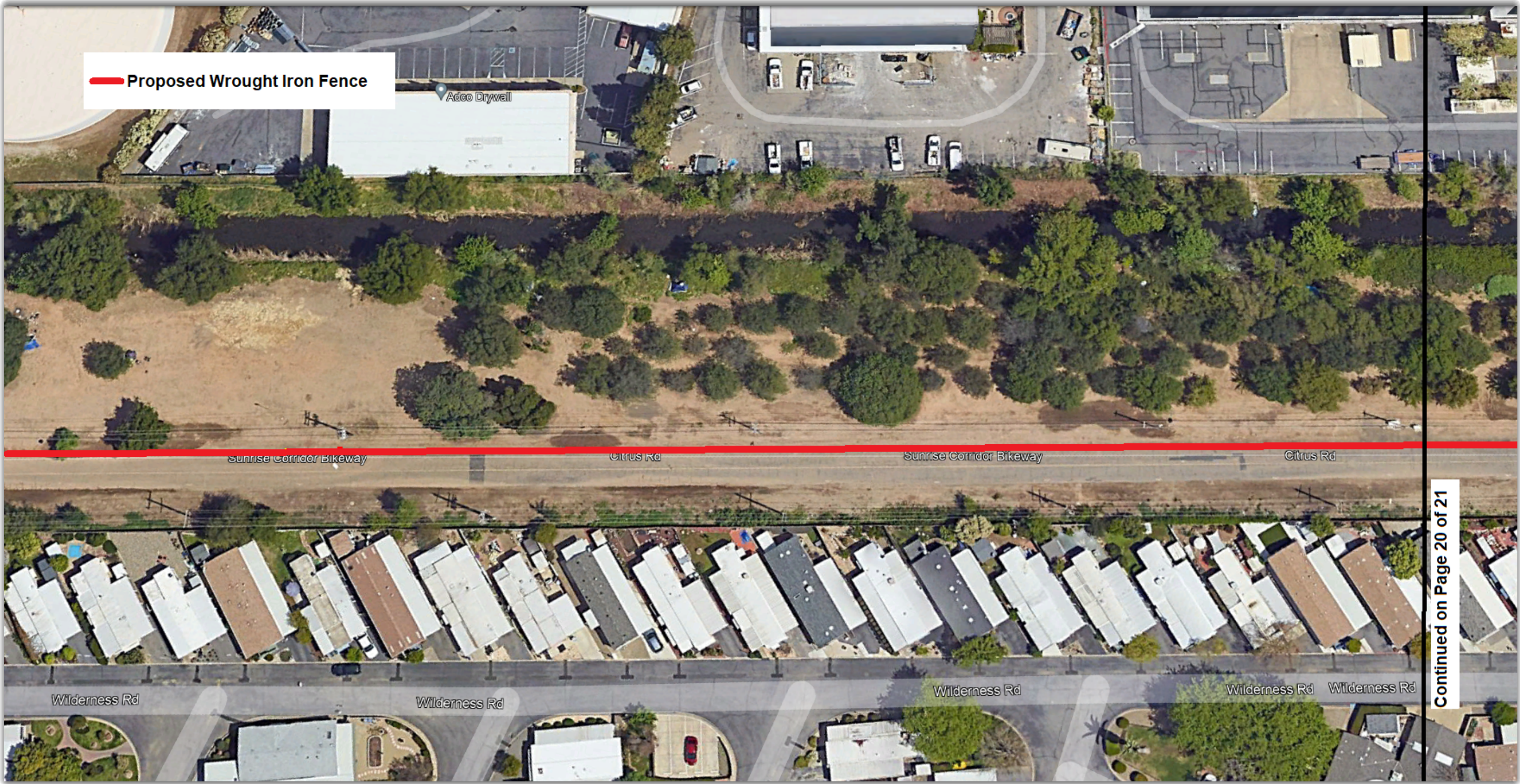
County of Sacramento Contract No. 52547
City of Rancho Cordova Contract No.2023-06



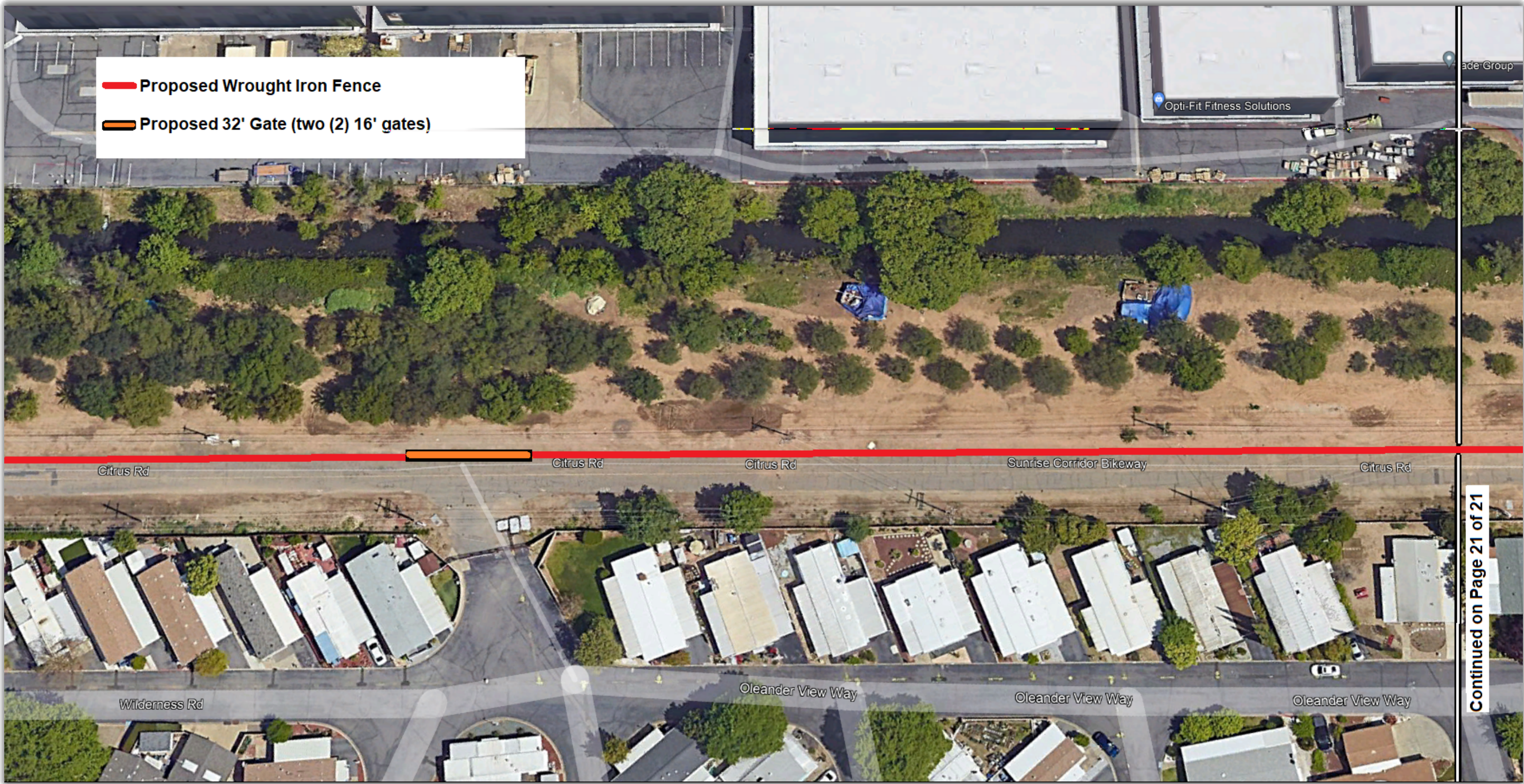
Citrus Road –Fence Project



Citrus Road –Fence Project



Citrus Road –Fence Project



Continued on Page 21 of 21

Citrus Road –Fence Project



MEMORANDUM



ITEM 14.1.

DATE: February 6, 2023
TO: Honorable Mayor and Council Members
FROM: Dalia Fadl, Principal Engineer
SUBJECT: **A RESOLUTION DECLARING A PROTEST HEARING AND
AUTHORIZING THE MAILING OF PROPERTY OWNER BALLOT
RELATING TO THE IMPOSITION OF THE ANNUAL STORMWATER
UTILITY FEE FOR THE RANCHO CORDOVA STORAGE PROJECT**

RECOMMENDATION

Approve the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would declare the results of the property owner's protest and, if there exists less than a majority protest, authorize the mailing of a ballot to the property owner to approve the levy of the fee to pay for maintenance of storm drainage and flood protection systems for the Rancho Cordova Storage project. The action also sets 1:30 p.m. on March 7, 2023 in the office of the City Clerk, as the time and date for the ballot tabulation for the matter.

BACKGROUND

The Rancho Cordova Storage project has a condition of approval which requires funding for operation and maintenance of the storm drainage system. This condition will be satisfied by the participation in the new Stormwater Utility Fee for storm drainage and flood protection services which is the subject of tonight's action.

The property owner of the Rancho Cordova Storage project has requested the City annex the project to the City's Stormwater Utility Fee pursuant to the California Health and Safety Code Section 5471 et seq. to provide the method of financing for storm drainage and flood protection services required to meet the condition.

On January 17, 2023, Council adopted a resolution which established Procedures for the Conduct of a Protest Hearing and Balloting Relating to a Stormwater Utility Fee (the "Procedures") and designated February 6, 2023, at 5:30 p.m. as the time and place for hearing protests in connection with the annual Stormwater Utility Fee for the Rancho Cordova Storage project.

DISCUSSION

The property owner has submitted a petition and waiver for the City to institute the proceedings

to participate in the Stormwater Utility Fee. This annexation to the Stormwater Utility Fee will include the project generally known as the Rancho Cordova Storage project, see [Attachment 2](#). The maintenance services to be funded include the furnishing of services and materials for the ordinary and usual operation, maintenance, and servicing of the storm drain and flood protection systems.

[Attachment 1](#) is the Resolution declaring the results of the property owner protest and authorizing the mailing of the property owner ballot, as required by Article XIII D of the California Constitution (also known as Proposition 218). The Resolution sets forth the tabulation of ballots on March 7, 2023, at 1:30 p.m. in the office of the City Clerk. The results of the mailed ballot election will be presented to City Council at their regularly scheduled meeting on March 20, 2023, and additional actions will be recommended based on the ballot results.

A “Rate Analysis Report” was approved by City Council on September 4, 2014, by Resolution 103-2014 setting Fiscal Year 2014-2015 maximum annual Stormwater Utility Fee amount for each parcel proportionate to the estimated stormwater runoff for each parcel, see [Attachment 3](#). The maximum annual fee will increase each subsequent Fiscal Year by the annual change in the Consumer Price Index (CPI), during the preceding year, for All Urban Consumers, for the San Francisco-Oakland-San Jose areas, published by the United States Department of Labor, Bureau of Labor Statistics. A sample of the Stormwater Utility Fees for Fiscal Year 2022-2023 are summarized in [Attachment 4](#).

FISCAL IMPACT AND FUNDING SOURCE

There is no impact to the City’s General Fund. Funds collected by this fee will pay for maintenance of storm drainage and flood protection systems.

ATTACHMENT(S)

1. Resolution
2. Annexation Boundary Map
3. Stormwater (SWU) Rate and Analysis Report
4. Stormwater Utility Fee- Rate Sheet FY22-23

CITY OF RANCHO CORDOVA**RESOLUTION NO. XX-2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA,
STATE OF CALIFORNIA, DECLARING THE RESULTS OF THE PROPERTY OWNER
PROTEST AND AUTHORIZING THE MAILING OF A PROPERTY OWNER BALLOT
RELATING TO THE IMPOSITION OF AN ANNUAL STORMWATER UTILITY FEE FOR
THE RANCHO CORDOVA STORAGE PROJECT**

WHEREAS, this Council has received petitions and waivers from the owners of not less than 100% of the area of land proposed to be annexed into the Stormwater Utility Fee; and

WHEREAS, on January 17, 2023, the City Clerk caused a notice of the time and place of the hearing thereon and on the proposed annexation to the Stormwater Utility Fee to be published and such public hearing was opened on February 6, 2023; and

WHEREAS, the Council adopted Resolution 103-2014 approving a written report entitled, "Rate Analysis Report", dated September 4, 2014 (the "Written Report") prepared by Harris & Associates and filed with the City Clerk containing a description of each parcel of real property within the City to which the Stormwater Utility Fee is applicable (collectively, the "Identified Parcels") and the amount of the Stormwater Utility Fee for each such Identified Parcel for Fiscal Year 2014-15. The Written Report is on file in the office of the City Clerk and is available for public inspection; and

WHEREAS, this Council adopted a resolution which established Procedures for the Conduct of a Protest Hearing and Balloting Relating to a Stormwater Utility Fee (the "Procedures") and set the date of public hearing; and

WHEREAS, this Council has conducted the public hearing and all interested persons have been afforded the opportunity to be heard, and the City Council has considered all protests against the annexation to the Stormwater Utility Fee; and

WHEREAS, there was no majority protest of the owner of the Identified Parcels subject to the Proposed Stormwater Utility Fee.

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

1. The foregoing recitals are true and correct.
2. The City Clerk is hereby authorized and directed to mail a property owner ballot in accordance with law and the Procedures.
3. The date of the ballot tabulation shall be March 7, 2023 at 1:30 pm.
4. The date of the Council Meeting to report the results of the mailed ballot election shall be March 20, 2023, at 5:30 p.m. or as soon thereafter as the matter may be heard.

ITEM 14.1.

ATTACHMENT 1

5. The City Council hereby designates Dalia Fadl, Principal Engineer, telephone number, (916) 851-8718 to answer inquiries regarding the ballot proceedings and procedural or technical matters.

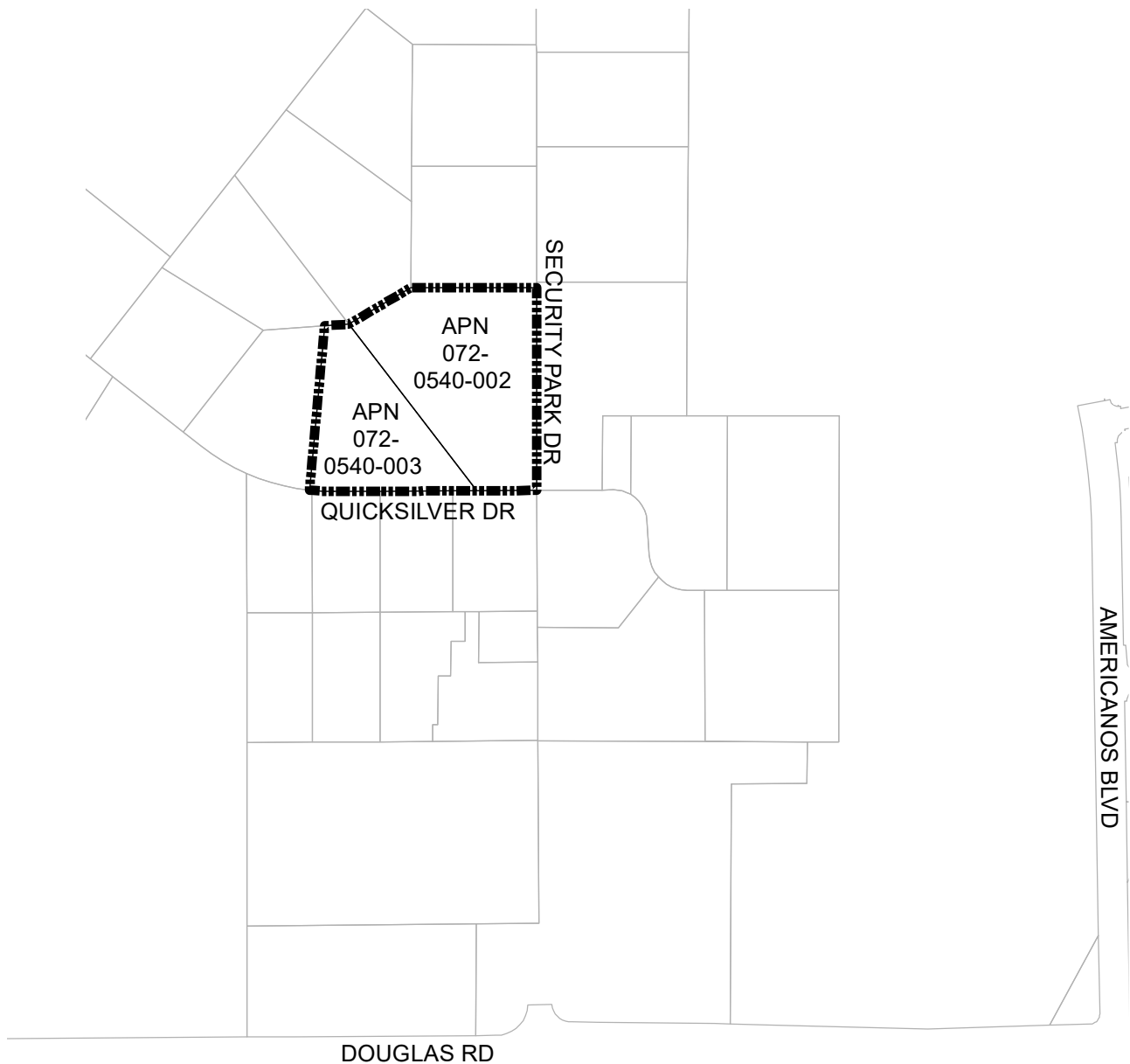
PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 6th day of February 2023 by the following vote:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

CITY OF RANCHO CORDOVA
STORMWATER UTILITY FEE AREA
ANNEXATION 30
RANCHO CORDOVA STORAGE PROJECT



Legend



Annexation Boundary

Parcel Boundary



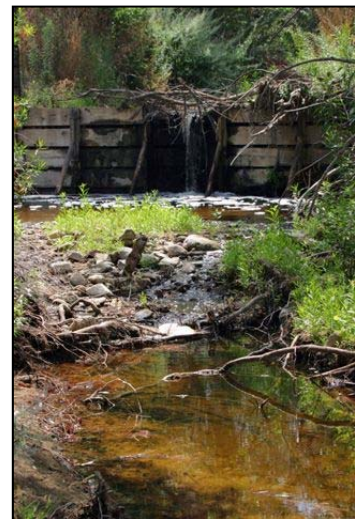
Rate Analysis Report

for the

Stormwater Utility Fee

For the

City of Rancho Cordova



August 7, 2014

Introduction

The City of Rancho Cordova (City) is detaching from the County of Sacramento fee and is creating their own Stormwater Utility Fee, which is being levied per the California Health and Safety Code Section 5471 et seq.

The purpose of this Rate Analysis Report is to:

- Review the Stormwater Utility Fee and improvements to be funded.
- Review the requirements of Article XIID of the State Constitution (Proposition 218) relating to requirements for apportioning the costs associated with the City's stormwater runoff system.
- Analyze and recommend an appropriate rate structure and provide estimated rates based on cost data information provided by the City.

Proposition 218 Requirements

This fee must comply with the provisions of Article XIID of the California Constitution (Proposition 218). Section 6 of Proposition 218 has the following requirements for all "new, extended, imposed or increased" fees and charges:

- 1) "Revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service."
- 2) "Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed."
- 3) "The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel."
- 4) "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with [the assessment section of this code]."
- 5) "No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners."

Background Information

In accordance with the Federal Clean Water Act of 1972, the United States Environmental Protection Agency (EPA) is required to establish regulations setting forth National Pollution Discharge Elimination System (NPDES) permit standards. The enactment of 1987 amendments to the Federal Clean Water Act (Act) of 1972 imposes permit requirements for discharge of storm waters. The Act allows the EPA to delegate its NPDES permitting authority to states with an approved environmental regulatory program. The State of California is one of the delegated states.

The responsibility for implementing various NPDES permits in the State of California has been delegated to the State Water Resources Control Board (SWRCB). The SWRCB administers NPDES authority through its nine Regional Boards. As an NPDES permittee, the City is required to manage stormwater pollution within its jurisdiction.

In order to provide for the safety of the residents of the City and protect property in the City from the damage associated with flooding and to meet the requirements of the NPDES permit, it is necessary to design, construct, operate, maintain, improve and replace storm drainage facilities which collect storm and surface water runoff and convey and treat such runoff in a safe manner to an acceptable point of discharge. It is also necessary to inspect, monitor, and take enforcement action related to illegal dumping, and illicit discharges. In order to properly fund such facilities and activities, the City has determined that it is necessary to impose on all developing properties in Rancho Cordova a user charge for storm drainage service.

Based on the 2030 General Plan and current specific plan areas, Rancho Cordova is expected to develop as shown in Table 1 below. The proposed boundary for the stormwater utility is shown in Appendix A.

Table 1 – Land Use

	Land Use/ Zoning Description	Total Acres	Total Units
Residential:			
LDR	SF (2.1-6.0 DU/AC)	2,635	13,156
	MD (6.1-12 DU/AC)	322	2,524
MDR	MD (6.1-18.0 DU/AC)	1,852	13,231
	MD (14.0-29.9 DU/AC)	60	885
HDR	HD (18.1-40.0 DU/AC)	192	4,372
	HD (30+ DU/AC)	30	825
	Residential Total	5,090	34,993
Non-Residential:			
VC	Village Commercial	202	
LTC	Local Town Center	134	
RTC	Regional Town Center	172	
BP	Business Park	158	
MP	Industrial Park	283	
Education:			
HS/MS	High School/Middle School	356	
MS	Middle School	20	
ES	Elementary School	102	
Open Space & Public:			
CP	Community Park	313	
P/QP	Public/Quasi Public	37	
NP	Neighborhood Park	194	
SWD	Storm Water Detention	186	
WP	Wetland Preserve	745	
DP	Drainage Parkway	270	
PR	Private Recreation	63	
OS	Open Space	168	
OS/P	Open Space/Preserve	279	
LC	Landscape Corridors	123	
GB	Green Belts	54	
ROW	Right-of-way	596	
BR/WP	Reservoir / Wetland Preserve	528	
S	Sewer Lift Station / Utility Substa	14	
	Vacant (unknown dev plan)	595	
	Total Non-residential	5,590	
	Total Residential & Non-Res	10,680	

A more detailed land use table by development area is shown in Appendix D.

This development is expected to require significant stormwater drainage and flood control facilities. Based on the development area and improvements that were required in four (4) recent developments

within the County of Sacramento, Table 2 summarizes the improvements that are expected once development is complete.

Table 2 – Expected Improvements

Infrastructure Type	Quantity	
Inlets	6,400	LF
Manholes	4,460	LF
66" Pipe	3,950	LF
60" Pipe	10,280	LF
54" Pipe	11,140	LF
48" Pipe	10,210	LF
42" Pipe	28,620	LF
36" Pipe	42,420	LF
30" Pipe	51,050	LF
27" Pipe	540	LF
24" Pipe	91,960	LF
21" Pipe	2,230	LF
18" Pipe	100,300	LF
15" Pipe	101,300	LF
12" Pipe	529,890	0
10" Pipe	4,170	0
Creeks and Channels	80	AC
Basins	320	AC

Services Funded

Expenditures from the revenue generated from the Stormwater Utility Fee are intended to comply with the requirements set forth in the NPDES permit. The activities and services funded by this fee include, but are not limited to:

1. Administration and oversight of the requirements set forth in the NPDES permit to City departments, developments, and local agencies.
2. Respond to and investigate incidents of illicit discharges and illegal connections to the storm drain system.
3. Periodically inspect facilities for proper handling of materials, chemicals, pollutants, garbage, waste, and debris and prevent any discharges to the storm drain system.
4. Regularly clean and maintain catch basins, the flowline, and storm drainage facilities.
5. Installation and maintenance of water quality devices required to keep pollutants out of the storm drain system.
6. Discourage illegal dumping or discharge of pollutants into the storm drain system by stenciling all City-owned catch basins with a "No Dumping" message.
7. Augment public education and outreach programs in regards to the proper use and function of the storm drainage system and the receiving waters.

8. Develop programs to promote, publicize, and facilitate public reporting of illicit discharges to the storm drain system.
9. Encourage the proper disposal of household hazardous waste (HHW) to prevent the improper disposal to the storm drain system or to the sewer system.
10. Discourage the improper disposal of litter, garden clippings, leaves, and pet waste into the street or the storm drain system.
11. Capital replacement of storm drainage and flood control improvements at the end of the expected useful life for such improvements.

Rate Structure Analysis

Section 6.b of Article XIID of the State Constitution (Proposition 218) states that:

“The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.”

and

“No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.”

By definition, all properties that shed stormwater into the City’s stormwater drainage system use, or are served by, the City’s stormwater drainage system. The amount of use attributed to each parcel is measurable by the amount of storm runoff contributed by the property, which is directly proportional to the amount of impervious area on a parcel (such as buildings and concrete). The more impervious area on a property, the more storm runoff the property generates, the more demand placed on the storm drain system.

The amount each parcel uses the stormwater drainage system is computed by the following formula:

$$(\text{Parcel Area}) \times (\text{Impervious Percentage}) = \text{Drainage Units}$$

The typical percent impervious (% Impervious) for land uses in the City, have been applied for the purposes of estimating the runoff generated by each property. These are shown in Appendix B.

The more Drainage Units a parcel has, the more storm run-off it generates, and the more it uses and impacts the stormwater drainage system.

It is standard practice to relate other land uses to a developed single family residential (SFR) parcel, instead of working exclusively with drainage units. The median size of a SFR parcel will be approximately 0.16 acre. Therefore, it makes sense to relate all parcels to this median residential property. The runoff from a 0.16-acre SFR parcel is set equal to one Drainage Measurement Unit (DMU) and this base DMU is calculated as follows:

$$(0.16 \text{ acres of area}) \times 50\% = 0.0800 \text{ Impervious Area} = 1 \text{ DMU}$$

Single Family Residential Parcels

As a SFR property increases in size over the median parcel size, the typical percentage of impervious area decreases, as shown in Appendix B. Conversely, as a SFR parcel decreases in size below the median parcel size, the typical percentage of impervious area increases, and such increase is typically proportional to the decrease in size. Therefore, SFR properties are separated into five (5) groups. The median parcel area for each group was used and their DMUs are calculated as follows:

<u>SFR Category</u>	<u>DMU/ Formula</u>
SFR1 – SFR parcels 0.16 acres or less	1.00 DMU
SFR2 – SFR parcels 0.17 - 0.25 acres	1.10 DMUs
SFR3 – SFR parcels 0.26 – 0.33 acres	1.175 DMUs
SFR4 – SFR parcels 0.34 – 0.50 acres	1.25 DMUs
SFR5 – SFR parcels greater than 0.50 acres	$1.25 + \frac{[(\text{acres} - 0.50) \times 5\%]}{0.0800} = \text{DMUs}$

Multi-Family Residential Parcels

Multi-Family Residential (MFR) units (including condominiums) are split into categories by the density, or number of dwelling units per acre (DU/Ac) as follows:

<u>MFR Category</u>	<u>Density</u>	<u>% Impervious</u>
MFR1 - High Density	Greater than 18 DU/Ac	75%
MFR 2 - Med Density	10 – 18 DU/Ac	70%

$$\frac{\text{Acreage} \times \% \text{Impervious}}{0.0800} = \text{DMUs}$$

Condominium unit parcel areas are calculated by dividing the total area of the condominium complex (which includes the common area) by the number of condominium units, and the total imperviousness of the entire complex is attributed to each individual condo parcel in the complex. (This divides the runoff of the entire complex to each of the individual units.) Because these condominium common areas are taken into consideration in this manner, they are exempt from the charge.

Non- Residential Parcels

All non-residential parcel DMUs will be based on the impervious area (runoff coefficient) table shown in Exhibit B, using the following formula:

$$\frac{\text{Acreage} \times \% \text{Impervious}}{0.0800} = \text{DMUs}$$

All parcels draining into Rancho Cordova Stormwater Utility Fee-maintained drainage infrastructure are proposed to be charged the same user fee rate per DMU for stormwater runoff treatment. The Rancho Cordova Stormwater Utility Fee is proposed in perpetuity.

For the purposes of this report, City-maintained drainage infrastructure includes streets, pipes, inlets, outlets, and natural drainage courses. Parcels related to these types of property uses are exempt from the runoff charge, as they are part of the infrastructure being funded. Also exempt from the runoff charge is Caltrans right-of-way, because Caltrans handles its own runoff under a separate NPDES permit.

Drainage units may be adjusted based on appeal from the property owner. See the Appeals Process below.

Table 3, below, provides a preliminary summary of DMUs for the various land uses in Rancho Cordova.

Table 3 – Drainage Measurement Unit Summary Table

Landuse Description	Number of Units	Total Area (acres)	Impervious Area (acres)	DMUs
SINGLE FAMILY RESIDENTIAL (SFR1)	15,107	2,028		15,107.00
SINGLE FAMILY RESIDENTIAL (SFR2)	13,790	2,776		15,169.00
SINGLE FAMILY RESIDENTIAL (SFR3)	14	4		16.45
SINGLE FAMILY RESIDENTIAL (SFR4)				-
SINGLE FAMILY RESIDENTIAL (SFR5)				-
MULTI-FAMILY RESIDENTIAL (MFR1)	6,082	282		2,639.06
COMMERCIAL		666	499	6,240.00
INDUSTRIAL		283	226	2,830.00
SCHOOLS		478	239	2,985.00
PRIVATE RECREATION		63	16	195.31
PARKS/GREENBELTS		561	140	1,752.47
PUBLIC		51	15	190.13
TOTAL	34,993	7,190		47,124

Cost Estimate

Table 4 below shows the estimated costs to maintain infrastructure in the developing areas. Unit costs for maintenance were derived using budget information provided by the County, since the County currently maintains the storm drainage system. The budget information is shown in Appendix C.

Table 4 – Estimated Costs

	Estimated Quantity	Unit	Cost (\$/unit)	Frequency	Total Cost/Year
Maintenance Costs:					
Trunk Lines (larger than 24") - TV Lines	158210	LF	\$ 7.50	25 years	\$ 47,463.00
Drainage Lines 10"-24" Cleaning	829850	LF	\$ 3.00	10 years	\$ 248,955.00
Drainage Lines 10"-24" TV	829850	LF	\$ 7.50	25 years	\$ 248,955.00
Creek and Channel Maintenance and Repair	65070	LF	\$ 0.75	1 year	\$ 49,009.83
Pipe Repairs	998920	LF	\$ 0.45	1 year	\$ 451,380.43
Creeks and Channels Mowing	80	AC	\$6,825	1 year	\$ 546,000.00
Creeks and Channels Herbicides	80	AC	\$680	1 year	\$ 54,400.00
HydroMod Basin Maintenance	320	AC	\$4,830	1 year	\$ 1,545,600.00
Basin De-silt	320	AC	\$1,000	25 years	\$ 12,800.00
Basins Herbicides	320	AC	\$761	1 year	\$ 243,360.00
Replacement Costs:					
Inlets	6400	EA	\$2,000	75 years	\$170,667
Manholes	4460	EA	\$3,500	75 years	\$208,133
66" Pipe	3950	LF	\$550	100 years	\$21,725
60" Pipe	10280	LF	\$475	100 years	\$48,830
54" Pipe	11140	LF	\$400	100 years	\$44,560
48" Pipe	10210	LF	\$325	100 years	\$33,183
42" Pipe	28620	LF	\$275	100 years	\$78,705
36" Pipe	42420	LF	\$225	100 years	\$95,445
30" Pipe	51050	LF	\$175	100 years	\$89,338
27" Pipe	540	LF	\$150	100 years	\$810
24" Pipe	91960	LF	\$125	100 years	\$114,950
21" Pipe	2230	LF	\$115	100 years	\$2,565
18" Pipe	100300	LF	\$105	100 years	\$105,315
15" Pipe	101300	LF	\$95	100 years	\$96,235
12" Pipe	529890	LF	\$85	100 years	\$450,407
10" Pipe	4170	LF	\$75	100 years	\$3,128

Total: \$5,011,917

Annual Fee Administration: \$45,000

Operating (Cash Flow) Reserve (10% of Maintenance Costs): \$344,792

Estimated Total: **\$5,401,709**

Fee Calculations

The estimated annual costs for the proposed storm drain improvements are \$5,401,709 as shown in Table 4 above. Dividing that by the total number of proposed DMU's in Rancho Cordova (47,124), the maximum estimated annual Stormwater Utility Fee rate is **\$114.63 per DMU**.

This would be the proposed maximum fee rate for fiscal year 2014-15. The maximum rate will be increased each subsequent Fiscal Year by the annual change in the Consumer Price Index (CPI), during the preceding year, for All Urban Consumers, for the San Francisco-Oakland-San Jose areas, published by the United States Department of Labor, Bureau of Labor Statistics (or a reasonably equivalent index should the stated index be discontinued, as determined by the Director of Public Works).

The actual rate to be levied each year will be as approved by the City at a public hearing, after they consider an Annual Fee Report outlining the estimated annual costs of the program for the ensuing fiscal year.

Table 5 provides sample fee calculations for various land uses and parcel sizes.

Table 5 – Sample Calculations

Land Use Description	Total Area (acres)	Impervious Area (acres)	DMUs	Sample Fee
SINGLE FAMILY RESIDENTIAL (SFR1)	0.16		1.000	\$ 114.63
SINGLE FAMILY RESIDENTIAL (SFR2)	0.22		1.100	\$ 126.09
SINGLE FAMILY RESIDENTIAL (SFR3)	0.30		1.175	\$ 134.69
SINGLE FAMILY RESIDENTIAL (SFR4)	0.40		1.250	\$ 143.28
SINGLE FAMILY RESIDENTIAL (SFR5)	1.00		1.563	\$ 179.10
MULTI-FAMILY RESIDENTIAL (MFR1)	5.00	3.75	46.875	\$ 5,373.12
COMMERCIAL ¹	1.00	0.75	9.375	\$ 1,074.62
INDUSTRIAL	1.00	0.80	10.000	\$ 1,146.27
SCHOOLS	5.00	2.50	31.250	\$ 3,582.08
PRIVATE RECREATION	1.00	0.25	3.125	\$ 358.21
PARKS/GREENBELTS	2.00	0.20	2.500	\$ 286.57
PUBLIC	2.00	0.60	7.500	\$ 859.70

¹ Average of Downtown and Neighborhood Commercial as shown in Appendix B

The Preliminary Charge Roll, which is a listing of each parcel to be charged a fee and its proposed maximum fee for FY 2014-15, is on file in the office of the City Clerk.

Appeals Process

If a property owner disagrees with the calculation of his or her fee, based on the parcel area and estimated impervious percentage assigned to the property, then the property owner may appeal the calculation as follows:

- Property owner must provide written documentation explaining the reason why the charge should be changed. This documentation must include:
 - The name, phone number, mailing address, and email address, if available, of the property owner.
 - The Assessor's Parcel Number (APN) of the property in question.
- If additional documentation is required or insufficient documentation was submitted, a representative of the Department of Public Works (Staff) will notify the property owner in writing.
- Once Staff has determined that sufficient documentation has been submitted, Staff will perform the initial review. Staff will notify the property owner in writing within four (4) weeks from the time sufficient documentation was submitted as to whether or not the fee amount will be changed.
 - If the determination is to change the fee amount, then the new fee amount will be documented within the City's fee database.

- b. If the determination is that the fee should not be changed, the property owner can appeal Staff's decision to the Director of Public Works. The appeal must be made in writing and returned no later than four (4) weeks from the date of mailing of Staff's initial review decision. The Director of Public Works will notify the property owner in writing within four (4) weeks from the date of receipt of the appeal as to whether or not the fee amount will be changed.

If the owner of any parcel shall have reason to feel that the computation of the DMU for his/her parcel is not correct, that person may file an appeal with the Director of Public Works in the manner prescribed by the Director of Public Works. The Director of Public Works will consider all data provided by the appellant and shall render a decision in writing. The decision of the Director of Public Works will be final with respect to City action on the appeal.

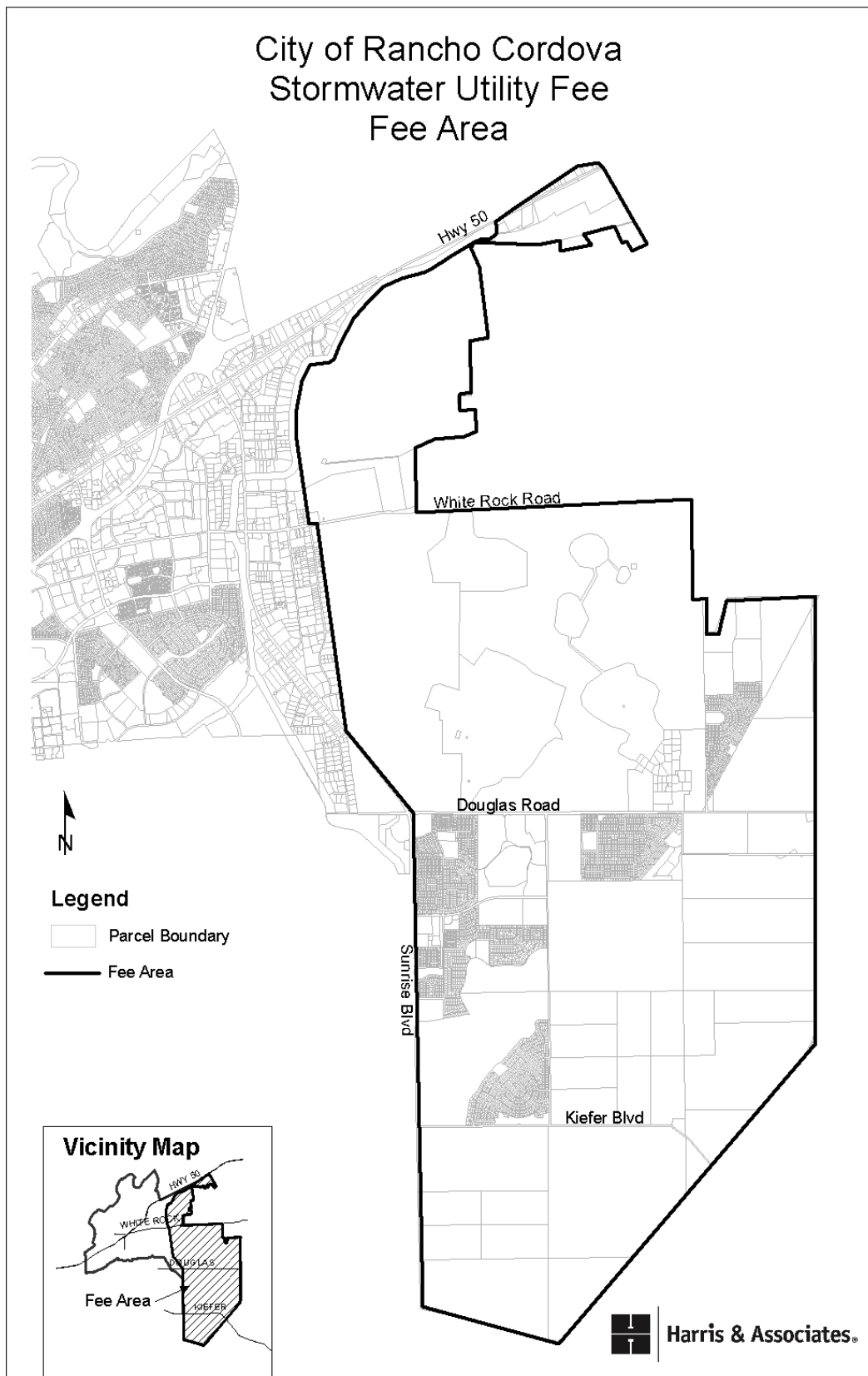
Appeals will be accepted annually up until June 30 for inclusion on the following fiscal year's property tax roll submittal. However, if an appeal is granted by Staff or the Director of Public Works that does not permit inclusion for the following fiscal year's property tax roll submittal, a reimbursement will be provided to the property owner by the City.

Respectfully submitted:

Harris & Associates

Dennis A. Anderson
Senior Project Manager

APPENDIX A



APPENDIX B

Runoff Coefficient

Land Use	Impervious
Single Family Residential less than 0.166 acres	50%
Single Family Residential 0.166 acres to 0.250 acres	40%
Single Family Residential 0.251 acres to 0.330 acres	30%
Single Family Residential 0.331 acres to 0.500 acres	25%
Single Family Residential Over 0.500 acres (excluding the first 0.500 acres)	5%
High-Density Residential (including Apartments and Mobile Home Parks)	75%
Condominiums	70%
Commercial Downtown Areas ¹	80%
Commercial Neighborhood Areas	70%
Industrial	80%
Schools	50%
Parks	25%
Greenbelts	10%

Footnotes:

¹ City of Rancho Cordova Municipal Code Chapter 15.

Sources:

1. Yolo County City/County Drainage Manual, February 2010.
2. Stormwater Quality Design Manual for the Sacramento and South Placer Regions, May 2007.

Appendix C

Cost Information

ITEM 14.1.

ATTACHMENT 3

County of Sacramento/City of Rancho Cordova Current Storm Drain Maintenance Costs

Pipe Repair Costs

Budget Classification		Repair Type	Actual Expenditures for FY 11/12	FY 13/14 Budget
County North	OCUO	Drain Line Upgrade or Repair	\$ 630,912.90	\$ 630,912.90
	OFFO	Fence Repair	\$ 19,343.41	\$ 19,343.41
	OHKO	Inlet Outfall Repair	\$ 455,724.02	\$ 455,724.02
	OMSO	Erosion Control	\$ 26,189.60	\$ 26,189.60
	OY8O	Manhole Repair	\$ 63,362.44	\$ 63,362.44
	RAMP	ADA Compliant Ramp	\$ -	\$ -
	Overhead	36.39%	\$ 435,026.56	\$ 435,026.56
	Total Budget=		\$ 1,630,558.93	\$ 1,630,558.93
County South	OCUO	Drain Line Upgrade or Repair	\$ 105,317.24	\$ 105,317.24
	OFFO	Fence Repair	\$ 35,802.01	\$ 35,802.01
	OHKO	Inlet Outfall Repair	\$ 214,660.90	\$ 214,660.90
	OMSO	Erosion Control	\$ -	\$ -
	OY8O	Manhole Repair	\$ 8,585.40	\$ 8,585.40
	RAMP	ADA Compliant Ramp	\$ -	\$ -
	Overhead	23.51%	\$ 85,667.45	\$ 85,667.45
	Total Budget=		\$ 450,033.00	\$ 450,033.00
Rancho Cordova	OCUO	Drain Line Upgrade or Repair	\$ 222,809.74	\$ 229,850.53
	OFFO	Fence Repair	\$ 26,326.14	\$ 27,158.05
	OHKO	Inlet Outfall Repair	\$ 224,877.26	\$ 231,983.38
	OMSO	Erosion Control	\$ -	\$ -
	OY8O	Manhole Repair	\$ 4,498.84	\$ 4,641.00
	RAMP	ADA Compliant Ramp	\$ -	\$ -
	Overhead	23.51%	\$ 112,504.88	\$ 116,060.03
	Total Budget=		\$ 591,016.86	\$ 609,692.99
Total LF of Pipes				
		County	7,865,755	7,865,755
		Rancho Cordova	1,349,271	1,349,271
Cost/LF of pipe for Repairs				
		County	\$ 0.26	\$ 0.26
		Rancho	\$ 0.44	\$ 0.45

* Costs were increased for 12/13 based on comparing actual expenditures in 11/12 with actual expenditures in 12/13.

County of Sacramento/City of Rancho Cordova
Current Storm Drain Maintenance Costs

Creek and Channel Cleaning

Budget Classification		Repair Type	Actual Expenditures FY 11/12	FY 13/14 Budget
County	OCCO	Inspect Channels	\$ 149,684.06	\$ 149,684.06
	ODSO	Clean, Inspect trach Racks and Box Culverts	\$ 203,337.83	\$ 203,337.83
	OF8O	Sandbag Distribution	\$ 5,184.60	\$ 5,184.60
	OFCO	Drainage Response	\$ 82,451.66	\$ 82,451.66
	OFDO	Concrete Channel Cleaning Bobcat	\$ 552,150.54	\$ 552,150.54
	OHWO	Vegetation Removal County Forces		
	OJZO	Clean and Inspect Outfall Structures	\$ 191,840.84	\$ 191,840.84
	OLCO	Access Road Maintenance	\$ -	\$ -
	OLDO	Mowing		
	OMPO	Expose Pipe End Mechanically	\$ 2,720.90	\$ 2,720.90
	OMRO	Channel Cleaning Mechanical	\$ 49,087.50	\$ 49,087.50
	OORC	Rodent Control	\$ 32,695.06	\$ 32,695.06
	OTVD	Tree Removal	\$ 79,463.44	\$ 79,463.44
	OVDO	Dry Spoil Dumping	\$ 8,137.34	\$ 8,137.34
	OWCO	Weed Control Chemical		
	Overhead	36.39%	\$ 493,691.29	\$ 493,691.29
	Total Budget=		\$ 1,850,445	\$ 1,850,445
County	OCCO	Inspect Channels	\$ 1,797.15	\$ 1,797.15
	ODSO	Clean, Inspect trach Racks and Box Culverts	\$ -	\$ -
	OF8O	Sandbag Distribution	\$ 2,464.80	\$ 2,464.80
	OFCO	Drainage Response	\$ 1,293.11	\$ 1,293.11
	OFDO	Concrete Channel Cleaning Bobcat	\$ 144,294.58	\$ 144,294.58
	OHWO	Vegetation Removal County Forces		
	OJZO	Clean and Inspect Outfall Structures	\$ -	\$ -
	OLCO	Access Road Maintenance	\$ 57,345.54	\$ 57,345.54
	OLDO	Mowing		
	OMPO	Expose Pipe End Mechanically	\$ -	\$ -
	OMRO	Channel Cleaning Mechanical	\$ 32,935.75	\$ 32,935.75
	OORC	Rodent Control	\$ -	\$ -
	OTVD	Tree Removal	\$ 214,736.46	\$ 214,736.46
	OVDO	Dry Spoil Dumping	\$ -	\$ -

ITEM 14.1.

ATTACHMENT 3

Budget Classification		Repair Type	Actual Expenditures FY 11/12	FY 13/14 Budget
	OWCO	Weed Control Chemical		
	Overhead	23.51%	\$ 106,945.71	\$ 106,945.71
		Total Budget=	\$ 561,813	\$ 561,813
Rancho Cordova	OCCO	Inspect Channels	\$ -	\$ -
	ODSO	Clean, Inspect trach Racks and Box Culverts	\$ 413.30	\$ 413.30
	OF8O	Sandbag Distribution	\$ -	\$ -
	OFCO	Drainage Response	\$ -	\$ -
	OFDO	Concrete Channel Cleaning Bobcat	\$ 65,905.39	\$ 65,905.39
	OHWO	Vegetation Removal County Forces		
	OJZO	Clean and Inspect Outfall Structures	\$ -	\$ -
	OLCO	Access Road Maintenance	\$ -	\$ -
	OLD0	Mowing		
	OMPO	Expose Pipe End Mechanically	\$ -	\$ -
	OMRO	Channel Cleaning Mechanical	\$ -	\$ -
	OORC	Rodent Control	\$ -	\$ -
	OTVD	Tree Removal	\$ -	\$ -
	OVDO	Dry Spoil Dumping	\$ -	\$ -
	OWCO	Weed Control Chemical		
	Overhead	23.51%	\$ 15,592.45	\$ 15,592.45
		Total Budget=	\$ 81,911	\$ 81,911
Total LF of Channels				
		Rancho Cordova (unlined)	74,628	74,628
		Rancho Cordova (lined)	37,562	37,562
		Total Rancho Cordova	112,189	112,189
		County (unlined)	1,677,768	1,677,768
		County (lined)	216,153	216,153
		Total County	1,893,920	1,893,920
Cost/LF of Channel for Cleaning:				
		County	\$ 1.27	\$ 1.27
		Rancho	\$ 0.73	\$ 0.75

* Costs were increased for 12/13 based on comparing actual expenditures in 11/12 with actual expenditures in 12/13.

ITEM 14.1.

ATTACHMENT 3

County of Sacramento/City of Rancho Cordova Current Storm Drain Maintenance Costs

Activity	Size/Location	Cost/LF	Frequency	Notes
Pipes/Channels				
Hydro Cleaning	6"-24"	\$ 3.00	10 years	
TV Lines	all	\$ 7.50	25 years	
Creek and Channel Cleaning	Rancho	\$ 0.75	each year	Within SWU Budget
	Sac County	\$ 1.27		
Pump Maintenance	Covered within budget			Per County Staff Assume no pumps in new areas.
Repairs	2 crews year round	SWU funds support this		
Hydromod Basin		cost/ac		
Maintenance		\$ 4,830.00	annul	see detailed estimate
Herbicides		\$ 325.00	2 x's/year	
Additional costs				
Pesticide Control Advisor		\$ 20,000.00	annually	
Engineering admin support with regulatory agencies		10%	of maint costs/year	
Supervisors and managers		5%	of maint costs/year	

Hydromod Basin Maintenance

Basin Maintenance Costs	Cost per Acre
Trash Clean-up and Disposal (4 x's/year)	\$ 1,200
Mowing (2 x's/year)	\$ 200
Inspection 4 x's/year	\$ 1,600
Erosion Repair	\$ 800
Vegetation and Landscape Maintenance	\$ 800
Sub-total	\$ 4,600
Over-head Mark-up (5%)	\$ 230
Total Cost	\$ 4,830

Inspection Includes: Examine gates, fences and access ramp for damage and overgrown vegetation, check basin slopes for erosion, excess vegetation, debris and animal burros, check flow line for excess vegetation and sediment, check for erosion at water line, large/floating debris, and excess vegetation. Check for debris, cracks and erosion at inlets and outlets. Also check access control racks for debris and to ensure they are locked and secured. Check riprap at inlet weir

Appendix D

Detailed Land Use Data

		Arista Del Sol		Arboretum		Douglas 98		Douglas 103		Grantline 208		Montelena		Rio Del Oro		Suncreek		The Ranch (Sunridge)		Sunridge Lot J		Westborough		North Douglas II		Heritage Falls		Anatolia IV		Anatolia		Sunridge				
	Land Use/ Zoning Description	AC	Units	AC	Units	AC	Units	AC	Units	AC	Units	AC 2012	Units 2012	AC	Units	AC 2013	Units 2012		AC 2013	Units 2012	Est.	Units 2013	AC	Units	AC	Units	AC	Units	AC	Units	GIS AC	GIS Units	GIS AC	GIS Units	Total Acres	Total Units
Residential:																																				
LDR	SF (2.1-6.0 DU/AC)	35.3	176	144.8	698			3.7	14	44.7	276	71.4	388	1,518.5	7,593	179.4	899		142.3	694	35.8	179	347.2	1,580	17.70	153.00	72.20	303.00	21.60	203.00					2,635	13,156
	MD (6.1-12 DU/AC)															321.5	2,524																	322	2,524	
MDR	MD (6.1-18.0 DU/AC)	83.8	556	290.0	2,334 ^a	94.2	528	28.2	287	42.8	227	54.4	402	256.0	2,048	43.7	286 ^c		105.4	685	17.5	192	146.8	1,389			92.10	525.00			450.8	2,831	146.4	941	1,852	13,231
	MD (14.0-29.9 DU/AC)			60.4	885																													60	885	
HDR	HD (18.1-40.0 DU/AC)													98.0	1,960	44.2	980		12.2	378 [*]			30.4	922			6.80	132.00							192	4,372
	HD (30+ DU/AC)			29.5	825																													30	825	
	Residential Total	119.1	732	524.7	4,742	94.2	528	31.9	301	87.5	503	125.8	790	1,872.5	11,601	588.8	4,689		259.9	1,757	53.3	371	524.4	3,891	17.7	153	171	960	22	203	450.8	2,831	146.4	941	5,090	34,993
Non-Residential:																																				
VC	Village Commercial			16.9				19.5				16.6		20.0		22.0		13.5					93.3												202	
LTC	Local Town Center			30.4										20.0									83.5												134	
RTC	Regional Town Center			0.9										113.0		58.4																			172	
BP	Business Park	6.6		65.0										86.0																					158	
MP	Industrial Park													283.0																					283	
Education:																																				
HS/MS	High School/Middle School			72.6										78.0		110.9 ^b							94.0 ^b												356	
MS	Middle School													20.0																					20	
ES	Elementary School			21.2						10.6				54.0													5.50			10.8					102	
Open Space & Public:																																				
CP	Community Park	11.4		60.7						7.8				107.0		44.9		29.3					52.3												313	
P/QP	Public/Quasi Public			2.0								3.2		7.5		12.3							10.6								1.1				37	
NP	Neighborhood Park	3.1		3.8		8.2		5.2		3.4		20.8		67.5		17.0		8.6		6.4					0.71		17.20		3.70		21.2		7.0		194	
SWD	Storm Water Detention	4.0								15.0		9.6		39.0		53.5		24.3							4.00		17.40				9.5		9.6		186	
WP	Wetland Preserve	55.8						43.8		81.0		54.5		510.0																					745	
DP	Drainage Parkway													138.0		5.0							104.6				15.30				7.2			270		
PR	Private Recreation													54.0													4.20			4.3					63	
OS	Open Space			144.5										22.0											0.60		0.80								168	
OS/P	Open Space/Preserve													12.0		45.6		174.0					47.7											279		
LC	Landscape Corridors	1.1				2.8								82.0		19.2											2.70		1.30		13.4		0.7		123	
GB	Green Belts							2.6						51.0																					54	
ROW	Right-of-way	9.5		104.3				8.5		5.3		22.4		192.0		82.6		20.5		14.5		127.1				6.90		2.20							596	
BR/WP	Reservoir / Wetland Preserve			302.8												205.1									19.80										528	
S	Sewer Lift Station / Utility Substation			1.0																											6.6		6.4		14	
	Vacant (unknown dev plan)																													567.4		27.3			595	
	Total Non-residential	91.5		826.1		11.0		79.6		123.1		127.1		1,956.0		676.5		270.2		20.9		613.1		25.1	0.0	70.0	0.0	7.2	0.0	634.3		58.2			5,590	
	Total Residential & Non-Res	210.6	732.0	1,350.8	4,742.0	105.2	528.0	111.5	301.0	210.6	503.0	252.9	790.0	3,828.5	11,601.0	1,265.3	4,689.0		530.1	1,757.0	74.1	371.0	1,137.5	3,891.0	42.8	153.0	241.1	960.0	28.8	203.0	1,085.1	2,831.0	204.6	941.0	10,680	

Notes: All data is from recent plans received in Nov 2013 unless specified otherwise.
^a Arboretum has 2 MD residential classifications. The first line is for 6.1-13.9 DU/AC (instead of 6.1-18)
^b Acreage for all schools
^c Suncreek has 2 MD residential classifications. The second line is for 12.1-18 DU/AC (instead of 6.1-18)

Includes April 2012
Amendment

AC estimated

Stormwater Utility Fee

Sample of the Stormwater Utility Fees for Fiscal Year **2022-2023**:

Table 1

Land Use Description	Total Area (acres)	Sample Fee
Single Family Residential (SFR1)	0.16	\$143.40
Single Family Residential (SFR2)	0.22	\$157.73
Single Family Residential (SFR3)	0.30	\$168.51
Single Family Residential (SFR4)	0.40	\$179.24
Single Family Residential (SFR5)	1.00	\$179.24
Multi-Family Residential (MFR1)	5.00	\$1,254.93
Commercial	1.00	\$1,344.58
Industrial	1.00	\$1,434.24
Schools	5.00	\$896.39
Private Recreation	1.00	\$448.17
Parks/Greenbelts	2.00	\$179.24
Public Property (with structures)	2.00	\$537.81

MEMORANDUM



ITEM 15.1.

DATE: February 6, 2023
TO: Honorable Mayor and Council Members
FROM: Nicholas Sosa, Associate Planner
SUBJECT: **LOGISTICENTER AT RANCHO CORDOVA MAJOR DESIGN REVIEW
- PROJECT NO. PLND-1021-0015**

RECOMMENDATION

Continue to the February 21, 2023 City Council Meeting

RESULT OF RECOMMENDED ACTION

This item will be continued to the February 21, 2023 City Council Meeting in order for Staff and the City's legal team to address additional legal letters received for the proposed project.

ATTACHMENT(S)

1. Letter from Law Offices of Gloria Smith 1.17.2023
2. Letter from Law Offices of Gloria Smith 1.27.2023
3. Letter from Miller Starr Regalia 1.25.2023
4. Letter from Miller Starr Regalia 1.25.2023

The Law Offices of Gloria D. Smith

48 Rosemont Place
San Francisco, CA 94103
(415) 308-9124
gloria@gsmithlaw.com

January 17, 2023

By E-mail and Hand Delivery

Mayor Linda Budge
Vice Mayor David M. Sander, Ph.D.
Councilmember Donald Terry
Councilmember Siri Pulipati
Councilmember Garrett Gatewood

Stacy Leitner, City Clerk
sleitner@cityofranchocordova.org
City of Rancho Cordova
Rancho Cordova City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670

RE: LogistiCenter at Rancho Cordova (PLND-1021-0015) Request for Review under the California Environmental Quality Act ("CEQA")

Dear Mayor Budge, Honorable Council Members:

These comments were prepared on behalf of Stone Creek Residents for Smart Growth, a local organization comprised of Rancho Cordova residents concerned about the unchecked proliferation of warehouses in their community. The comments were prepared with the assistance of Dr. Petra Pless, a court-recognized expert on California air quality. Stone Creek Residents continue to analyze the facts and law applicable to this matter and may supplement these comments as needed as the case develops.

I. Introduction

We have read Dermody Properties' (developer) at times hyperbolic letters to the City Council claiming the Council has slow-walked its project approvals. The developer is threatening to sue Rancho Cordova should it not conform to Dermody's ambitious timeline.

However, in reality, the developer was free to file its application materials earlier if it felt an urgent need to have the project approved by a date-certain. Residents do not have the same information or resources as Dermody and have struggled over the last year to understand the myriad impacts associated with siting yet another warehouse distribution center in their community. Nonetheless, Stone Creek Residents for Smart Growth are catching up and are prepared to fully participate in the Council's public approval process going forward.

As detailed below, Stone Creek Residents are particularly concerned about the above-referenced warehouse project proposed for Bear Hollow Drive and urge the City to conduct a proper analysis under the California Environmental Quality Act (CEQA) to investigate and disclose all potentially significant impacts resulting from the proposed project.

II. Proposed Project Description

The developer is requesting major design review to construct a 155,077 square-foot, 40-foot-tall industrial building with parking, lighting and loading docks (the project). What the project description does not detail is the size of the trucks traveling to and from the site and an estimate of the number of daily and annual trips, the timing of those trips, and a description of the adverse impacts on air quality due to emissions of air pollutants and on climate change due to emissions of greenhouse gases associated with those trips.

The developer contends the City's hands are tied to review the project under CEQA and cannot investigate, disclose or mitigate the project's negative impacts beyond aesthetic considerations under the City's major design review program under City Code § 23.141. We disagree. While Dermody does hold certain contract rights allowing it to realize its reasonable development expectations, those rights are not unfettered, and cannot trump the City Council's responsibility to protect human health and the environment.

The developer appears to be raising three overarching arguments to support its claim that the City has no role in protecting residents and the environment from the project's adverse effects under CEQA:

1. The project is consistent with the Zinfandel Special Planning Area (ZSPA), for which Sacramento County adopted an environmental impact report (EIR) in 1998, and a supplemental EIR in 2000;¹ therefore no additional environmental review under CEQA is necessary or permitted according to the developer;²
2. Sacramento County entered into a development agreement with the developer in 2003. That agreement binds the City's ability to take steps to mitigate the proposed warehouse project's impacts some twenty years hence;³ and,

¹ Certified in 2003.

² Letter to Cyrus Abher, Rancho Cordova City Manager, from Arthur Coon of Miller Star Regalia (Oct. 3, 2022).

³ Letter to the Rancho Cordova City Council from Arthur Coon of Miller Star Regalia (Nov. 29; Dec. 14, 2022).

3. The City Council cannot review the project under CEQA because the City lacks discretionary power beyond certain aesthetic considerations pursuant to its major design review process.⁴

As shown below, these three arguments cannot stand individually nor in combination, and do not restrict Rancho Cordova from taking steps to protect nearby residents and the environment while ensuring the developer realizes its reasonable investment expectations.

a. The Project Does Not Comply with CEQA Because the Information in the 25-Year-Old ZSPA EIR is Woefully Stale

The developer is attempting to bypass CEQA review on grounds the project is exempt. Specifically, it points to CEQA Guideline § 15183.⁵ Although this particular section falls within the enumerated exemptions to the Act, § 15183 is not a true exemption. Instead, it allows a project to avoid environmental review if the project is “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified . . . except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁶

In this way, the section is not an exemption but rather a process to streamline CEQA review by avoiding the preparation of repetitive documents. Environmental review is still required for various types of impacts, including those “peculiar to the project or parcel on which the project would be located;” and those impacts which **“were not analyzed as significant effects in a prior EIR on the zoning action,** general plan or community plan with which the project is consistent;” that “are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for ... the zoning action,” or “[a]re previously identified significant effects which, as a **result of substantial new information which was not known at the time the EIR was certified,** are **determined to have a more severe adverse impact than discussed in the prior EIR.**”⁷

Under subsection (f), a project’s environmental effects are not peculiar to a project if “uniformly applied development policies or standards have been previously adopted” which serve to mitigate environmental impacts, **“unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.”** There is substantial evidence showing the project will have significant impacts on the environment which were not addressed in the ZSPA. A CEQA exemption under §15183 does not apply here, and the City must prepare appropriate CEQA documents to incorporate all substantial new information, regulations and changed circumstances from 2000 to the present.

⁴ Letter to Cyrus Abher from Arthur Coon (Oct. 3, 2022).

⁵ CEQA Guidelines § 15183(a).

⁶ Id. (emphasis added).

⁷ CEQA Guidelines § 15183(b).

The requirement to keep information fresh is consistent throughout CEQA. In addition to Guideline § 15183, the statute and Guidelines make clear agencies must update their EIRs whenever “new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”⁸ There is no question Rancho Cordova and this particular community have changed dramatically in the last 22 years since the supplemental EIR was adopted. Likewise, environmental laws, regulations, and standards have been updated and made more stringent. For example, California began regulating greenhouse gas emissions with Assembly Bill 32 (AB 32) in 2006. AB 32 required the California Air Resources Board (CARB) to establish in 2008 a statewide greenhouse gas emissions cap for 2020.⁹

In 2007, California expressly recognized the need to analyze greenhouse gas emissions as a part of the CEQA review process with Senate Bill 97 (SB 97). SB 97 required the Office of Planning and Research to develop, and the California Natural Resources Agency (Agency) to adopt, amendments to the CEQA Guidelines addressing the analysis and mitigation of greenhouse gas emissions. Those amendments became effective on March 18, 2010. In late 2018, the Agency finalized amendments to the CEQA Guidelines, including changes to CEQA Guidelines section 15064.4, which addresses the analysis of greenhouse gas emissions. The amendments became effective on December 28, 2018.

In addition, CARB and the Sacramento Metropolitan Air Quality Management District have since adopted numerous legal standards and regulations applicable to stationary and mobile sources. For example, in 2002, CARB adopted revisions to the state ambient air quality standard for particulate matter equal to or smaller than 10 micrometers (PM10) and established a new annual ambient air quality standard for particulate matter equal or smaller than 2.5 micrometer (PM2.5). Subsequently, CARB adopted revisions to the ambient air quality standards for ozone and nitrogen dioxide, which went into effect on May 17, 2006 and March 20, 2008, respectively, along with ground-level ozone and nitrogen.¹⁰ None of these standards were (or could have been) analyzed in the City’s prior EIRs.

Furthermore, Sacramento County prepared the 1998 ZSPA because Rancho Cordova had not yet incorporated as a city. As such, the 1998 EIR did not analyze all of the potentially significant impacts associated with building out a new municipality and balancing all of the various land uses. Since 2003, the City has carried out haphazard plans to site an elementary school and hundreds of homes in close proximity to new warehouse distribution facilities across its sphere of influence. The size, number and nature of these

⁸ CEQA at § 21166; Guidelines § 15162(3).

⁹ <https://ww2.arb.ca.gov/resources/fact-sheets/ab-32-global-warming-solutions-act-2006>.

¹⁰ See <https://ww2.arb.ca.gov/resources/california-ambient-air-quality-standards>.

industrial facilities were not known in 1998 because ubiquitous online shopping driving the explosion of these large warehouses could not have been known in 1998 or 2000.¹¹

The City Council must make a determination on the record that addresses the environmental impacts “peculiar to the project.” According to air quality expert Dr. Petra Pless, there are numerous impacts that are specific to this project that were not addressed or mitigated by any of the City’s policies or standards in 1998 or 2000. For example, greenhouse gas emissions from the project’s truck traffic may exceed the CEQA significance threshold established by SMAQMD of 10,000 metric tons per year.

Similarly, the incremental increase in cancer risk due to toxic diesel particulate matter emissions in truck combustion exhaust, which were not assessed in the prior EIR, may exceed SMAQMD’s CEQA significance thresholds for residents and school children of 10 in one million. Nor does it appear that, in the alternative, the City found that the project’s impact “has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards.”¹² As shown above, the 1998 EIR and 2000 supplemental EIR are entirely out of date and omit the residential buildout adjacent to the project site, and changes in air quality and GHG emission regulations, among other things.

Finally, the City Council must explain whether the Project meets the requirements of § 15183(j) which provides: “This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR.” The record does not show that the Council has analyzed new impacts specific to this project that were not included in the ZSPA EIR. Instead, the Council has limited its discussion to project aesthetics. However, with an intensive industrial use such as a warehouse distribution center, the City has yet to address the issue of the substantial increase in truck traffic due to the project and associated combustion exhaust emissions, which include toxic diesel particulate matter, carbon monoxide, ozone precursors and other air pollutants and the resulting impacts on local (and regional) air quality. These project emissions would occur in close proximity to Navigator Elementary School and residences, exacerbated by the cumulative effects of numerous other warehouse projects in the vicinity and region.

Given the foregoing, even if the ZSPA had generally discussed the effects of industrial zoning, its outdated analyses which did not anticipate the explosion of warehousing due to online commerce, does not exempt this project from CEQA. In light of its woefully stale EIR, the City Council must conduct CEQA review for the project.

¹¹ The 2000 SEIR did analyze significant and unavoidable on: (a) air quality due to vehicular ROG and NOx emissions; and, (b) traffic and circulation due to additional 75,630 daily vehicle trips.

¹² Id. at § 15183(c).

b. Development Agreements Are Subject to CEQA Review

There is no dispute that development agreements are projects under CEQA and the developer does not dispute this fact.¹³ The existence of Dermody's development agreement does not in any way limit the City's obligations under CEQA; rather it is an underlying fact in this case.

c. The City May Not Rely on its Own Major Design Review Ordinance to Avoid Investigating the Proposed Warehouse's Potentially Significant Environmental Impacts under CEQA

Dermody's counsel has not been particularly clear on its position on the City Council's CEQA obligations. On the one hand it opined that the project "qualifies for a streamlining exemption under CEQA Guidelines Section 15183."¹⁴ But on the other hand, and in the same letter, it urged the City Council to scotch CEQA Guidelines Section 15183 altogether:

"Here, the City's Major Design Review process expressly limits the City's discretion to deny or condition approval of the Design Review Project based solely on the effects of its design components, not other effects of the previously authorized uses and density and intensity of those uses at the site. In other words, the City is not at liberty to use its limited design review authority to revisit environmental issues previously analyzed and laid to rest by the prior certified ZSPA EIR."¹⁵

Dermody's first position is the closest to being accurate; however, as shown above in section II(a), the City is not shielded from conducting CEQA review under Guidelines Section 15183. This is because there is substantial evidence of potentially significant impacts that were not analyzed as significant effects in the 1998 SZPA EIR and 2000 supplemental EIR.

The caselaw Dermody cited for the proposition that municipalities that have adopted design review ordinances are shielded from CEQA review are inapposite to the facts and law here and do not apply here.¹⁶ This is because the caselaw cited by the developer upholding design review ordinances contained numerous factual and legal predicates that do not exist in this case.

In the *Friends of Davis* and *McCorkle* cases, both cities were extremely proactive in keeping their general plans and other zoning documents up to date and responsive to the changing conditions in each town. For example, the City of St. Helena in the *McCorkle* case had just updated its housing element in 2015 and the application at issue in the case was

¹³ See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

¹⁴ Letter to Cyrus Abhar from Arthur Coon (Oct. 03, 2022).

¹⁵ *Id.*

¹⁶ To be clear, Stone Creek Residents do not dispute that cities' design review ordinances allow municipalities to place aesthetic conditions on projects to ensure consistency with their zoning plans.

filed in 2016.¹⁷ The city could show the planning documents accurately reflected current conditions and regulations. In *Friends of Davis*, the record showed that the city had adopted and revised the relevant land use planning documents in 1987, 1993, 1994, 1995 and 1996.¹⁸ The application at issue in the case was filed in 1997; therefore, the City's decisions were grounded in recently adopted analyses.¹⁹ These scenarios are in stark contrast to what has transpired here. The relevant planning documents are two decades old and no longer reflect changes in environmental regulations and are not responsive to the myriad changes that have occurred in the years since Rancho Cordova incorporated as a city and began growing.

Next, in both *Friends of Davis* and *McCorkle*, the plaintiffs had raised concerns that were within the purview of and could be competently addressed by the respective design review teams under the design review ordinances. In *Friends of Davis*, residents were concerned about who could own a retail book shop; in *McCorkle*, plaintiffs complained about an eight-unit residential development. These concerns could be dealt with by the design review teams. The courts sided with the cities because the types of impacts the residents were raising were not the types of environmental impacts that CEQA could address (e.g., who can own a bookstore, whether storm drains are adequate and whether firetruck turnarounds are large enough). In other words, CEQA review would have not been duplicative of the design review teams' work; rather, CEQA simply had no mechanism for addressing such concerns.²⁰

The facts here are starkly opposite. To date, residents have not focused on the aesthetic concerns of the warehouse proposal. Instead, the impacts identified in this letter and those raised with the City in 2022 are far more serious and simply beyond the expertise of the design review ordinance's purview. A CEQA document analyzing the environmental impacts not included in the 1998 EIR is the only mechanism for understanding this projects' construction, operational and cumulative environmental impacts. Dermody inadvertently agreed in its October letter when it asserted that the City may not "revisit environmental issues previously analyzed and laid to rest by the prior certified ZSPA EIR." Stone Creek Residents agree that the City need only analyze all of the new circumstances and environmental laws and regulations that were not included in the 1998 or 2000 EIRs, because the record is clear that the 1998 policies and standards cannot mitigate the potentially significant effects this project would cause.

¹⁷ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 86.

¹⁸ *Friends of Davis v. City of Davis*, (2000) 83 Cal.App.4th 1004, 1008-10.

¹⁹ *Id.* at p. 1011.

²⁰ "While local laws do not preempt CEQA, aesthetic issues like the one raised here are ordinarily the province of local design review, not CEQA." "Where a project must undergo design review under local law, that process itself can be found to mitigate purely aesthetic impacts to insignificance, even if some people are dissatisfied with the outcome. A contrary holding that mandated redundant analysis would only produce needless delay and expense." *McCorkle* at p. 94.

III. Conclusion

The City cannot rely on its design review ordinance to avoid investigating the potentially significant impacts this project would have on the environment, nor can the City assert a CEQA exemption under Guidelines § 15183. Instead, the City must prepare a thorough CEQA analysis to update the wholly inadequate planning documents under which the City has been operating for more than 20 years. Thank you for considering these comments and do not hesitate to contact me with any questions.

A handwritten signature in black ink, appearing to read "Gloria D. Smith". The signature is fluid and cursive, with the first name "Gloria" being more prominent than the last name "Smith".

By: Gloria D. Smith

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January 27, 2023

By E-mail
CityClerk@cityofranchocordova.org

Mayor Linda Budge
Vice Mayor David M. Sander, Ph.D.
Councilmember Donald Terry
Councilmember Siri Pulipati
Councilmember Garrett Gatewood

Rancho Cordova City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670

RE: LogistiCenter at Rancho Cordova (PLND-1021-0015), Second Request for Review under the California Environmental Quality Act ("CEQA") and Land Use Compliance

Dear Mayor Budge, Honorable Council Members:

This second comment letter was prepared on behalf of Stone Creek Residents for Smart Growth. As was apparent at the January 17, 2023 City Council hearing, Stone Creek Residents are concerned about the unchecked proliferation of warehouses in their community. This letter was prepared with the assistance of Dr. Petra Pless, a court-recognized expert in California air quality and other environmental matters. Stone Creek Residents continue to analyze the facts and law applicable to this case and may supplement these comments as needed as the case continues.

This letter concerns Dermody's claim that a development agreement for the Villages of Zinfandel Special Plan Area ("ZSPA") extends through June 2023; and as such, the developer has an unencumbered right to construct the project which is located within the ZSPA. However, as shown below, Stone Creek Residents have not been able to verify Dermody's claims on the validity of the development agreement. In addition, Dr. Pless has determined the project as proposed would cause potentially significant unmitigated impacts that the City must analyze and disclose to the public prior to project approval.

I. The 2003 Development Agreement Dermody Relies Upon Has Long Expired and Is No Longer in Effect

According to Dermody, the City's ability to exercise discretion over the warehouse project is governed and constrained by vested rights under a development agreement that relates to the entire ZSPA entered into on May 28, 2003 by Elliott Homes, Inc., and the County of Sacramento. Dermody claims this development agreement is valid from the effective date of June 28, 2003 for a period of 20 years, *i.e.*, until June 27, 2023.¹ Dermody goes to great lengths in a November 29, 2022 letter to the City describing the City's duties and obligations under the agreement. In that letter, Dermody's counsel correctly acknowledged that the agreement is subject to Gov. Code Section 65865.3, which governs the transfer of development agreements between government agencies in the event of incorporation or annexation.² Here is Gov. Code Section 65865.3(a):

Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation **shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier.** The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation.

Consistent with this language, after transfer to the City, the 2003 development agreement was limited by law to a maximum of eight years after the effective date of the City's incorporation on July 1, 2003, unless the City entered into a new agreement with the applicant agreeing to extend it to 15 years. This did not happen for the portion of the site where the project would be located. Either way, both the 8-year and the 15-year duration provided by law for transfer of a development agreement from a county to a newly incorporated city are long past. Therefore, the 2003 development agreement has long expired and is no longer valid.

Furthermore, under subsection (c), "this section [Section 65865.3] only applies to development agreements which meet **all** of the following requirements:

¹ Letter to City of Rancho Cordova from Arthur Coon of Miller Star Regalia, at p. 4 (Nov. 29, 2022).

² Id. at footnote 2 ("The City formally incorporated on July 1, 2003. However, the time limits set forth in Government Code section 65865.3 on the effectiveness of development agreements (8 to 15 years) from the date of incorporation of affected land into a new city do not apply because the election on incorporation of the City in November 2002 occurred before the parties entered into the Development Agreement in June 2003. (See Gov. Code, § 65865.3 (c)(2).")

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant **prior to the date of the election on the question of incorporation** or annexation, or, in the case of an annexation without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.”³

Stone Creek residents are operating with incomplete information because they do not have access to all of the original documents that the parties to the agreement have and were required to maintain. These files would verify the chain of events that unfolded between Sacramento County and Elliott Homes. Likewise, it would have been helpful had Dermody’s counsel fully addressed this critical threshold issue beyond a cursory statement in a letter’s footnote. Nevertheless, a plain reading of Section 65865.3(c)(2) makes clear that the development agreement was null and void from the date of the election for incorporation of the City. Here is the chronology as Stone Creek understands it and Dermody has confirmed:

1. “The date of the election on the question of incorporation” for Rancho Cordova was **November 5, 2002**.
2. The original 2003 development agreement for the ZSPA was signed by both Sacramento County and Elliott Homes on **May 28, 2003** for a 20-year term.⁴ On the same day, the County adopted the corresponding ordinance, specifying that the development agreement would take effect 30 days thereafter.⁵
3. Thereafter, on July 1, 2003, the City of Rancho Cordova officially incorporated, placing the ZSPA within City limits.⁶

³ Cal. Gov. Code § 65865.3.

⁴ The Villages of Zinfandel Development Agreement, entered into as of May 28, 2003, by and between Elliott Homes, Inc. and the County of Sacramento.

⁵ County of Sacramento, Ordinance No. SZC-2003-0011, An Ordinance Adopting a Development Agreement between the County of Sacramento and Elliott Homes, Inc. Relating to a Development Known as “Villages of Zinfandel,” May 28, 2003.

⁶ Rancho Cordova, About Our City; available at: <https://www.cityofranchocordova.org/departments/about-our-city>.

The operative date, which Dermody agrees with, is “the date of the election on the question of incorporation.” This date, November 2, 2002, occurred *before* the County and Elliott Homes entered into the development agreement and the City adopted the corresponding ordinance on May 28, 2003, meaning the agreement does not satisfy at least one of the statute’s three requirements for a valid transfer from Sacramento County to the newly incorporated City of Rancho Cordova. Again, Stone Creek Residents do not have the necessary documents to evaluate compliance with the other two statutory requirements, but Dermody has failed at least one of the mandatory criteria.

The California legislature’s mandate to limit transferred development agreements to eight years makes for good public policy. Newly formed cities should be free to make their own land use decisions and not be encumbered for decades by another agency’s choices on land over which that agency no longer has jurisdiction or management responsibilities. In this case, it appears Sacramento County rushed to saddle newly-incorporated Rancho Cordova with a development agreement for which the City had no input. Dermody’s November, 2022 letter underscored the County’s and Elliott Home’s attempt to hamstring Rancho Cordova for two decades: “The Development Agreement relates to the entire approximately 671.39-acre ZSPA and has a term of twenty (20) years from its effective date of June 28, 2003. Its purpose is to facilitate the phased development of the comprehensively planned ZSPA, including a complementary mix of residential, light industrial, business professional (including industrial office parks), and commercial uses.”⁷ The whole point of the development agreement between the County and Elliott Homes was to constrain, for a generation, the ability of the newly-formed City to propose its own land use priorities.

In any case, the 2003 development agreement was not legally transferred to the City; but even if the transfer had been legal, it has long expired. Consequently, Dermody’s warehouse project requires a discretionary conditional use permit and must adhere to the legal requirements that apply to all other land use projects.⁸

II. Because the Development Agreement is No Longer in Effect, the Project Must Comply with California Land Use Laws

The proposed warehouse project must proceed under an application for a conditional use permit. The foregoing analysis, Stone Creek Residents’ letter of January 17, 2023, and Dr. Pless’s additional technical analyses below, show that the project is not protected by a development agreement; *and*, it could cause significant environmental impacts the analyses of which is not within the design review team’s responsibilities. Likewise, it is not the design review team’s responsibility to evaluate the project’s consistency with California land use planning requirements.

⁷ November 2022 letter to City of Rancho Cordova from Arthur Coon at p. 4.

⁸ Stone Creek Residents’ January 17, 2023 letter sets out why the warehouse project is not eligible for a CEQA exemption. Those arguments are herein incorporated by reference.

Accordingly, the developer is required to submit an application for a conditional use permit along with a full CEQA checklist evaluation under CEQA Guidelines Appendix G. But any CUP preliminary review would quickly be hampered by the City's legally deficient planning documents. Before the project could proceed with approval, the City would need to update its general plan and ZSPA.

a. The City's General Plan Does Not Adequately Address Current State Laws and Standards

Since 1971, municipalities have been required to have legally sufficient general plans with all of the mandatory elements reflecting current state laws, regulations and standards.⁹ A general plan must be integrated and internally consistent among its elements and within each element.¹⁰ If a general plan is inconsistent, a court will find it legally inadequate, and any required findings of consistency for land use approvals must be overturned.¹¹

Relevant to this case is the well-settled principle that a municipality may only approve a conditional use permit when its general plan is "in compliance with governing [state] statutes."¹² Put differently, a city may not grant a conditional use permit unless the use is consistent with a *lawful* general plan.¹³ If the general plan fails to provide required criteria relevant to the use sought by the permit, there is no valid measure by which the municipality can evaluate a permit application.¹⁴

Beneath the general plan are zoning ordinances that regulate the allowed uses on particular parcels such as special use areas, such as the ZSPA, or specific plans.¹⁵ These documents must be consistent with a legally defensible general plan.¹⁶ This means the City of Rancho Cordova must make its land use decisions under a defensible general plan with elements that reflect current laws, policies, and regulations for air quality, greenhouse gas emissions, traffic and circulation, and noise, among other elements.

The City's general plan was adopted in 2006.¹⁷ While a few elements have been updated since, many are woefully out of date. Specifically, the General Plan's air quality element has not been updated since 2006, and, therefore, does not address compliance with a number of new and/or lower national and state ambient air quality standards

⁹ Curtin's Land Use and Planning Law, 13th Ed. (2010) at p. 22.

¹⁰ Gov. Code § 65300.5.

¹¹ *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1185; *See also* Curtin's Land Use and Planning Law at p. 24.

¹² *Neighborhood Action Group* at 1185.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800.

¹⁶ Curtin, at p. 25.

¹⁷ City of Rancho Cordova, General Plan; available at:

<https://www.cityofranhocordova.org/departments/community-development/planning/planning-division-document-library>.

(“NAAQS” and CAAQS”) that have since been promulgated. These include the 2007 1-hour and annual CAAQS for nitrogen dioxide (“NO₂”), the 2010 1-hour NAAQS for NO₂, the 2012 annual and 24-hour NAAQS for particulate matter equal to or smaller than 2.5 micrometers (“PM_{2.5}”), and the 2015 8-hour NAAQS for ozone.^{18,19} In addition, the attainment status of the Sacramento Valley Air Basin and Sacramento County laid out in the 2006 General Plan air quality element does not reflect these new or lower ambient air quality standards nor does it reflect the current attainment status with prior NAAQS and CAAQS.

Similarly, the City’s General Plan does not address climate change and greenhouse gas emissions. By enacting Senate Bill 97 (“SB 97”) in 2007, California’s lawmakers expressly recognized the need to analyze greenhouse gas emissions as a part of the CEQA process. SB 97 required the state’s Office of Planning and Research (“OPR”) to develop, and the California Natural Resources Agency to adopt, amendments to the CEQA Guidelines addressing the analysis and mitigation of greenhouse gas emissions. Those amendments became effective on March 18, 2010. In late 2018, the Agency finalized amendments to the CEQA Guidelines, including changes to CEQA Guidelines section 15064.4, which addresses the analysis of greenhouse gas emissions.

Finally, the state’s GHG and climate amendments became effective on December 28, 2018.²⁰ The 2017 Climate Change Scoping Plan published by the California Air Resources Board (“CARB”) describes California’s strategy for achieving the 2030 greenhouse gas emissions reduction target established by Senate Bill 32. The Scoping Plan also recognized the critical and complementary role of local governments in achieving the State’s climate goals.²¹ OPR’s General Plan Guidelines, Chapter 8, on climate change provide specific guidance for cities and counties on how a general plan or climate action plan must be consistent with CEQA Guidelines section 15183.5(b), entitled Plans for the Reduction of Greenhouse Gas Emissions.²² (the City, late to the party, is currently in the process of developing its climate action plan.²³)

¹⁸ California Air Resources Board, History of California’s Ambient Air Quality Standards; available at: <https://ww2.arb.ca.gov/resources/documents/history-californias-ambient-air-quality-standards>; and.

¹⁹ U.S. Environmental Protection Agency, Timeline of Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS); <https://www.epa.gov/no2-pollution/timeline-nitrogen-dioxide-no2-national-ambient-air-quality-standards-naaqs>; Timeline of Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS); <https://www.epa.gov/pm-pollution/timeline-particulate-matter-pm-national-ambient-air-quality-standards-naaqs>; and Timeline of Ozone National Ambient Air Quality Standards (NAAQS); available at: <https://www.epa.gov/ground-level-ozone-pollution/timeline-ozone-national-ambient-air-quality-standards-naaqs>.

²⁰ OPR, CEQA & Climate Change; available at: <https://opr.ca.gov/ceqa/ceqa-climate-change.html>.

²¹ CARB, California’s 2017 Climate Change Scoping Plan, The Strategy for Achieving California’s 2030 Greenhouse Gas Target, November 2017, at 97; available at: https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf.

²² General Plan Guidelines and Technical Advisories, Chapter 8, Climate Change; available at: <https://opr.ca.gov/planning/general-plan/guidelines.html>.

²³ City of Rancho Cordova, Climate Action Plan; available at: <https://www.cityofranhocordova.org/residents/community-topics/climate-action-plan>.

OPR's Guidelines can also be used to update older plans so they comply with the criteria in Section 15183.5(b).²⁴

To comply with state law, the City is required to update the air quality and circulation elements in its general plan and adopt a climate action plan. The City has not done so, and therefore, cannot evaluate the proposed warehouse until these deficiencies are corrected. This is because there is substantial evidence the proposed warehouse project would have adverse impacts on air quality, and would undermine the state's climate goals.

For any project-specific CEQA documents the City prepares, it must analyze and disclose inconsistencies between the general plan, specific plans, and regional plans. This is because deficiencies in the general plan will affect the legal adequacy of the CEQA document.²⁵ An agency cannot review a project under CEQA if it lacks a legally sufficient and complete general plan and local zoning ordinances.²⁶ Finally, the process of updating a general plan's elements also requires CEQA review.²⁷

As shown below, the proposed project would result in significant adverse impacts on air quality and greenhouse gas emissions.

b. The Project Does Not Comply with CEQA Because the Information in the Decades-Old EIR and Supplemental EIR for the ZSPA Is Unlawfully Stale

The Applicant and the City assume that any impacts associated with the project were fully analyzed and all feasible mitigation was required in the 1998 EIR and the 2000 supplemental EIR for the ZSPA (General Plan Amendment, Community Plan Amendment, Rezone, Tentative Subdivision, Tentative Parcel Map, and Development Agreement).²⁸ Like the City's General Plan, these CEQA documents are woefully dated. There is substantial evidence the project would have negative impacts on air quality and greenhouse gas emissions that were not analyzed or adequately mitigated in the 1998 and 2000 CEQA documents.

According to Dr. Pless, emissions associated with project construction and operation would exceed applicable CEQA thresholds of significance established by the Sacramento Metropolitan Air Quality Management District ("SMAQMD") for PM10, PM2.5, and greenhouse gases. Thus, the project would result in significant and unmitigated adverse impacts on air quality and undermine the state's climate goals,

²⁴ Id. at 222.

²⁵ CEQA Guideline § 15125(d).

²⁶ Curtin at p. 23.

²⁷ Pub. Resources Code §§ 21000, et seq.; see also CEQA Guidelines § 15378.

²⁸ See, for example, Nicholas Sosa and Darcy Goulart, City of Rancho Cordova, Logistcenter at Rancho Cordova, PLND-1021-0015 Major Design Review, December 5, 2022, p. 8, and Staff Report on Logistcenter at Rancho Cordova Major Design Review - PLND-1021-0015, July 18, 2022.

Dr. Pless prepared emission estimates for the project with the California Emissions Estimator Model (“CalEEMod”)²⁹ based on project-specific assumptions (for example, 150,076-square foot building, 1.78-acre project site, trip generation estimate of 755 trips/day from Dermody’s traffic study, 10,000 cubic yard soil import, 1,000 cubic yard cut/fill, etc., and otherwise relying on model default assumptions). Emissions of PM10 and PM2.5 during both construction and operation of the project would exceed the SMAQMD’s respective quantitative CEQA significance thresholds of zero (0) pounds per day (“lbs/day”).³⁰ The project does not propose to implement all feasible best available control technologies (“BACT”) or best management practices (“BMPs”) and, thus, is not eligible for the SMAQMD’s alternate significance thresholds of 80 lbs/day and 14.6 tons per year (“tons/year”) for PM10 and 82 lbs/day and 15 tons/year for PM2.5. Thus, the project would result in significant impacts on air quality due to particulate matter emissions that are not mitigated.

Next, the project is not consistent with the operational significance threshold for greenhouse gas emissions established by the SMAQMD, which requires a demonstration of consistency with the Climate Action Scoping Plan by implementing applicable BMPs or equivalent on-site or off-site mitigation. To comply with the SMAQMD’s requirements, all projects must implement, at a minimum, Tier 1 BMPs, which require no natural gas infrastructure at the project (BMP 1) and electric vehicle readiness (BMP2),³¹ which the project fails to demonstrate. In addition, the 1998 and 2000 EIRs found significant unavoidable impacts on air quality after implementation of all feasible mitigation measures that were acceptable 20 years ago.³² Many additional feasible mitigation measures became routinely available after adoption of these decades-old documents which must be required to mitigate the project’s significant adverse impacts (and all other current and future projects within the ZSPA). For example, the wide-spread availability of electric vehicles, including industrial trucks, was not even on the horizon 20 years ago; nor had the state incorporated the now-routine requirement that agencies analyze and mitigate significant greenhouse gas emissions in all CEQA documents.

²⁹ CalEEMod is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas emissions associated with both construction and operations from a variety of land use projects. Model is available at: <http://www.aqmd.gov/caleemod/home> and <https://www.caleemod.com/>.

³⁰ SMAQMD, available at: <https://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable4-2020.pdf>.

³¹ SMAQMD Greenhouse Gas Thresholds/Best Management Practices Applicability4/24/2020, revised 9/23/2020; available at: <https://www.airquality.org/LandUseTransportation/Documents/Ch6GHGBMPApplicabilityFlowChart9-23-2020.pdf>.

³² Sacramento County, Final Environmental Impact Report, Volume I, Village of Zinfandel General Plan Amendment, Community Plan Amendment, Rezone, Tentative Subdivision, Tentative Parcel Map and Development Agreement, Control Number: 95-GPB-CZB-PMR-SDB-DGB-ZOB-0533, January 1998, at 14, and Final Environmental Impact Report, Volume I, March 2000, at 1.14 and 1.15.

Stone Creek Residents are developing evidence of additional environmental impacts analyses on other aspects of the warehouse projects. Dr. Pless will supplement her work as new information becomes available.

III. Conclusion

This letter shows, based on limited publicly-available information, that the development agreement between Elliott Homes and Sacramento County was not legally transferred to the City. Or, at best, the agreement expired long ago. As a consequence, the proposed warehouse project is subject to authorization under a conditional use permit application for which the City must investigate and disclose the potentially significant impacts Dr. Pless has raised. Please contact me if you have questions about this letter.

THE LAW OFFICES OF GLORIA D. SMITH

A handwritten signature in black ink, appearing to read "Gloria D. Smith", with a stylized, cursive script.

Gloria D. Smith



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January 25, 2023

VIA EMAIL

Mayor Budge, Vice Mayor Sander, and City
Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
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Email: CityClerk@cityofranchocordova.org

Re: **January 17, 2023 Letter to City Council from Attorney Gloria D. Smith
Concerning CEQA Review of LogistiCenter Project at N. Mather
Blvd./Bear Hollow Drive (APN 072-236—041-000) Within Villages of
Zinfandel Special Planning Area, File No. PLND-1021-0015**

Dear Mayor Budge, Vice Mayor Sander, and Honorable Members of the City
Council:

This office represents Dermody Properties (“Dermody”) in connection with the City Council’s ongoing Major Design Review approval process for the above-referenced warehouse project (the “Project”). This letter addresses contentions raised in the above-referenced January 17, 2023 letter to the Council from San Francisco attorney Gloria D. Smith (the “Smith letter”), which was written on behalf of certain Project opponents calling themselves “Stone Creek Residents for Smart Growth.”

The Smith letter makes numerous assertions about the California Environmental Quality Act (“CEQA”; Pub. Resources Code, § 21000 et seq) and its alleged applicability to the City’s design review of the Project. Based thereon, the Smith letter urges this Council to reject the analysis and well-supported conclusions of City’s expert planning staff that: (1) “the [P]roject is exempt and no environmental document pursuant to CEQA is required” and (2) “the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts [to] biological resources.” (Staff Memorandum from Associate Planner Nicholas Sosa to City Council re January 17, 2023 Meeting Agenda Item 18.1, at page 8; see also Staff Memorandum from Sosa to Council re December 5, 2022 Meeting Agenda Item 22.1, at pp. 12-13 [reaching same conclusions].) As explained in more detail below, the City staff’s analysis and determinations are legally and factually correct, and it is the Smith letter that is in error and should be rejected.

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I. **CITY'S STAFF HAS CORRECTLY DETERMINED THAT THE DESIGN REVIEW PROJECT BEFORE THE COUNCIL IS CEQA-EXEMPT UNDER GUIDELINES SECTION 15183 BECAUSE IT IS STATUTORILY EXEMPT FROM CEQA UNDER THAT GUIDELINE'S AUTHORIZING STATUTE, PUBLIC RESOURCES CODE SECTION 21083.3**

The City's staff has correctly analyzed the Project's exemption from CEQA as follows:

The Logisticenter at Rancho Cordova Major Design Review would be exempt from CEQA review under CEQA State Guidelines Section 15183. This exempts from CEQA projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR was certified by the Sacramento County Board of Supervisors in 1998 for the VOZSPA. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002 for the plan area.

The Logisticenter at Rancho Cordova Major Design Review involves development of a 155,040 square foot industrial shell building with parking and loading docks. The development also includes landscaping, drainage, and required screening/fencing for a loading dock area. The business and professional park (BP) site was identified in the Villages of Zinfandel Special Planning Area EIR and uses contemplated within the BP designation include those use[] listed in the Sacramento County Zoning Code under the BP and MP (Industrial Office Park) use tables located in Chapter 25 and Chapter 30. Warehousing is a permitted by right use[s] as listed in Table IV I.3.

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized under the Traffic Improvements section of the December 5th staff report. The noise study that was completed concluded that noise levels associated with the project generated onsite operations would satisfy the General Plan noise criteria at the nearest existing residential uses. This is due in part to existing solid noise barriers in the vicinity, as well as overall on-site operational practices.

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As this Major Design Review is consistent with the Special Planning Area and the environmental documentation prepared for the Special Planning Area, it is exempt from CEQA review. So long as the project does not have any project-specific significant effects peculiar to the Major Design Review and not identified in the previous environmental documentation, the project is exempt and no environmental document pursuant to CEQA is required. The project applicant is requesting approval of a Major Design Review for the proposed project. ***Additionally, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts of biological resources.***

(1/17/23 Meeting Staff memo at pp. 7-8, emph. added.)

While the Smith letter attacks Dermody's past correspondence and positions regarding CEQA, mischaracterizing many of them in the course of doing so (Smith letter, at pp. 2-3, 6), it fails to acknowledge that the City's own planning staff (and City Attorney) have independently concluded – in full agreement with Dermody's counsel – that the Design Review Project now before the Council for approval is exempt from CEQA. That conclusion is fully supported by the law and the record.

Indeed, and as the Smith letter also fails to recognize, the Design Review Project is clearly ***statutorily exempt*** under Public Resources Code section 21083.3, which is part of CEQA itself, and which states in relevant part:

(a) If a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action, the application of this division [CEQA] to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(b) If a development project is consistent with the general plan of a local agency and an environmental impact report was certified with respect to that general plan, the application of this division [CEQA] to the approval of that development project shall be limited to effects on the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects

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in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(Pub. Resources Code, § 21083.3(a), (b).) This section of CEQA – which the Smith letter fails to mention – is the relevant statutory authority that CEQA Guidelines § 15183 cites and on which it is based.

A leading CEQA treatise describes the scope and operation of this statutory exemption as follows:

When Pub. Res. C. § 21083.3 applies, CEQA review of a later project is limited to significant environmental impacts that are [1] “peculiar to” the affected parcel or project and [2][a] that were not addressed as significant impacts in the previous EIR or [b] that substantial new information shows will be more significant than described in the previous EIR, [3] together with significant off-site and cumulative impacts that were not discussed in the prior EIR. [citations]
Section 21083.3 is worded as a CEQA *exemption* and not as a procedure for streamlining subsequent environmental review. [¶]
As originally enacted in 1981, [section] 21083.3 applied only to residential development projects. It was amended in 1992 to remove the residential limitation, so that it now applies to industrial and commercial projects as well as mixed-use projects.

(1 Kostka & Zischke, *Practice Under the California Environmental Quality Act* (CEB 2d ed., 2022 Update), § 10.33, pp. 10-35 – 10-36, citations omitted, *emph. in orig., bracketed text added.*)

Accordingly, while there are statutory limits (as enumerated in the above passage) on its application, the Smith letter’s contention that CEQA Guidelines “§ 15183 is not a true exemption” (Smith letter, at p. 3) is simply incorrect. The interpretive Guideline is in relevant part based wholly on the statutory CEQA exemption set forth in Public Resources Code § 21083.3, and as a regulatory interpretive aid it must be applied in a manner consistent with that authorizing statutory exemption in order to be valid. (E.g., 8 Miller & Starr, *California Real Estate* 4th (2022 Update), § 26:3, pp. 26-18 – 26-19, and cases cited [“guideline that is clearly unauthorized or inconsistent with CEQA is invalid”].) Further, because it is a *statutory* CEQA exemption enacted by the Legislature for policy reasons, rather than a *categorical* CEQA exemption based on a regulatory determination of the Secretary of Resources, the exemption is not to be narrowly construed, but, rather, must be broadly construed to achieve its statutory purpose of exempting the covered actions from CEQA review. (E.g., *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 386-387 [observing it would be incorrect to assume a harmony exists between CEQA’s general purposes and those of its statutory exemptions, which, on the contrary, reflect a variety of policy goals promoting interests deemed important enough to justify foregoing the benefits of CEQA review;

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further stating, in upholding application of CEQA's emergency exemption, that courts "do not balance the policies served by the statutory exemptions against the goal of environmental protection" and "the self-evident purpose of the exemption is to provide an escape from the EIR requirement despite a project's clear, significant impact"].)

II. THE SMITH LETTER CONCEDES THAT THE STATUTORY EXEMPTION OF PUBLIC RESOURCES CODE § 21083.3/CEQA GUIDELINES § 15183 APPLIES TO THE DESIGN REVIEW PROJECT, AND IS WRONG IN ARGUING THAT ANY OF THE STATUTE'S LIMITATIONS REMOVE THE PROJECT FROM THE SCOPE OF THE EXEMPTION; ITS ATTEMPT TO INVOKE CEQA'S SUBSEQUENT REVIEW RULES ALSO FAILS

The Smith letter does *not* contest – and thus *concedes* – that section 21083.3 applies to the project since (1) the parcel on which it is proposed has been zoned and planned to accommodate a particular density of development, (2) an EIR was certified for that zoning and planning action, and (3) the Project is consistent with the zoning and plan for the area.

The Smith letter nonetheless argues the Project is removed from the coverage of the statutory exemption because there are allegedly impacts "peculiar to the project" that "were not analyzed as significant effects in [the] prior EIR on the zoning action" or "which substantial new information [not known at the time the EIR was certified] shows will be more significant [or severe] than described in the prior [EIR]." (See Pub. Resources Code, § 21083.3(a); Smith letter at p. 3, citing CEQA Guidelines, § 15183.) The Smith letter also appears to argue that the Project will have potentially significant cumulative impacts that were not discussed in the prior EIR. (Smith letter, at pp. 3-5; Pub. Resources Code, § 21083.3(c).)

The Smith letter's first argument fails as a factual matter because there is absolutely no evidence that it points to showing that *any* of the allegedly significant and unanalyzed environmental impacts with which it professes concern are "peculiar to the parcel or to the project" as required by the statute to limit the scope of the exemption. (Pub. Resources Code, § 21083.3(a), (b).) Even assuming *arguendo* that the warehouse project would have significant GHG, particulate matter, ozone, NOx, or other air quality impacts as the Smith letter suggests (at p. 4), these impacts are not peculiar to Dermody's Project or parcel. Indeed, they are the same as or similar to the air quality impacts of any other warehouse or distribution center built on any other parcel authorized by applicable zoning for such use; they are *not* impacts caused by any "peculiar" aspect of either the parcel or the Project, but are generic to the authorized use itself. To the extent the Smith letter tries to argue that the statutory limit on the exemption does not require that the alleged significant impacts be "peculiar" to the parcel or project, it simply misreads the statute.

To the extent the Smith letter argues that CEQA contains some uncodified requirement to "keep information fresh" by updating allegedly "stale" EIRs whenever "new information" becomes available (Smith letter, pp. 3-4, citing CEQA Guidelines,

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§ 15162[(a)] (3)), it is wrong as a matter of law and either fundamentally misunderstands – or intentionally mischaracterizes – the CEQA subsequent review rules it tries to invoke. (See also Pub. Resources Code, § 21083.1 [“It is the intent of the Legislature that courts ... shall not interpret this division [CEQA] or the state guidelines ... in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.”].) In either event, its arguments lack merit. CEQA’s “subsequent review” rules (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163) are designed to balance promoting environmental review with finality and efficiency interests, and they therefore *limit* a lead agency’s authority to require additional CEQA review after an EIR has been certified. (See, *Friends of College of San Mateo Gardens v. San Mateo Community College Dist.* (2016) 1 Cal.5th 937, 949.) To avoid an “intractable” agency decision-making process (*ibid.*), CEQA establishes a strong presumption *against* further environmental review after an EIR is certified. (*Committee for Reevaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1246; *Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal.App.5th 656, 666; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 805.)

Thus, under the subsequent review CEQA rules the Smith letter tries to invoke, once an EIR for a project has been prepared, the agency may not require a subsequent or supplemental EIR except in specific circumstances. An SEIR is required only if “[s]ubstantial changes are proposed in the project” or “occur with respect to the circumstances” of the project or if “[n]ew information” becomes available which “will require major revisions of the [EIR]” “due to the involvement of new significant environmental effects or substantial increase in the severity of previously identified significant effects.” (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162(a), 15163(a); *T-Line Loop*, *supra*, 6 Cal.App.5th at 1246.) Moreover, “new information” is that “which was not known and could not have been known” when the EIR was originally “certified as complete” (§ 21166(c)), and it must be “of substantial importance,” for example because it shows “[s]ignificant effects ... will be substantially more severe than shown in the previous EIR.” (CEQA Guidelines, § 15162(a)(3).)

The Smith letter falls woefully short of pointing to any substantial evidence showing that a subsequent or supplemental EIR could be required for the Project under these standards. The Project does not modify, but is concededly fully consistent with, the general plan and zoning standards reviewed under the 1998 FEIR and 2000 FSEIR for the VOZSPA entitlements.

Moreover, there are no “changed circumstances” and no “significant new information” that was not known or knowable at the time those EIRs were certified. It was *always* known and, indeed, *planned* that commercial and light industrial uses (such as warehouses and distribution centers) could be developed in locations within the VOZSPA that included the Project parcel, and that such locations were near to other VOZSPA locations where residences would be built. To the extent the Smith letter claims that air quality issues, including those related to GHGs or toxic

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diesel particulate matter (whether PM10 or PM2.5) constitute “new information” that was unknown or unknowable in 1998 or 2000 (see Smith letter at pp. 4-5), it is wrong as a matter of both fact and law, for reasons pointed out in prior correspondence. (See 1/10/23 Coon to Council letter, at p. 7, and legal authorities cited therein.) To the extent the Smith letter (at pp. 4-5) argues that post-EIR changes in laws, or regulatory standards for categorizing, analyzing or assessing the significance of project impacts constitute “significant new information” or “changed circumstances” requiring subsequent CEQA review, it is again wrong as a matter of law. (*Citizens Against Airport Pollution, supra*, 227 Cal.App.4th at 807-808; *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1318-1320.) Further, information anticipated by an EIR is not significant new information. (E.g., *Citizens Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 478 [“REIR anticipated the new information that appellants rely on”]; *T-Line Loop, supra*, 6 Cal.App.5th at 918 [“FEIR anticipated an increase in residential use and other development and analyzed the impacts of constructing and operating light rail in residential areas....”].)

Similarly, and contrary to the Smith letter’s contentions, there is no CEQA statute or rule declaring a project EIR “stale” after any particular time period; as seen above, whether CEQA’s subsequent review rules require a supplemental EIR depends on whether substantial changes in the project or surrounding circumstances or significant new information require major revisions to a previously certified EIR (or other adopted CEQA document) due to the involvement of new or substantially more severe environmental impacts – not the mere passage of time or any vague or subjective notions of “freshness.” (E.g., *T-Line Loop, supra*, 6 Cal.App.5th at 1254 [holding use of 16-year old EIR was adequate CEQA compliance for light rail line project and noting absence of “any authority holding that mere delay in completing construction constitutes a substantial change in a project under section 21166”]; *Snarled Traffic Obstructs Progress v. City and County of San Francisco* (1999) 74 Cal.App.4th 793 [9-year old negative declaration was adequate CEQA compliance for revived parking structure project and SEIR not required].) The very fact that the County entered into a CEQA-reviewed 2003 Development Agreement with a 20-year term evinces that it had thoroughly analyzed the environmental impacts of long-term development and build-out of the VOZSPA.

In short, the Smith letter fails to negate the application of CEQA’s Section 21083.3 statutory exemption because it points to no facts or evidence of any environmental impacts that are **peculiar** to the Project or site **and** that were not analyzed as significant impacts in the prior VOZSPA EIR or shown by substantial new information to be more significant than previously described. Nor does the Smith letter point to any substantial evidence supporting any of the grounds for conducting further review under CEQA’s subsequent review rules. Nor does the Smith letter demonstrate or point to evidence of any significant cumulative impacts (as to air quality or otherwise) that were not discussed as such in the prior EIR.

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III. **AS A SEPARATE AND INDEPENDENT GROUND FOR REJECTING ITS CEQA ARGUMENTS, CITY STAFF HAS CORRECTLY INTERPRETED CITY'S MAJOR DESIGN REVIEW PROCESS AS LIMITING CITY'S DISCRETION SUCH THAT IT CANNOT ADDRESS THE AIR QUALITY IMPACTS OF WHICH THE SMITH LETTER COMPLAINS**

It is fundamental that when addressing a project's significant effects, an agency may *only* exercise those express or implied powers provided by *law other than CEQA*, subject to the other law's express or implied limitations. (Pub. Resources Code, § 21004; CEQA Guidelines, § 15040(b) ["CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws."].) The City's Major Design Review ordinance is the "other law" that provides the express or implied powers the Council may exercise in acting on the Project design review application that is now before it. The City Council is bound by and must comply with its own Design Review Ordinance, including that local law's restrictions on its discretion. As the Court of Appeal recently explained in the context of applying CEQA to a housing project, "where a legal obligation limits an agency's discretion, the scope of environmental review likewise is limited" and "adjusts in relation to the amount of discretion[.]" (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700.)

While the Smith letter spends two pages desperately attempting to distinguish relevant case law based on insignificant, irrelevant and immaterial alleged factual differences (at pp. 6-7), it fails to grapple with the main and dispositive issue, which is that ***the City here has consistently interpreted its own design review ordinance not to permit it to address the types of environmental issues the letter raises.*** (See e.g., City Staff memos for 1/17/23 meeting and 12/5/22 meeting; see also 3/2/20 letter from Meyers Nave attorney Ed Grutzmacher written on behalf of the City to Michael Lozeau, attached hereto as Exhibit 1 [explaining in detail why design review of zoning-compliant warehouse project in VOZSPA limits City's discretion such that it cannot "consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from TAC's, greenhouse gas emissions, and impacts to biological resources."].) Mr. Grutzmacher, a quite knowledgeable CEQA attorney who is a partner at a well-respected law firm, cited in support of the City's position on this issue the very same cases that Dermody did, and which the Smith letter unpersuasively tries to distinguish – *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1014-1015 and *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 91-95.

The point is that CEQA does not independently confer power or discretion, and simply does not apply where agency discretion to deny or require project modifications to mitigate *environmental* impacts does not exist. The Smith letter fails to cite any provision of the City's Major Design Review ordinance that would allow the City to exercise CEQA-triggering discretion to address the non-design-related environmental issues the letter raises.

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IV. CONCLUSION

The City's design review ordinance does not vest it with CEQA-triggering discretion to address the non-design-related air quality/public health issues the Smith letter raises. The Project before the City is also CEQA-exempt under Public Resources Code § 21083.3 and CEQA Guidelines § 15183. Further, CEQA's subsequent review rules furnish no authority to revisit or supplement the prior certified EIRs for the VOZSPA, with which the Project is fully consistent. The City should therefore reject the Smith letter's meritless arguments regarding CEQA, and follow its staff's correct analysis and recommendations, and its own prior consistent interpretations.

Thank you for your attention to the foregoing important issues.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:dly/klw
encl.

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March 2, 2020

Michael R. Lozeau
 Paige Fennie
 Lozeau Drury LLP
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 Oakland, CA 94612

**Re: Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000
 Request for Review under the California Environmental Quality Act ("CEQA")**

Dear Mr. Lozeau and Ms. Fennie:

The City of Rancho Cordova ("City") is in receipt of your letter dated February 18, 2020 concerning Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000 ("Project"). The City Attorney's Office has had the opportunity to review your letter and has the following responses to the allegations and assertions made therein.

In your letter, you claim that the City is in violation of the California Environmental Quality Act ("CEQA") for relying on CEQA Guidelines section 15183 to conclude that the Project is in compliance with the City's General Plan and no further environmental review is required. Your letter further asserts that the CEQA requires the City to examine the Project's potential impacts to human health from toxic air contaminants ("TAC"), (pp. 3-4), impacts from the Project's greenhouse gas emissions, (p. 4-5), the Project's consistency with the General Plan (p. 5-6), and the Project's impacts to biological resources, (p. 5-8).

The Project seeks Major Design Review approval for a 164,149 square-foot light industrial office warehouse and associated office space building that includes parking, lighting, and landscaping for the applicant GLP Stores, LLC. The Project is located within the Villages of Zinfandel Special Planning Area ("ZSPA"). The Special Planning Area was approved in 2002 by Sacramento County. The ZSPA includes residential, commercial, business professional, light industrial, park, bike trails, and open space uses. A Final Environmental Impact Report was certified for the Special Planning Area in 1998 by Sacramento County and a Mitigation Monitoring Program was adopted. Under the City's General Plan and the ZSPA, the Project site has a designation of Light Industrial, which allows for limited industrial uses. Similarly, under the City's Zoning Code, the Project site is zoned Light Industrial Villages of Zinfandel Special Planning Area (LI ZSPA) which allows for industrial/retail flex and manufacturing and warehousing uses.

Michael R. Lozeau
March 2, 2020
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The Project site has had previous entitlements that were approved as follows:

April 2006: Tentative Parcel Map that included the light industrial zoned area to the west and south. Divided 3 parcels into 93 parcels.

May 2007: Tentative Subdivision Map, Creekside Commerce Center, to divide 28 acre parcel into 16 parcels. The project also included a design review for 16 buildings.

Feb 2009: A Tentative Subdivision Map Amendment, Creekside Commerce Center, that reduced the subdivision map from 16 parcels to 8 parcels and reduced 16 buildings to 7 buildings.

March 2017: A Tentative Subdivision Map, Creekside Commerce Center, Extension to February 2020.

Oct 2018: Final Map recorded.

Oct 2019: Lot Line Adjustment to combine 3 lots into 1 lot (subject property).

The Project is a permitted use and does not require a conditional use permit. Rather, the Project requires only approval of Major Design Review. Pursuant to the City's Code, Chapter 23.141, the City Council "may approve or approve with conditions an application for major design review after finding all of the following"

"A. The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Plan provisions, and special planning area provisions, and is consistent with the applicable Rancho Cordova design guidelines.

B. The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community.

C. The architecture, including the character, scale, and quality of the design, relationship with the site and other buildings, building materials, screening of exterior appurtenances, exterior lighting and signing, and similar elements, establishes a clear design concept and is compatible with the character of existing or anticipated buildings on adjoining and nearby properties.

D. The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation." (City Code, § 23.141.070.)

The City Council may only condition approval of a Major Design Review application "to ensure specific design features, construction materials, and conformance with all applicable provisions of this chapter." (City Code, § 23.141.080.)

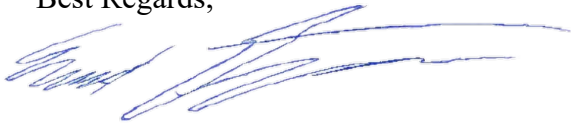
Michael R. Lozeau
 March 2, 2020
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“A city is not, pursuant to general law, required to have a design review ordinance. Accordingly, where, as here, a city chooses to impose such an additional level of review, it is for the city to determine the scope that such review will entail.” (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1014 (“*Friends of Davis*”).) “The Guidelines recognize that the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the local ordinance, rather than vice versa. ... The Guidelines note[d] that CEQA does not grant an agency new powers independent of the powers granted by other laws. (Guidelines, § 15040, subd. (a).) Rather, the exercise of an agency’s authority under a particular law must be within the scope of the agency’s authority provided by that law and must be consistent with express or implied limitations provided by other laws.” (*Id.* at pp. 1014–1015.) Where a city’s own ordinance prevents it from disapproving or conditioning a project “for non-design related matters,” it lacks “discretion to address environmental effects” and, thus, the city’s ability to apply CEQA review to a project is limited to design-related issues. (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Ca.App.5th 80, 91-95.)

Therefore, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from TAC’s, greenhouse gas emissions, and impacts to biological resources. That said, pursuant to the General Plan and the ZSPA, the Project will be required to comply with the mitigation monitoring and reporting program for the ZSPA, which includes measures designed to mitigate the impacts from air pollutant emissions and impacts to biological resources in the area. Moreover, the Project has undertaken a trip generation analysis that concludes that the Project’s traffic trips are consistent with the analysis and findings of the ZSPA EIR. As such, no further CEQA review of this Project is required.

If you have any further questions regarding this Project, please do not hesitate to contact myself or the City.

Best Regards,



Edward Grutzmacher

cc (email only): Adam Lindgren
 Frank Splendorio
 Cyrus Abhar
 Darcy Goulart
 Stacy Leitner
 June Cowles

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January 25, 2023

VIA EMAIL

Mayor Budge, Vice Mayor Sander, and City
Councilmembers
City of Rancho Cordova
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Re: **Dermody Properties' Notice of City of Rancho Cordova's Breach of and Default Under Development Agreement and 60-Day Period to Cure; LogistiCenter Project at Corner of N. Mather Blvd./Bear Hollow Drive (APN 072-2360-041-000), File No. PLND-1021-0015**

Dear Mayor Budge, Vice Mayor Sander, and Honorable Members of the City Council:

This firm represents Dermody Properties ("Dermody"), as successor-in-interest to original master developer Elliott Homes, Inc. under that certain "Villages of Zinfandel Development Agreement" entered into as of May 28, 2003, and adopted by County Ordinance No. SZC-2003-0011, which became effective June 28, 2003 (the "Development Agreement" or "DA"), with respect to Dermody's above-referenced real property located within the 671.39± acre site governed by the DA.

This letter constitutes Dermody's written notice pursuant to Section 6.1 of the Development Agreement that the City of Rancho Cordova (the "City"), which is successor-in-interest to the County of Sacramento under the DA, has materially breached and is in default of its legal obligations under the DA to timely and in good faith process and approve Dermody's Major Design Review application for the above-referenced LogistiCenter project located on Dermody's approximately 10-acre parcel at the corner of North Mather Boulevard and Bear Hollow Drive in the City (the "Design Review Project" or "Project").

The Project is located within the Villages of Zinfandel Special Planning Area (VOZSPA), an 823± acre area within the Cordova community that transitioned from heavy industrial (surface mining) use and zoning to a comprehensively planned and entitled mixed-use development in the late 1990's and early 2000's when the County of Sacramento approved extensive development entitlements for the area, including general plan and zoning amendments, an amended community plan, a

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public facilities financing plan, and the subject DA. The VOZSPA's potential environmental impacts were also comprehensively analyzed under the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq) through a Final Environmental Impact Report ("FEIR") certified by the County on March 25, 1998, as supplemented through a Final Supplemental EIR ("FSEIR") certified by the County on April 26, 2000. The DA was approved by Ordinance No. SZC-2003-0011, which was adopted on May 28, 2003, and has a 20-year term.

Dermody submitted its Design Review Project application on October 25, 2021, and the City determined the application to be complete on January 12, 2022, over a year ago. The City was required to determine within 30 days of that date, or by November 24, 2021, whether an EIR or negative declaration would be required for the Project. (Pub. Resources Code, §§ 21080.1(a), 21080.2.) Even assuming that the Project is not exempt – which it is – such that a CEQA document of some kind would be necessary, all possible statutory deadlines for the City to have completed its CEQA review of the Design Review Project have now expired without the City Council having completed or adopted any CEQA document or findings. (See Pub. Resources Code, § 21151.5(a), (1)(A), (B); CEQA Guidelines, § 15107 [if negative declaration is to be prepared, lead agency must complete and adopt same within 180 days after date application is complete, and if EIR is to be prepared, agency must complete and certify same within one year].) The City's staff and attorneys have consistently advised the Council that the Project is exempt from CEQA under CEQA Guidelines, § 15183. (See Pub. Resources Code, § 21083.3.)

For many months Dermody and the City's own planning staff have advised and reminded the Council of (1) its obligations under the DA, (2) its very limited discretion to conduct CEQA review in the Major Design Review process, and (3) that the Project should be reviewed and found exempt from further environmental analysis under the exemption/streamlined review provisions of CEQA Guidelines section 15183, which the City has applied to similar projects. The Council's failure to timely complete its CEQA review of the Project in the more-than-one-year period of time that has elapsed since the Project application was determined to be complete, in and of itself, constitutes a bad faith failure to timely process and approve the Project as required by the DA.

The City's failure to timely process the Project not only violates CEQA and the DA, as explained further below, but has deprived Dermody of legal rights that should also rightfully have accrued to it under the Permit Streamlining Act ("PSA"; Gov. Code, § 65920 et seq). The PSA provides that a CEQA lead agency must act to approve or disapprove a project within 60 days after a negative declaration is adopted or an exemption determination made. (Gov. Code, § 65950(a)(4), (5).) The City should have completed its CEQA analysis and exemption determination for this Project by the Spring of 2022, at the latest, and acted to approve or disapprove it not later than June 2022 – over six months ago – assuming it had been acting in compliance with CEQA and the PSA, and even setting aside its further legal obligations under the DA.

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In fact, the Project should have been processed to an approval decision even earlier than last summer because – in addition to the basic requirements of CEQA and the PSA – Dermody has vested property and contractual rights under the DA requiring the City’s timely processing of and approval action on its Design Review Project application, and the City’s full and good faith cooperation to enable Dermody to obtain the full benefits of the DA. These DA rights of Dermody, and the City’s corresponding DA obligations, have previously – and repeatedly – been explained to the City in detail, with abundant supporting citations to relevant DA provisions, in prior correspondence from Dermody’s counsel including: (1) Nadia Costa’s July 18, 2022 letter to the City Attorney, copied to the City Manager and Deputy City Manager; (2) my September 16, 2022 letter to City Manager Cyrus Abhar, copied to the City Attorney and Community Development Director; (3) my November 29, 2022 letter to the City Council, copied to the City Manager, Deputy City Manager, and City Attorney; (4) my December 14, 2022 letter to the City Council, copied to the City Manager, Deputy City Manager, and City Attorney; and (5) my January 10, 2023 letter to the City Council, copied to the Community Development Director and City Attorney.¹

Despite Dermody’s extensive correspondence repeatedly bringing the City’s attention to its legal obligations under the DA and applicable law, the City Council has ignored and failed even to acknowledge these obligations. Instead, it has repeatedly continued and delayed hearings on the Project beginning in April 2022. After a half year delay, the City refused to set a hearing for Project approval in November 2022 as Dermody requested. After delays of well over a year from the date of Dermody’s submitted application, and almost a year from the application being deemed complete, the City finally set a December 5, 2022 hearing to consider the Project, but then further continued that hearing without taking action to January 17, 2023. On the latter date, the Council finally closed the public hearing following presentations by City staff and Dermody, and after hearing public comment on the Project, but then refused to discuss, deliberate or take action on Dermody’s Project application, and instead further continued that portion of the hearing to January 30, 2023. The Council voted to further delay a decision on Dermody’s Project so that it could first further consult with the City Attorney (who was present at the January 17 hearing) in closed session concerning an 8-page, single-spaced “late hit” CEQA comment letter submitted by an attorney hired by project opponents which was not received until well after commencement of the January 17 hearing.

Unfortunately, but consistent with the Council’s previous public discussions indicating either a profound misunderstanding of or a heedless intent to exceed its lawful discretion in its consideration of the Project, the Council’s most recent action

¹ The foregoing correspondence, and all exhibits thereto, are already part of the Administrative Record in the City’s administrative proceedings on Dermody’s Design Review Project and are fully incorporated by reference in the instant written notice of City’s breach and default under the DA.

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was again taken in bad faith disregard of its DA obligations to timely process and approve the Project. As but one example, when I, as counsel for Dermody, was asked by the Council to come to the podium and respond at the January 17 hearing to the just-received CEQA comment letter and began my response by accurately characterizing it as a typical (and meritless) “late hit” CEQA comment letter, I was interrupted and chided by the Council not to “editorialize.” I found this to be an extremely surprising rebuke since the Council, like the California courts, is surely “aware that the practice of allowing [CEQA] objectors to withhold objections, which could have been raised earlier in the environmental review process, until the last possible moment **must be strongly disapproved.**” (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120, emph. Added, citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.) As noted by our Supreme Court in the above-cited case:

“We cannot, of course, overemphasize our disapproval of the tactic of withholding objections, which could have been raised earlier in the environmental review process, solely for the purpose of obstruction and delay. As one federal court has aptly stated: “[T]he NEPA requirement of studying alternatives may not be turned into a game to be played by persons who – for whatever reasons and with whatever depth of conviction – are chiefly interested in scuttling a particular project. [citation.]”

(*Goleta Valley, supra*, 52 Cal.3d at 568, emph. added, citation omitted; see also, e.g., *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316 [lengthy “late hit” comment letter from project opponent’s attorney delivered at beginning of Board hearing on project resulted in Board continuing hearing for over a month to respond]; cf. *Save North Petaluma River and Wetlands v. City of Petaluma* (2022) 86 Cal.App.5th 207 [notwithstanding project opponent’s late hit comment letter submitted on afternoon of hearing, City Council proceeded with hearing and after considering detailed staff memo covering project’s history, public comments, the real party’s public outreach, and numerous responsive project revisions, and the revised project’s satisfaction of the previously expressed planning commission concerns, and after several hours of deliberation and public comment at the hearing, City Council took action as publicly noticed and scheduled and voted to certify FEIR and approved zoning amendments for project].)

While Dermody will respond by separate letter to the substance – or, more accurately, the lack thereof – of the Project opponents’ lawyer’s late-hit CEQA comment letter, the above is included for present purposes simply to augment Dermody’s showing as to the City’s continuing bad faith breaches and disregard of its DA obligations. Here, the City Council not only refused to “strongly disapprove” the Project opponents’ “late hit” CEQA tactic, but actually rewarded it with a further two-week delay. By contrast, a council acting in good faith would have quickly and roundly condemned and rejected the Project opponents’ well-recognized and judicially-disapproved abusive CEQA “late-hit” tactic, and would have reminded the Project opponents of the lengthy processing process Dermody has endured to date,

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the numerous project amendments and concessions it has voluntarily made and offered to address public concerns, and Dermody's vested legal and contractual rights to timely processing and approval of its Major Design Review application under the DA. But the Council did not. Instead, it chose to praise the project opponents, as "informed and articulate" and not "typical NIMBYs," further underscoring its willful disregard for Dermody's DA and other legal rights to timely and good faith processing of and an approval decision on its Project.² In other words, for whatever reason, the Council members are continuing to unnecessarily delay their decision on this Project and are publicly praising Project opponents who are vilifying Dermody, encouraging further dilatory City action in processing the Project approvals, and blatantly encouraging the City to repudiate its binding DA obligations. Such conduct is the polar opposite of the good faith required under the DA and applicable law.

In sum, the only conclusion that can be drawn from the record in this matter is this: the City has violated and breached the Development Agreement and Dermody's vested rights thereunder by attempting to subject Dermody's Design Review Project to improper and inapplicable requirements and procedures, and by failing to act in good faith to timely process, act on, and approve the Project. Dermody can no longer wait or give the City Council the benefit of the doubt by assuming that it will ultimately choose to comply with its legal obligations under the DA – the term of which will expire in Summer 2023 – and Dermody has therefore been compelled to now provide this formal notice of default.

As provided in the DA, the City can cure its default and avoid the institution of legal proceedings seeking remedies for its DA breaches, by making a final decision on and approving Dermody's Project, as the Project was fully presented at the January 17, 2023 meeting, by not later than 60 days from the date of this letter. (DA, § 6.1.)

² It bears noting that the same Project opponents praised by council members offered comments characterizing my client (or, perhaps, me) as a "playground bully" (for insisting that Dermody's vested rights be respected) and urging the council to "continue the process as long as needed" (Troy Fennel). The opponents even stated: "There are ways out of this contract [the DA], and you know what they are." (Greg Mylenberg.) Stuningly, the Council did nothing to correct such misapprehensions or acknowledge its binding obligations under the DA.

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Thank you for your anticipated attention to these matters.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:dly/klw

cc: Micah Runner, City Manager (mrunner@cityoffranchocordova.org)
Elizabeth Sparkman, Community Development Director,
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MEMORANDUM



ITEM 16.1.

DATE: February 6, 2023
TO: Honorable Mayor and Council Members
FROM: Russell Ducharme, Neighborhood Services Manager
SUBJECT: **PROPOSED MUNICIPAL CODE AMENDMENTS PERMITTING SHORT-TERM RENTAL PROPERTY**

RECOMMENDATION

Receive presentation by staff, discussion and direction regarding regulating short-term rental property.

RESULT OF RECOMMENDED ACTION

Based on the recommended changes and any additional direction given by Council, an ordinance would come back at a regularly scheduled City Council meeting for a first reading and introduction. Additionally, a resolution could be adopted which will allow the City to adjust fees related to license and registration of short-term rental property.

BACKGROUND

Over the past three years, the City has seen a significant increase in the number of short-term rental properties operating in the City. In 2019, the City had fewer than ten properties listed on various short-term rental websites, with the number increasing to over 100 in 2023. During this time, the Neighborhood Services department has seen an increase in nuisance calls for service, including excessive noise and illegal private and public parking at short-term rental properties. The City currently does not have a mechanism in place to ensure basic health, life, and safety standards are maintained per the City municipal code. In addition, Neighborhood Services staff currently do not have a point of contact for a property when issues arise, prolonging the length of time it may take to rectify problems. Furthermore, because these properties are not registered as short-term rentals, they are not remitting Transient Occupancy Tax to the City.

Currently, Title 23 Zoning Code does not list short-term vacation rentals as a permitted use. Section 23.107.020D. Rules of interpretation state that if a use is not listed, the use is not permitted. If directed to amend Title 23 to address short-term vacation rentals, the residential use table would be amended to list these rentals as a permitted use, subject to going through the Housing Code requirements of chapter 16.20.

By modifying the City ordinance to allow short-term rental property, the city will have the ability to inventory the property through registration, ensure health, life and safety requirements are met, and collect transient occupancy tax from property owners.

Staff is recommending that the City require all short-term rental properties to go through the City's existing rental housing registration program, which will enable staff to obtain property owner contact information and enroll the property in the City's rental inspection program. This information can then also be used to facilitate the remittance of Transient Occupancy Tax to the City. Changes to the zoning code would recognize short-term rentals as an allowed use.

FISCAL IMPACT AND FUNDING SOURCE

The proposed changes will require short-term rental properties to remit applicable fees through the Rental Housing Registration process as well as remit Transient Occupancy Tax of 12% on all short-term stays. It is anticipated that the additional inspections of the short-term rental properties can be absorbed by existing staff in the Neighborhood Services Department.

ATTACHMENT(S)

1. Presentation

Short-Term Rental Properties

February 6, 2023

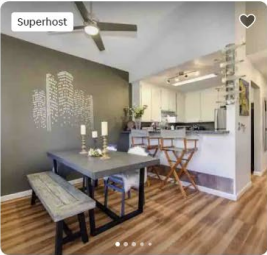
MEETING GOALS

- Provide an update on short-term rental properties
- Discuss proposed modifications to City process & Municipal Code
- Discussion and Questions

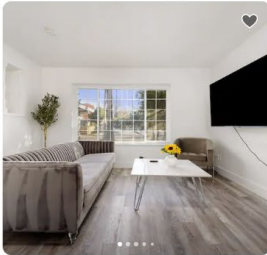
Background

- 2019 there were fewer than 10 within the City limits, currently near 100 listed (depending on search criteria)
- Properties are not required to register with the City
- Properties are not inspected for basic health, life, safety requirements
- Properties generate nuisance calls for service to Police and Code Enforcement
- Property owners are not paying Transient Occupancy Tax
- Currently Zoning Code does not permit short-term rental properties

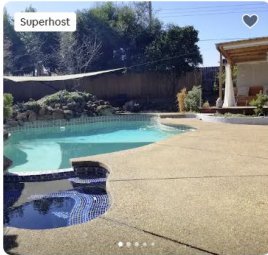
77 homes in Rancho Cordova



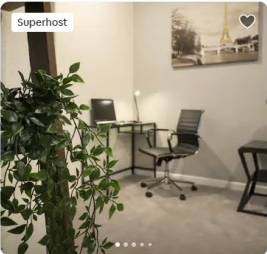
Private room in Rancho Cordova ★ 4.97 (59)
Cozy Living Room Your own room ...
1 queen bed
\$59 night - \$365 total



Home in Rancho Cordova ★ New
Sub URBAN 4 BD Home/POOL/GAME ...
4 beds
\$141 night - \$921 total



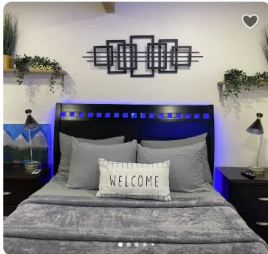
Home in Rancho Cordova ★ 4.92 (78)
Quiet Oasis with Pool/Hot Tub just off ...
4 beds
\$233 night - \$1,518 total



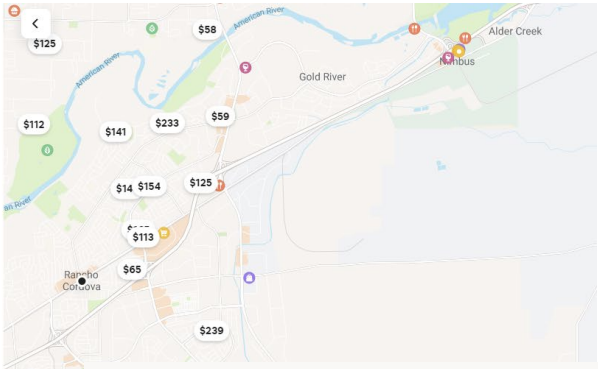
Guest suite in Rancho Cordova ★ 4.94 (35)
Designer New-Built Private Guest Suite &...
2 beds
\$104 night - \$658 total



Guest suite in Carmichael ★ 4.99 (203)
Quiet Carmichael Home - Gardens, Pond...
2 beds
\$112 night - \$695 total



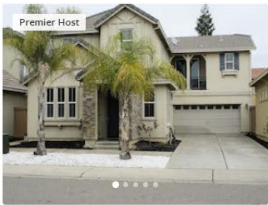
Home in Rancho Cordova ★ New
Cozy Stylish Studio
1 bed
\$113 night - \$734 total



Map area

18 properties Sort

Need flexibility? We've got you.
Some places let you cancel for free closer to your check-in date. Check the property's policy for details.



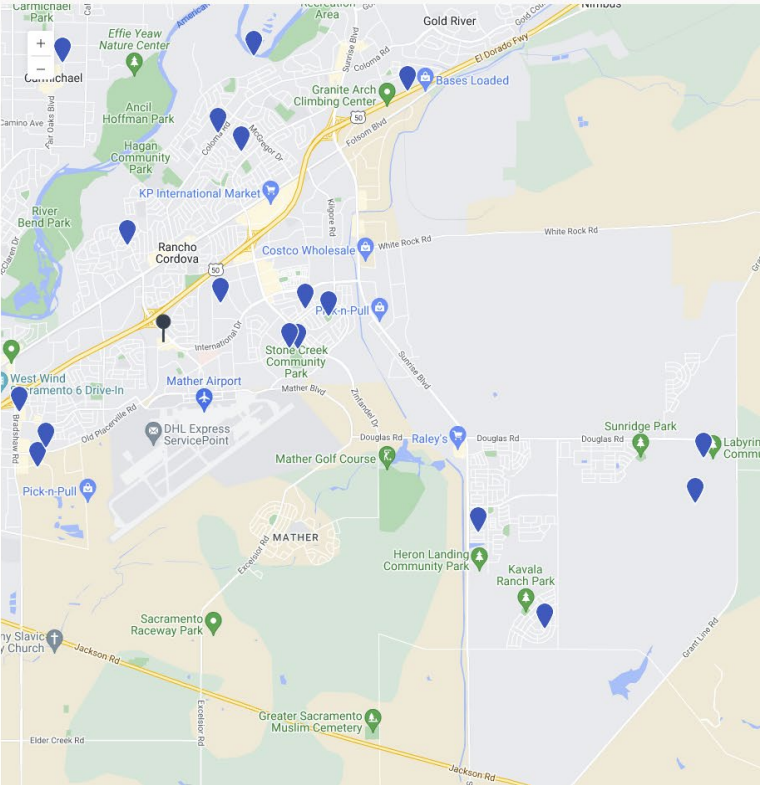
House
Modern Living, relax and enjoy your stay!
Sleeps 8 - 3 bedrooms - 3 beds
Wonderful! 4.9/5
★ 4.9 (17 reviews)
Free cancellation up to Mar 19
\$219 /night
\$1,651 total



House
Cozy & Luxurious Rancho Getaway | BRAND NEW
Build Spacious for Family
Sleeps 6 - 4 bedrooms - 4 beds
★ 5.0 (1 review)
\$398 /night
\$2,887 total



House
Peaceful & Spacious home complete with Garage
Sleeps 6 - 3 bedrooms - 3 beds
Free cancellation up to Mar 19
\$201 /night
\$1,642 total



Staff Recommendations

- Create a registration process for Short-Term Vacation Rentals
 - This would require an annual rental property inspection
 - Ensures a point of contact for the property for accountability if problems/complaints arise
 - Remittance of the City's Transient Occupancy Tax
- Amend Title 23 to allow short-term rental property within residential districts
 - Amend Table 23.310-1 to permit vacation rentals subject to the Housing Code chapter 16.20.

THANK YOU

QUESTIONS & DISCUSSION