

**REGULAR MEETING AGENDA  
CITY OF MADERA  
PLANNING COMMISSION**

**COUNCIL CHAMBERS - CITY HALL  
TUESDAY  
FEBRUARY 13, 2018  
6:00 pm**

**CALL TO ORDER**

**ROLL CALL**

Commissioner Robert Gran, Jr. (Chairperson)  
Commissioner Israel Cortes (Vice Chairperson)  
Commissioner Bruce Norton  
Commissioner Kenneth Hutchings  
Commissioner Pamela Tyler  
Commissioner Jim DaSilva  
Commissioner Richard Broadhead

**INTRODUCTION OF STAFF**

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENT**

The first fifteen minutes of the meeting are reserved for members of the public to address the Commission on items which are within the subject matter jurisdiction of the Commission. Speakers shall be limited to three minutes. Speakers will be asked to identify themselves and state the subject of their comment. If the subject is an item on the Agenda, the Chairperson has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Commission is prohibited by law from taking any action on matters discussed that are not on the Agenda and no adverse conclusions should be drawn if the Commission does not respond to public comment at this time.

**MINUTES:** December 12, 2017 and January 9, 2018

**CONSENT ITEMS:**

**C1. SPR 2009-21 EXT5 & Multiple CUP Extensions – Foxglove Shopping Center Extension**

A request for an extension of an approved site plan review and various conditional use permits in support of the development of a retail shopping center. The property is 19.51 acres in size and is located on the southeast corner of Schnoor Avenue and Foxglove Way in the C2 (Commercial) Zone District with a C (Commercial) General Plan land use designation. An environmental impact report, mitigation monitoring and reporting program, statement of overriding considerations, and related findings for all project components were completed in conjunction with the proposal. The retail shopping center was approved and the environmental impact report was certified by the Planning Commission on February 12, 2013.

## **PUBLIC HEARING ITEMS**

### **1. REZ 2017-06, CUP 2017-36 and SPR 2017-53 – Boston Motors, Inc.**

A noticed public hearing to consider a rezone of one parcel (APN: 007-123-003) encompassing approximately 6,000 square feet from the R3 (High Density Residential) Zone District to the C1 (Light Commercial) Zone District, and a conditional use permit and site plan review to allow for the establishment of a used automotive sales business on four parcels located at the northwest corner of East Yosemite Avenue and High Street in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation. A Negative Declaration will also be considered by the Planning Commission. (APNs: 007-123-003, 004, 005 and 006)

### **2. Development Agreement Annual Review – Madera Town Center**

An annual review of the development agreement approved in conjunction with the Madera Town Center project (Ordinance 821) for the period running through August 1, 2017. This annual review has been scheduled pursuant to Section 10-3.1715 of the Madera Municipal Code, which required that the Planning Commission determine whether the principal party to the agreement, Zelman Retail Partners, has complied in good faith with the terms of the development agreement. (APN: 013-240-001)

### **3. Development Agreement Annual Review – Madera Travel Center**

An annual review of the development agreement approved in conjunction with the Madera Travel Center project (Ordinance 938) for the period running through December 21, 2017. This annual review has been scheduled pursuant to Section 10-3.1715 of the Madera Municipal Code, which required that the Planning Commission determine whether the principal party to the agreement, Love's Travel Center, has complied in good faith with the terms of the development agreement. (APNs: 013-240-004, 005, 006 & 007)

### **4. OTA 2017-02 – Quimby Act Ordinance**

A public hearing and consideration of adoption of a resolution of the Planning Commission of the City of Madera recommending to the City Council of the City of Madera adoption of an ordinance adding chapter 10-2.1300 to the Madera Municipal Code in order to establish a method for coordinated acquisition and development of city park facilities consistent with Government Code Section 66477, the Quimby Act.

## **NON-PUBLIC HEARING ITEMS:**

## **ADMINISTRATIVE REPORTS:**

### **1. Zoning Ordinance Update – Planning Commission Workshop**

## **COMMISSIONER REPORTS:**

## **ADJOURNMENT:**

The next regular meeting will be held on March 13, 2018.

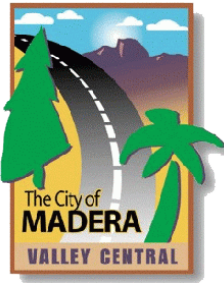
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation in the public meeting should be made at least seventy-two (72) hours before the meeting. If you need special assistance to participate in a City meeting or other services offered by this City, please contact the Planning Department office at (559) 661-5430. Those who are hearing impaired, may call 711 or 1-800-735-2929 for TTY Relay Services. Any and all persons interested in this matter may provide comments.

Any writing related to an agenda item for the open session of this meeting distributed to the Planning Commission less than 72 hours before this meeting is available for inspection at the City of Madera – Planning Department, 205 W. 4th Street, Madera, CA 93637 during normal business hours.

Pursuant to Section 65009 of the Government Code of the State of California, notice is hereby given that if any of the foregoing projects or matters is challenged in Court, such challenge may be limited to only those issues raised at the public hearing, or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

All Planning Commission actions may be appealed to the City Council. The time in which an applicant may appeal a Planning Commission action varies from 10 to 30 days depending on the type of project. The appeal period begins the day after the Planning Commission public hearing. There is NO EXTENSION for an appeal period.

If you have any questions or comments regarding this hearing notice, you may call the Planning Department at (559) 661-5430. Si usted tiene preguntas, comentarios o necesita ayuda con interpretación, favor de llamar el Departamento de Planeamiento por lo menos 72 horas antes de esta junta (559) 661-5430.



CITY OF MADERA  
PLANNING COMMISSION

205 W. Fourth Street  
Madera CA 93637  
(559) 661-5430

**Staff Report: Foxglove Shopping Center Extension  
SPR 2009-21 EXT5 & Multiple CUP Extensions  
Item #C1 – February 13, 2018**

---

**PROPOSAL:** A request for extension of an approved site plan review and various conditional use permits in support of the development of a retail shopping center.

---

<b>APPLICANT:</b>	Shaw/Feland Partnership	<b>OWNER:</b>	Same
<b>ADDRESS:</b>	None	<b>APN:</b>	013-160-005 & 013-160-016
<b>APPLICATIONS:</b>	SPR 2009-21 & CUP 2013-04, 05, 06 & 07	<b>CEQA:</b>	Environmental Impact Report

---

**LOCATION:** The project site is located on the southeast corner of Schnoor Avenue and Foxglove Way.

**STREET ACCESS:** Foxglove Way and Schnoor Avenue

**PARCEL SIZE:** 19.51 acres

**GENERAL PLAN DESIGNATION:** C (Commercial)

**ZONING DISTRICT:** C2 (Commercial)

---

**SITE CHARACTERISTICS:** The subject property is approximately 20 acres in size. The Home Depot Shopping Center and Sonic Drive-thru restaurant are located north of the site. Madera Market Place is located to the south. Schnoor Avenue fronts the property to the west. A Madera Irrigation District canal and State Route 99 are located directly east of the site. The project site contains unimproved disturbed land.

**ENVIRONMENTAL REVIEW:** An environmental impact report, mitigation monitoring and reporting program, statement of overriding considerations, and related findings for all project components were completed in conjunction with the proposal. The retail shopping center was approved and the environmental impact report was certified by the Planning Commission on February 12, 2013.

---

**SUMMARY & RECOMMENDATION:** The shopping center remains compatible with surrounding commercial properties and is designed to be a positive attribute to the area. The information presented in this report supports conditional approval of the requested one-year time extension. No amendments to the original conditions of approval are recommended. It is recommended that a one-year time extension for the site plan review and conditional use permits be approved by the Planning Commission.

## **APPLICABLE CODES AND PROCEDURES**

MMC §10-3.4.0114 Lapse of Site Plan Approval

MMC §10-3.1311 Termination and Revocation

California Public Resources Code Section 21000 et. seq., California Environmental Quality Act.

The Commission, in considering the time extension request, may approve, deny or conditionally approve a time extension. If the time extension is denied, the applicant may re-file the site plan review and conditional use permit requests for further consideration by the Planning Commission. The applicant has made a written request for a one-year extension to February 12, 2019 consistent with the Planning Commission's prior approval of the project.

## **PRIOR ACTION**

The site plan review and conditional use permit entitlements were approved by the Planning Commission on February 12, 2013. Extensions have been granted by the Planning Commission on March 11, 2014, January 13, 2015, February 9, 2016 and February 13, 2017.

## **ANALYSIS**

The project proposes to develop a retail shopping center with up to 191,500 square feet of tenant space on approximately twenty acres of land. A primary anchor space would contain approximately 84,000 square feet gross floor area. Several smaller anchors, shops and freestanding pads would fill out the total square footage. Site Plan Review 2009-21 establishes site plan, building design, and construction requirements for the proposed shopping center. Multiple conditional use permits memorialize uses such as outdoor seating, a drive-thru window, and alcohol sales in conjunction with restaurants and retail stores.

The project site was historically used for agricultural purposes. Recent activity has been limited to annual weed control and the project site remains vacant and unimproved.

The applicant requested an extension to the site plan review and use permits in a written communication dated January 18, 2018. At present, the property owner has been in contact with prospective tenants and is consulting with an engineering firm in providing plans for intersection improvements, water demand and other related improvements. The applicant is "optimistic about commencement of construction in 2018." As there have not been substantive changes in the City's Zoning Ordinance over the past year, a new application for the same project would likely generate similar conditions, hence, a time extension rather than a re-filing is appropriate.

If approved by the Commission, the project will have an additional year to commence construction. In total, six years of time will have been granted to project proponents since the original approval in 2013.

## **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Though approval of an extension to the previously approved site plan review is not specifically addressed in the vision or action plans, the overall project does indirectly support Action 115.1 to "encourage viable economic development".

## **SUMMARY OF RECOMMENDATIONS**

The information presented in this report supports approval of a one-year extension of the site plan review and conditional use permits as conditioned. It is recommended that the

Commission consider this information and make a motion to approve the application extension, subject to the recommended conditions.

## **PLANNING COMMISSION ACTION**

The Commission will be taking action regarding the time extension for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07.

Motion 1: Move to approve the requested Time Extension to February 12, 2019, for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07, subject to the original conditions of approval as listed.

### Findings

#### **A. Site Plan Review Findings**

- The use, as defined by the master site plan, is consistent with the Madera General Plan and the Zoning Ordinance designation on the site, as amended by the proposal.
- The master site plan is consistent with established legislative policies relating to traffic safety, street improvements and environmental quality.
- All buildings and site features proposed are addressed under the environmental impact report (EIR) and mitigation monitoring and reporting program (MMRP) for project adopted on February 12, 2013.

#### **B. Conditional Use Permit Findings**

- The proposals to add a drive thru window, outdoor seating, and alcohol sales are ancillary uses to the retail shopping center are consistent with the purposes of the C (Commercial) General Plan designation and the C-2 (Heavy Commercial) Zone District, which provides for these uses subject to the issuance of a conditional use permit.
- There is adequate parking and site area to accommodate the participants of the existing and proposed uses, including stacking distances required for the drive-thru window.
- Because the site has been designed for the development of an integrated shopping center to accommodate a variety of retail and restaurant uses, the conditional uses proposed, as conditioned, will not be detrimental to the health, safety, peace, comfort, morals or general welfare of the neighborhood or the City, and will be compatible with the surrounding area and the City in general.

## **CONDITIONS OF APPROVAL**

#### **A. Site Plan Review Conditions**

##### General Conditions

1. The project approval is conditioned upon acceptance of these conditions contained herein within 30 calendar days, as evidenced by the applicant's signature on a required acknowledgment form.

2. The applicant's or owner's failure to utilize this site plan review within one year following the date of this approval shall render the site plan review null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
3. The approval of this site plan review authorizes the development of the improvements as specified in the site plan, subject to the revisions and clarifications required in these conditions of approval below. All standard permits and approvals required for the improvements, including, but not limited to building permits, grading permits, and construction permits, shall be obtained prior to commencing construction. Modifications to actual building/unit sizes may be authorized by the Community Development Director prior to the issuance of building permits. Such changes may not substantively change the nature of the site plan or building elevations, and may not increase the overall square footage allowances for the development as specified in the environmental impact report for the project.
4. Any changes to the site plan required after, or because of, the preparation of grading plans, final on and off-site utility plans, or other changes made by the developer will require the approval of the Community Development Director. Substantive changes to the site plan, as determined by the Community Development Director, may require the completion of an amended site plan review process.
5. The development of the shopping center shall be subject to compliance with, and implementation of, the mitigation measures identified in the mitigation monitoring and reporting program approved as part of the Foxglove Shopping Center Final Environmental Impact Report.

### **Engineering Department**

6. Engineering plans for off-site improvements and for on-site public improvements shall comply with Section 27 of the City of Madera Standard Plans and Specifications and approved addenda, and shall be submitted to the City Engineer for review and approval, prior to issuance of building permits. Engineering plans shall be wet stamped by a licensed civil engineer and shall be accompanied by a final site plan showing existing and/or re-established lot corner monuments, including a bearing and distance for each boundary line. Plans shall show dedication of all land by easements or other mechanism which may be acceptable to the City for all public streets, sanitary sewer mains (on and off site), water mains (on and off site), storm drains lines (on and off site) and detention basins.
7. Construction work within the City rights-of-way shall not begin prior to obtaining an encroachment permit from the Engineering Division in accordance with Section VI, Madera Municipal Code. All encroachment permits shall be obtained prior to the commencement of construction within the public rights of way.
8. Excavated or graded material shall be sufficiently watered to prevent excessive amounts of air borne dust. Watering should occur at least twice a day with complete coverage, preferably in the late morning and after work as directed by the City Engineer.
9. Material transported offsite should be securely covered to prevent excessive amounts of dust.
10. Streets adjacent to the project may be required to be swept and silt removed manually or mechanically at least once a day as required by the City Engineer. Water hosing will not be allowed as a cleanup method.

## Grading and Drainage

11. Under the direction of a licensed architect or civil engineer, a site grading and drainage plan shall be prepared. No lot fill, rough grading or rough plumbing shall commence until plans are approved. The grading plan should include cut and fill quantities, along with a City Engineer approval signature line. This plan shall demonstrate that storm water drainage will be adequately handled. This plan shall be approved by the City Engineer prior to the issuance of any building permits. Storm drainage runoff engineering calculations shall be submitted for compliance with City standards.
12. As part of a master grading plan, the applicant shall provide detailed drainage calculations to demonstrate to the satisfaction of the City Engineer that the existing storm drain basin (Basin 43550) located southwest of the intersection of Foxglove Way and Schnoor Avenue is sufficiently sized to accommodate both the commercial development and the Fairgrounds related storm water runoff. Calculations shall be submitted for basin capacity and sizing of onsite main.
13. The site shall be graded to provide drainage to approved storm drainage facilities. Fill in excess of 8-inches requires compaction tests when supporting structures. Geotechnical and soil testing reports shall be submitted prior to issuance of building permits in compliance with state requirements.
14. Grading certification by developer's soils and civil engineers upon completion of each building pad shall be provided by letter or as built plans prior to temporary or final occupancy.

## Streets and Drives

15. The development shall implement any and all traffic mitigation measures specified in the Final Environmental Impact Report and Mitigation Monitoring and Reporting Program prepared for the Foxglove Shopping Center project. All measures requiring physical improvements shall be incorporated into civil improvement plans required pursuant to Condition #6.
16. Proposed entrances on North Schnoor Avenue shall be a minimum of 24 feet wide, shall be street type entrances with minimum face of curb radius of 15 feet and shall include the construction of standard handicapped ramps with an ADA accessible path from ramp to ramp. Proposed driveways shall be spaced in accordance with the results of the traffic study prepared for this project.
17. A median island shall be constructed on Foxglove Way that extends from North Schnoor Avenue to a minimum of 50 feet east of the first driveway on the north side of Foxglove Way.
18. Project driveways on Foxglove Way should be aligned with those on the north side of the street. If this is not feasible due to overall project design constraints, reasonable measures shall be implemented to minimize vehicular conflicts.
19. Free and unimpeded access shall be maintained from this development to the Marketplace shopping center located to the south.
20. All public utilities shall be undergrounded, except transformers, which may be mounted on pads.



21. Prior to the issuance of a grading permit, the developer shall dedicate an additional 8 feet to an existing 7 foot Public Utility Easement (PUE) to complete a 15-foot PUE along North Schnoor Avenue.
22. Prior to the issuance of the grading permit, the developer shall record a reciprocal ingress/egress, utility and parking easement acceptable to the City of Madera across the entire center that is applicable to all existing and/or future parcels. The easement shall provide the mutual right to cross access and parking for all future uses. With such easements in place, compliance with City parking standards for each building will be based on total number of spaces available at the Center.
23. Prior to issuance of a grading permit, the developer shall cause the existing 60 foot wide easement for access and utilities to be shifted westward to avoid the proposed structures being constructed within the easement.
24. The developer shall reimburse its fair share of cost to the City for previously constructed infrastructure in and on Foxglove Way to the extent that such infrastructure is utilized by the project. The developer shall not be responsible for reimbursement of cost for those improvements removed due to the project's reconstruction of Foxglove Way or improvements otherwise not incorporated into the project. Determination of fair share costs will be calculated in conjunction with submittal and review of civil plans for off-site improvements.
25. Additional detailed review will be conducted by the City when more detailed off-site street plans, and on/off site utility plans are submitted to the City; additional requirements may be specified based on this subsequent review. This will include, but not be limited to, further refinement to street plan for Foxglove Way alignment from Schnoor Avenue through transition to private drive alignment on the project site.

#### Sewer

26. Sewer service connection shall be constructed to current City standards.
27. Sewer connections larger than 4 inches shall require construction of a manhole.
28. Existing septic tanks, if found, shall be removed, permitted, and inspected by the City of Madera Building Department.
29. Prior to the issuance of encroachment permits to construct utility connections, the developer shall reimburse its fair share of cost to the City for the previously constructed sewer main in North Schnoor Avenue. Total reimbursement due by the developer to the City is \$12,293.00.

#### Water

30. Water service connection(s) shall be constructed to current City standards including water meter(s) located within the City right-of-way and shall read in cubic feet. A backflow prevention device shall be located within private property.
31. A separate water meter and backflow prevention device will be required for landscape consumption.
32. Existing wells, if any, shall be abandoned as directed and permitted by City of Madera for compliance with state standards.

33. Prior to the issuance of encroachment permits to construct utility connections, the developer shall reimburse its fair share of cost to the City for the previously constructed water main in North Schnoor Avenue. Total reimbursement due by the developer to the City is \$7,822.00.
34. Additional detailed review of the water system requirements will be conducted by the City when more detailed off-site street plans, and on/off site utility plans are submitted to the City; additional requirements may be specified based on this subsequent review.

## **Planning Department**

### Site Plan and Building Design - General

35. This site plan approval authorizes the development of an integrated shopping center with a cohesive parking and circulation system and consistent design criteria. All buildings, regardless of tenant, shall be designed and constructed in a manner consistent with the City's Design and Development Guidelines for Commercial Development and the master design guidelines prepared for the project.
36. Consistent with the above described guidelines, consideration will be given to all tenants to be allowed to retain important elements of their corporate identity and architectural details which support their branding and themed experience. While buildings and related site features shall incorporate a standard color palette, architectural features, roof types, and materials, etc., they may feature such aforementioned corporate elements and architectural details as well as variations to the color palette. Final elevations for all buildings/units are subject to the approval of the Community Development Director prior to the issuance of building permits.
37. The landscape and irrigation plan submitted for the project shall be in compliance with the State Department of Water Resources Model Water Efficient Landscape Ordinance.
38. Prior to the issuance of the first building permit, a final landscaping plan for the shopping center shall be submitted which encompasses the following revisions and clarifications:
  - a. A phasing plan for all site landscaping shall be submitted for approval.
  - b. All landscaping areas shall have a minimum of 75% vegetative ground cover.
  - c. Indicate species, size and spacing of shrubs where used. Clear distinction between landscaping symbols should be provided.
  - d. Clearly designate what is ground cover and what is turf.
  - e. Landscape islands with shade trees separating facing parking stalls shall be a minimum of 5'x18' (at outside of curb). Where used, tree wells shall be a minimum of 5' in length and minimum of 5' in width (at outside of curb).
  - f. Raised planters, free standing planters (pots, containers), and tree wells in walking surfaces (with grates) shall be incorporated along storefronts which abut parking spaces.
  - g. Root barriers shall be provided for all trees which are planted 5' or less from curb, gutter and walkways.

- h. Along the rear of the site, adjacent to the existing MID canal, it is recommended that efforts be made to create a more functional screen of this area for views from SR99. This can be accomplished in a variety of ways, including through the addition of berms or solid fencing, by planting additional evergreen trees, or combination thereof.
  - i. All landscaping shall be developed with permanent irrigation systems and shall be controlled with an irrigation control system approved by the Parks and Community Services Director. Tree wells should provide for deep watering versus surface watering.
  - j. All unpaved areas within the public right-of-way along the street frontages shall be landscaped and maintained by the developer/property owner. Landscaping shall be continuous from the curb-face, around the sidewalks, and up to the pavement in the parking area. Detailed landscape and irrigation plans shall be submitted and approved by the Parks and Community Services Director prior to issuance of any building permits. Street trees shall be placed as specified in the approved landscaping plan. No temporary or permanent occupancy of any buildings shall be approved until the landscaping has been installed as per the landscaping phasing plan, and approved by the Parks and Community Services Director.
  - k. Any fencing, landscaping and irrigation within the public right-of way shall not be installed until the Parks and Community Services Director approves the plans. Any deviation shall require prior written request by the developer and approval by the Parks and Community Services Director. Removal or modification shall be at the developer's expense. A landscaping water meter (if applicable) shall be connected after a back flow device.
  - l. The property owner shall maintain all landscaping in a healthy and well manicured appearance to achieve and maintain the landscaping design approved as part of the project's landscape and irrigation plan(s). This includes, but is not limit to, ensuring properly operating irrigation equipment at all times, trimming and pruning trees and shrubs, mowing lawns consistent with industry standards, replacing dead or unhealthy vegetation, etc.
  - m. Landscaping inspection fees for this project shall be paid in accordance with the fee schedule adopted by the Resolution of the City Council, no later than the issuance of building permits for the first building.
39. The location of all exterior transformers and similar utility/service equipment within the parking and circulation areas, common areas, and landscaped areas shall be shown on building plans; above ground features shall be screened with a combination of landscaping, berms, architecturally treated walls, etc. to the satisfaction of the Community Development Director.
  40. All building-related electrical and utility service panels and equipment shall be enclosed in mechanical rooms or screened from public views with architectural features or landscaping.
  41. Roof access ladders shall be located inside the buildings, or be located within an enclosure matching the adjacent architectural features.
  42. Submit for review and approval a lighting plan and information (tear sheets) on fixtures. This should be accomplished in conjunction the requirements of the mitigation measures required for the project.

43. Outdoor lighting fixtures shall be directed downward and shielded away from adjacent properties, unless accent lighting is specifically authorized by the City. Any nuisance lighting conditions which are found to exist after commencement of operation shall be corrected by the owner to a configuration that is acceptable to City at the owner's expense, within (30) days of notification by the City.
44. A plan for internal pedestrian crossings shall be submitted for review and administrative approval by the Community Development Director which indicates the type and design of pavement markers (e.g., stamped concrete, pavers) pursuant to the provisions of the Master Design Guidelines. The use of painted lines in lieu of alternative pavement types to delineate pedestrian connections should be used only where alternative pavement is limited by ADA access requirements.
45. To the extent feasible, pedestrian connections/sidewalks shall be meandered with landscape strips to avoid long, continuous paved edges. Meander may be accomplished with a curvilinear or angular pattern.
46. The placement and design of bollards or planters adjacent to store fronts shall be shown on the building plans for all buildings. Any such features shall be consistent with the overall architectural style for the center. Bollards shall have decorative features rather than simple solid pipes or posts, and may vary by design.
47. Submit for review and administrative approval by the Community Development Director, a plan and detail for refuse storage areas. Where any side is exposed to public view, landscape screening (and berming, where possible) shall be incorporated, or the enclosure shall be surfaced with an architectural treatment compatible with the adjacent building.
48. Provide details and locations for cart storage areas in conjunction with each building permit application. Storage areas shall be buffered with landscaping or architectural features. The only signage allowed will be a basic symbol.
49. Vandalism and graffiti shall be corrected at the owner's expense within 72 hours of notification.

#### Site Plan and Building Design – Specific Modifications

50. Light sconces or other architectural embellishments should be included along building frontages to break up wall mass. Wainscoting and/or banding treatment are recommended at columns and entryways.
51. Major A – The building shall be modified in accordance with the provisions of the City's Design and Development Guidelines. A stucco finish shall be applied to the front exterior elevation, currently presented as a painted CMU (Concrete Masonry Unit) block finish. This would bring the lines and exterior finish of the building closer to the conceptual elevations of other buildings in the shopping center.
52. Shops A1 and A2 – The buildings shall be modified in accordance with the provisions of the City's Design and Development Guidelines. Landscape features such as tree wells and/or planter beds shall be included at the rear of buildings where currently none are indicated. The use of awnings or other structures placed over rear service doors should be considered.

53. Buildings B & C – The buildings shall be modified in accordance with the provisions of the City’s Design and Development Guidelines. Along the southeasterly elevation of Building C (side of building) the project shall include planters and/or tree wells along the curb face where parking spaces abut building. Architectural features shall be included to break up the wall massing of this side of the building, such as vertical landscaping, trellis structures, or combination thereof. The use of awnings or other structures placed over rear service doors should be considered.
54. Pads D, E & F – The rear (northwesterly elevation) of the building proposed for Pad F shall be modified consistent with the General Plan and the Design and Development Guidelines to take into consideration public views from Foxglove Way. A “four-sided building” shall be designed for Pad F and the utility equipment shall be screened by landscaping or by incorporating the mechanical areas into the architectural design of the building. Utility equipment for buildings proposed for Pads D & E should be located at the rear of buildings (southerly elevations), out of public views.
55. Pad G – Pharmacy Use - The building shall be modified to incorporate a smooth textured finish to soften the CMU construction, using colors from the center’s primary color palette. Along the northwesterly elevation of Building C (frontage of building facing Foxglove Way) the project shall include planters and/or tree wells along the curb face where parking spaces abut building. The screening enclosure for the trash compactor and trash bins must carry the same architectural treatments as the adjoining walls.
56. A design for the transit site shall be submitted for review and approval of the Community Development Director. The design should:
  - Encourage the use of transit services by providing a positive appealing space.
  - Be located in an area inclusive of the general activities.
  - Be a well landscaped attractive setting.
  - Provide separation from the traffic.
  - Provide a shade and rain shelter that is architecturally consistent with the area,
  - Include provisions for seating, trash receptacles and a screened area for depositing carts.

#### Master Sign Plan

57. A master sign plan shall be developed to demonstrate unified sign styles within the center and to establish allowances for individual sign permits when they are proposed. The plan shall cover building signage, monument signage, or other freestanding signage including any proposed “directional monument”. The master sign plan shall be submitted by the applicant and reviewed and approved by the Planning Department prior to issuance of building permits.
58. All freestanding directional, monument and/or pylon type signs shall be designed to be consistent with the architecture and color schemes of the commercial center. Presentation of multiple tenant names and or symbols shall be done in a manner that provides a uniform consistent presentation. Consistency may be achieved in several ways including but not limited to uniform background colors, alignment of lettering, consistency in font sizes or types. The intent is not to prevent unique tenant identification, but to present corporate images/logos and signage in a thematically coordinated manner rather than in an uncoordinated, dissimilar fashion.

## **FIRE REQUIREMENTS**

59. Fire Department connections shall be located in posted fire lanes 40 feet from the structure protected. Where multiple Fire Department connections are located together, each shall be clearly identified as to the building it serves.
60. Portable fire extinguishers must be provided. A minimum of at least one, 2A10BC-rated portable fire extinguisher is required for each 3,000 square feet of area or fraction thereof. The fire extinguishers must be mounted in visible and accessible locations with 75 feet of travel distance of all portions of each building.
61. Fire sprinklers are required in most buildings. The exact use and occupancy of the smaller structures will determine if fire sprinklers are required.
62. Exit signs and emergency lighting are required in buildings with two or more required exits.
63. Fire lanes need to be provided and clearly identified on the Site Plan including the method of posting. NOTE: The drive access along the north side of the project does not appear to provide proper turning movements for fire apparatus. This may require a slight redesign in building placement or parking layout.
64. The addresses for each building must be visible from the street and the method and placement must be shown on the front elevation of the plans.
65. A fire alarm system for supervision of the fire sprinkler system is required. An evacuation alarm may be required based upon the requirements of California Fire Code Chapter 9 and California Building Code Chapter 9.
66. When commercial cooking systems are proposed, a fire suppression system will be required.
67. The specific use of the "Patio Areas" will need to be identified during the plan review phase.
68. There does not appear to be an adequate accessible path of travel at the rear of Building B and possibly not at Building A either. This shall be addressed prior to submittal for building permits.
69. The proposal shows interconnectivity with the rear of the Marketplace Shopping Center. The fire access lanes need to be identified for review. Careful attention should be given regarding maintenance of the fire lanes.
70. Note, this project will be subject to the City of Madera's new "Shell Building Policy" if such buildings are proposed as is common with this type of development.
71. Cross-access agreements are required for the multiple properties that comprise this site. The access to the existing Home Depot site will be affected and this must be clarified.
72. All onsite underground fire mains and above ground fire protection systems (such as fire hydrants) must be tested and operational prior to the delivery of combustible construction materials to the site.

## Building Plans, Permits, Processes

73. Existing property corners shall be found or installed and noted on the site plan, along with the distance from the property lines to the face of curb and street centerline. New property corners shall require record of survey prior to any site construction or issuance of building permits.
74. For each building to be constructed, provide a minimum of 2 sets of the following plans to the Building Division for the initial plan check. The size of plans shall be at least 36" x 24". A complete set of plans shall be prepared by and bearing the stamp and signature of an individual licensed to practice architecture, including the following required drawings drawn to an appropriate scale:
  - a. Site plan bearing City approval or a plan incorporating all site related conditions
  - b. Grading plan prepared by an individual licensed to practice land surveying, civil engineering or architecture
  - c. Floor plan
  - d. Site utilities plan showing on-site sanitary sewer, water, storm sewer, water meters, back flow prevention devices, roof drains, etc., and the connections to off-site utilities
  - e. All exterior elevations
  - f. Engineering plans and calculations
  - g. Foundation plan
  - h. Ceiling framing plan
  - i. Roof framing plan
  - j. Electrical plan
  - k. Plumbing plan
  - l. Mechanical plan
  - m. Sections and details
  - n. Disabled access compliance drawings
  - o. Energy compliance drawings and documentation
  - p. Landscape plan
  - q. Landscape irrigation plan
75. The site plan submitted with the each building permit application shall include all modifications and clarifications required by these conditions of approval, as applicable to the building proposed for construction. Information required on the plan shall include, but not be limited to: water and sewer service, water meter and sewer cleanout, backflow preventer location and type, existing fire hydrants within (100) feet and street lights within (100) feet, traffic striping and signing, and any other existing or proposed improvements.
76. The plans submitted for building permits shall show compliance with the herein listed conditions of approval and shall comply with the uniform building codes, along with federal and state laws, local resolutions and ordinances. Site development shall be consistent with the approved site plan, floor plan and elevations. Any deviations shall require prior written request and approval from the Community Development Director. The site plan and all plans submitted for building permit purposes shall be at a scale large enough to allow all dimensions and distances to be legible.
77. Site and buildings must meet federal and state disability access regulations. Each first floor unit must meet accessibility requirements from public spaces and parking lots to each unit. In addition, inside each unit all rooms must meet accessibility and be adaptable for future compliance to disabled access regulations.

### San Joaquin Valley Air Pollution Control District

78. The SJVAPCD has commented that the project is subject to District Rule 9510 (Indirect Source Review). District Rule 9510 states that a project proponent shall submit an Air Impact Assessment (AIA) prior to final discretionary approval. It is recommended that the project applicant consult with the SJVAPCD regarding District Rule 9510, as well as any other applicable District Rules and Regulations prior to submittal for building permits.

### Caltrans

79. The project applicant shall enter into a fair share agreement with Caltrans to address off-site improvements as identified in the Draft EIR and MMRP prepared for the Foxglove Shopping Center.
80. The applicant shall make all required traffic improvements as identified in the Draft EIR and MMRP prepared for the Foxglove Shopping Center.

### Madera Irrigation District

81. The applicant shall coordinate with Madera Irrigation District regarding the location and configuration of required fencing along the canal alignment.

## **B. Conditional Use Permit Conditions**

### General

1. Conditioned upon acceptance of the conditions of approval contained herein within thirty (30) days, as evidenced by the Applicant's dated signatures on the required acknowledgment.
2. An applicant's failure to utilize any use permit within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission for the specified permit.

### Outdoor Seating (CUP 2013-04)

3. The defined outdoor seating areas for the site shall be limited to use in conjunction with food and beverage service, and may be defined and separated from the parking area by a planter or low fence. The seating areas shall not interfere with required path of travel required for the center.

### Drive-thru Use (CUP 2013-05)

4. A drive-thru window is proposed for the drug store use. There shall be adequate area to accommodate the drive-thru window and sufficient vehicle stacking area in both drive-thru lanes. The drive-thru window shall be incorporated into the design of the building and not substantively detract from the overall architectural value of the building.

### Alcohol Sales for On-Site Consumption (CUP 2013-06...)

5. Alcohol sales for on-site consumption of beer, wine and spirits, within the shopping center project shall be limited to sale and consumption within restaurant/cafe tenants where



alcohol is an accessory component to food service. Alcohol sale for on-site consumption shall be limited to Shops A1 and A2, and also for Pads D, E and F.

6. A separate conditional use permit shall be assigned to each specific location. Each shall operate independent of the others and each shall require individual review for compliance and/or any requested extensions or modifications.
7. Specific locations approved for alcohol sales for on-site consumption shall have the following use permit numbers assigned:
  - Shop A1 - CUP 2013-06A1
  - Shop A2 - CUP 2013-06A2
  - Pad D - CUP 2013-06D
  - Pad E - CUP 2013-06E
  - Pad F - CUP 2013-06F
8. The service and consumption of alcohol in the outdoor seating area for the five identified locations will require that a specific seating area be established, and defined with a fence and gate, and that alcohol not be taken from that area.
9. ~~Hours of operation for the restaurant/café uses shall not be earlier than 8:00 a.m. or later than midnight.~~
9. Sales of alcoholic beverages for on-site consumption shall not occur earlier than 8:00 a.m. or later than midnight.
10. The applicant must, prior to commencing the use contemplated by this permit, provide evidence of a valid ABC license for the sale of alcoholic beverages for consumption on-site of the premises of the restaurant/café use.
11. Music or obnoxious noise from the operation or business shall not be audible to persons in the public rights-of-way or on adjacent or nearby properties.
12. Loitering shall be prohibited in, upon the premises and in adjacent, and nearby areas both public and private.
13. An adult operator or employee 21 years of age or older shall be on site during all hours of operation.
14. The limitation/restriction on the number and locations for alcohol sales for on-site consumption within the center, as part of this approval, shall not be construed as a prohibition from a future conditional use permit application being submitted to the City for consideration.

#### Alcohol Sales for Off-Site Consumption (CUP 2013-07...)

15. Alcohol sales for off-site consumption within the shopping center project shall be limited to Major A (Grocery Store use) and Pad G (Pharmacy use) locations.
16. A separate conditional use permit shall be assigned to each specific location. Each shall operate independent of each other and require individual review for compliance and/or any requested extensions or modifications.

17. Specific locations approved for alcohol sales for off-site consumption shall have the following use permit numbers assigned:
  - Major A (Grocery Store use) – CUP 2013-07A
  - Pad G (Pharmacy use) – CUP 2013-07G
- ~~18. Sales of alcoholic beverages for off-site consumption shall not occur earlier than 8:00 a.m. or later than midnight.~~
19. The applicant must, prior to commencing the use contemplated by this permit, provide evidence of a valid ABC license for the sale of alcoholic beverages for consumption off the premises of the store.
20. Loitering shall be prohibited in, upon the premises and in adjacent, and nearby areas both public and private.
21. An adult operator or employee 21 years of age or older shall be on site during all hours of operation.
22. The limitation/restriction on the number and locations for alcohol sales for off-site consumption within the center, as part of this approval, shall not be construed as a prohibition from a future conditional use permit application being submitted to the City for consideration.

**(OR)**

Motion 2: Move to continue the requested time extension for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07 to a date specified, for the following reasons or in order for the following information to be provided: (specify)

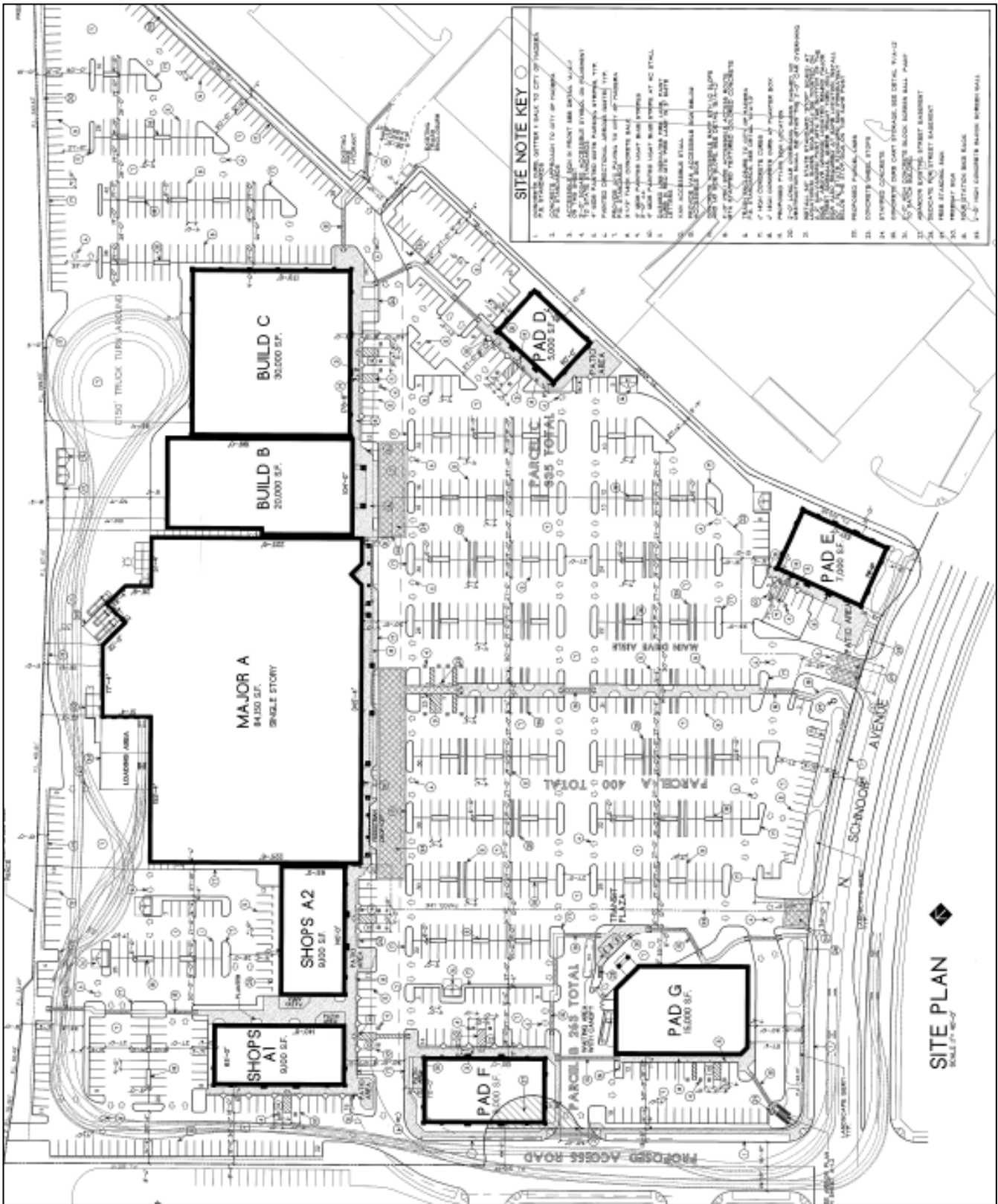
**(OR)**

Motion 3: Move to deny the requested time extension for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07: (specify)

## **ATTACHMENTS**

Site Plan  
Extension Request Letter

# Site Plan



## Extension Request

LAW OFFICES OF  
**DEWAYNE ZINKIN**  
5 RIVER PARK PLACE WEST, SUITE 203  
FRESNO, CALIFORNIA 93720  
Telephone: (559) 224-8100  
Facsimile: (559) 224-8111

DEWAYNE ZINKIN  
ATTORNEY AT LAW

RICHARD L. FAIRBANK  
ASSOCIATE

January 18, 2018

Mr. Chris Boyle  
Planning Manager  
City of Madera  
205 West Fourth Street  
Madera, CA 93637

Re: Foxglove and Schnoor - Site Plan Review – 2009-21


Chris,

The purpose of this letter is to request a one year extension for the Site Plan Review approval for SPR 2009-21 and all of the various conditional use permits that were granted and approved with it at the Planning Commission meeting on February 12, 2013. The use permits include, without limitation, conditional use permits for outdoor seating, a drive-thru window and alcohol sales. Now that the national economy is showing positive growth, and although the Central Valley tends to lag behind, we are seeing more activity with prospective tenants. We are working with an engineering firm to provide us with the engineering for the intersection improvements, water demand, and other issues contained in the mitigation measures contained in the EIR. We are optimistic about commencement of construction in 2018. We would like to request another one year extension from the City and I would appreciate it if you would please put that on the calendar of the City for action prior to the date of expiration. A check in the amount of \$1,650.00 for the extension filing fees will be delivered to your office today.

As you know, I believe that the efforts, costs, and obligations made and incurred by the Owner, in reliance upon the SPR-2009-21 and related CUPs would justify a finding that those entitlements have become vested and perfected, but I anticipate it will be some time before the City will be able to review that and agree, so out of an abundance of caution, this application is submitted for an extension.

Thank you for your help and assistance

Sincerely,



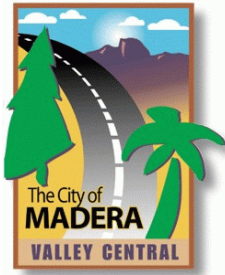
Richard L. Fairbank  
Attorney at Law

F:\Word\ - MADERA PROPERTY2 - DEVELOPMENT, CONSTRUCTION, MAINTENANCE\4 - CONSTRUCTION\City of Madera\Correspondence\20180118-RF to Dave Merchen re extension.doc

[Return to Agenda](#)

**REZ 2017-06, CUP 2017-36 & SPR 2017-53  
Boston Motors, Inc.**

Staff is requesting this item be continued to the March 13, 2018 Planning Commission meeting to allow more time to work with the applicant.



CITY OF MADERA  
PLANNING COMMISSION

205 W. Fourth Street  
Madera CA 93637  
(559) 661-5430

**Staff Report: Madera Town Center  
Development Agreement Annual Review and  
Environmental Determination  
Item #2 – February 13, 2018**

---

**PROPOSAL:** A public hearing for the annual review of the development agreement approved in conjunction with the Madera Town Center Shopping Center (Ordinance 821 C.S.).

---

<b>APPLICANT:</b>	Zelman Madera LLC	<b>OWNER:</b>	Zelman Madera LLC
<b>ADDRESS:</b>	Avenue 17/SR 99	<b>APN:</b>	013-240-001
<b>APPLICATION:</b>	Development Agreement Annual Review	<b>CEQA:</b>	None Required for the Annual Review

---

**LOCATION:** The project site is located at the northeast corner of the intersection of Avenue 17 and Freeway 99.

**STREET ACCESS:** Avenue 17

**PARCEL SIZE:** 101 Acres (Approximately)

**GENERAL PLAN DESIGNATION:** HC (Highway Commercial)

**ZONING DISTRICT:** C-2 (Heavy Commercial)

---

**SITE CHARACTERISTICS:** The parcel was formerly utilized as a dairy and is now vacant. The property has approximately 2,300 feet of frontage along Avenue 17, which forms the southern boundary, and approximately 2,100 feet of frontage along Freeway 99, which forms the western boundary. Schmidt Creek, a natural drainage feature, lies along the northern boundary and separates the project site from the rural residential subdivision to the north. A portion of the site currently lies within the 100 year flood zone.

**ENVIRONMENTAL REVIEW:** An environmental impact report (EIR) was prepared and certified for the shopping center project. An addendum was prepared and accepted by the City in 2007 to address refinements to the conceptual site plan which was referenced in the initial EIR. No additional environmental review is required in conjunction with the annual review of the development agreement.

---

**SUMMARY & RECOMMENDATION:** The Madera Town Center Development Agreement was considered by the Planning Commission in July 2007 and approved by the City Council in August 2007. The primary purpose of the agreement was to lock in the project approvals and development requirements for the shopping center and define reimbursements and fee credits that would be received by the developer. An annual review of the development agreement is required pursuant to the California Government Code and the Madera Municipal Code to verify that the developer has complied in good faith with the terms of the agreement. A review of the agreement indicates that the obligations of the developer are triggered when the shopping center is developed, which has not yet occurred. As such, it is recommended that the Commission find that the developer has complied in good faith with the terms of the development agreement.

## **APPLICABLE CODES AND PROCEDURES**

California Government Code Sections 65864-65869.5 authorize cities to enter into binding development agreements. Madera Municipal Code Sections 10-3-1701 thru 1718 establish the procedures and regulations applicable to the consideration and adoption of development agreements in Madera. Both the Government Code and the Madera Municipal Code specify that all development agreements be reviewed by the City on an annual basis to determine whether the applicant has complied in good faith with the terms of the agreement.

## **PRIOR ACTION**

In 2006, the City Council approved general plan amendment and rezoning applications in order to facilitate the annexation of the 100+ acre subject property at Avenue 17 and State Route 99 into the City and to allow the development of a shopping center on the site. The Local Agency Formation Commission subsequently approved the annexation. In 2007, Zelman Retail Partners proposed a development agreement for the shopping center project which was approved by the City Council in August 2007.

The various approvals necessary for the project were sought by Zelman Retail Partners before they actually purchased the subject property outright. Prior to formal acquisition, Zelman Retail Partners formed "Zelman Madera LLC" for the purpose of taking title to the property and developing the shopping center. In accordance with the terms of the Development Agreement, Zelman Madera LLC is a successor in interest and is bound by the Development Agreement as the current owner of the property.

## **ANALYSIS**

In 2006, the City of Madera approved a general plan amendment and a rezoning in order to facilitate the annexation of the subject property into the City and to allow the development of the Madera Town Center shopping center on the site. A few months later, a development agreement was proposed by the developer and approved by the City as authorized by the California Government Code and City regulations. Development agreements are used for vesting land use entitlements and may also establish financing and construction responsibilities, as well as timelines for the installation of on and off-site improvements. Development agreements are generally used for larger, more complex projects that often take a long time to fully develop. Without a development agreement in place, it is possible that the development requirements could change over time, fees could increase, etc.

The development agreement approved in conjunction with the Madera Town Center project includes the following principle features:

- The agreement would have a term of 20 years, during which the cumulative development requirements applied to the project would not change.
- Development exactions would be locked in during the term of the agreement and would not increase.
- The Project would develop infrastructure and utilities consisting of a water well, water pipelines, sewer lines, five traffic signals, Avenue 17 street frontage improvements and Freeway 99 ramp improvements.
- The project would dedicate, to the City, property for a storm drain and flood management basin, pump site, water well site, and property along Avenue 17 for street right-of-way.

- The City will credit the applicable categories of project's capital facility "impact" fees towards the cost of the off-site improvements (i.e. sewer impact fees credited towards off-site sewer line construction).
- The City will reimburse the developer for off-site construction costs, up to a total of \$7,386,371.00 during the term of the agreement. The source of the reimbursement will be the City's share of sales tax revenue generated by the project. Annual reimbursement payments shall be in an amount not to exceed 50% of the first \$1,300,000 of project-generated sales tax revenue which is received by the City.
- In no event shall the aggregate of the fee credit and the reimbursement amount exceed the developer's reasonable and actual costs and expense of constructing and installing the Infrastructure Improvements.

A table highlighting the basic terms of the agreement that trigger compliance by the applicant, and summarizing the status of each item, is provided (Table 1).

**Table 1  
Development Agreement Terms Triggering Compliance by Applicant**

	<b>Description</b>	<b>Timing of Compliance</b>
1.	Provide water well site	If project constructed – at first occupancy
2.	Construct water well	If project constructed – at first occupancy
3.	Construct water line to well	Developer has completed this improvement
4.	Construct water line along project frontage	If project constructed – at first occupancy
5.	Construct sewer line to property	If project constructed – at first occupancy
6.	Construct sewer lift station	If project constructed – at first occupancy
7.	Construct 5 traffic signals	If project constructed – at first occupancy
8.	Construct Avenue 17 improvements	If project constructed – at first occupancy
9.	Re-stripe SR 99 NB Ramp	If project constructed – at first occupancy
10.	Construct basin and floodway (Schmidt Creek) improvements	If project constructed – at first occupancy
11.	Dedicate basin and floodway improvements to the City	After completion of improvements, and acceptance by City Engineer
12.	Construct SR 99/Avenue 17 Interchange Improvements	If project constructed – at first occupancy
13.	Pay Phase 1 Interchange Impact Fee	If project constructed – at first occupancy



14.	Dedicate 20' wildlife corridor	Unspecified. (Assumed to occur with dedication of floodway improvements)
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

As shown in Table 1, the development agreement outlines a series of obligations that the project developer, Zelman Madera LLC, will need to comply with. The majority of these obligations relate to the construction and dedication of public improvements. The agreement specifies that the completion of these improvements is only triggered when and if the shopping center is constructed, and then allows until the first occupancy at the shopping center to complete the improvements. The project developer has completed the installation of the water line from the west side of the freeway to the well site on the east side of freeway (Item 3 in Table 1). It should also be noted that some of the improvements referenced in the Madera Town Center Development agreement are also required in conjunction with the Madera Travel Center (Love's). If Love's constructs these improvements first, it will relieve Zelman from the requirement to do so and Zelman would not be reimbursed for those improvements.

The development agreement does not include a schedule for the construction of the shopping center. Instead, the agreement acknowledges that the developer cannot predict when or the rate at which phases of the project will be developed. Such decisions depend upon numerous factors which are not within the control of the developer, such as market orientation and demand, interest rates, absorption, competition and other similar factors.

### **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Though the annual review of development agreements are not specifically addressed in the vision or action plans, the overall project does indirectly support **Action 115.2** – *As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...;*

### **SUMMARY OF RECOMMENDATIONS**

The information presented in this report supports a determination that Zelman Madera LLC has complied in good faith with the terms of the development agreement.

### **PLANNING COMMISSION ACTION**

The Commission will be making a determination as to whether the applicant has complied in good faith with the terms of the development agreement.

Motion 1: Move to approve a resolution declaring a statement of compliance under periodic review for the development agreement approved in conjunction with the Madera Town Center Project (Ord 821), for the period through August 1, 2017.

### Findings

- As summarized in Table 1 of this staff report, Zelman Madera LLC has complied with the terms of the development agreement which trigger compliance on the part of the applicant. There are no developer obligations which required compliance during the period through August 1, 2017.

### **(OR)**

Motion 2: Move to find that Zelman Madera LLC has not complied in good faith with the terms of the development agreement approved in conjunction with the Madera Town Center Project (Ord 821), for the period through August 1, 2017.

### Findings

- The Planning Commission will identify the terms of the development agreement where compliance has not occurred and the substantial evidence relied on in making that determination.

### **(OR)**

Motion 3: Move to continue the public hearing, to a date specified, for the following reasons or in order for the following information to be provided: (please specify)

## **ATTACHMENTS**

Planning Commission Resolution Declaring a Statement of Compliance  
Municipal Code Section 10-3.1715 – Periodic Review of Development Agreements  
Development Agreement between City of Madera and Zelman Retail Partners, Inc.

**RESOLUTION NO. 1822**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA DECLARING A STATEMENT OF COMPLIANCE UNDER PERIODIC REVIEW FOR THE DEVELOPMENT AGREEMENT APPROVED IN CONJUNCTION WITH THE MADERA TOWN CENTER PROJECT (ORD 821 C.S.), FOR THE PERIOD THROUGH AUGUST 1, 2017

WHEREAS, in 2007, the City of Madera and Zelman Retail Partners entered into a development agreement in conjunction with the Madera Town Center shopping center project; and

WHEREAS, the development agreement was entered into before Zelman Retail Partners purchased the subject property outright; and

WHEREAS, prior to its formal acquisition of the subject property, Zelman Retail Partners formed "Zelman Madera LLC" for the purpose of taking title to the subject property and developing the shopping center; and

WHEREAS, in accordance with the terms of the Development Agreement, Zelman Madera LLC is a successor in interest and is bound by the Development Agreement as the current owner of the property; and

WHEREAS, the City of Madera Community Development Director ("the Community Development Director") initiated a Periodic Review for the Development Agreement approved in conjunction with the Madera Town Center project (Ordinance 821 C.S.), as required under Zoning Ordinance Section 10-3.1715; and

WHEREAS, the Planning Commission held a public hearing on this matter on February 13, 2018 and considered the information provided in a written staff report; and

WHEREAS, the Planning Commission has made the following finding:

1. Zelman Madera LLC, Inc has complied with the terms and conditions of the Development Agreement (ORD 821 C.S.), through August 1, 2017 as summarized in Exhibit A, attached hereto and incorporated by reference, and, Zelman Madera LLC has demonstrated a

continuing good faith effort to implement the terms and conditions as set forth in the Development Agreement.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MADERA AS FOLLOWS:

1. The above recitals are true and correct.
2. The Planning Commission of the City of Madera hereby declares that the Zelman Madera LLC, Inc is in compliance with the terms and conditions of the Development Agreement approved in conjunction with the Madera Town Center project (Ord 821 C.S.), through August 1, 2017.
3. This resolution is effective immediately upon adoption.

\* \* \* \* \*

Passed and adopted by the Planning Commission of the City of Madera this 13<sup>th</sup> day of February, 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
Chairperson  
City of Madera Planning Commission

Attest:

\_\_\_\_\_  
Christopher Boyle  
Planning Manager

## Exhibit A

### Madera Town Center Development Agreement Status of Terms Triggering Performance or Compliance by Applicant

	Description	Timing of Compliance
1.	Provide water well site	If project constructed – at first occupancy
2.	Construct water well	If project constructed – at first occupancy
3.	Construct water line to well	Developer has completed this improvement
4.	Construct water line along project frontage	If project constructed – at first occupancy
5.	Construct sewer line to property	If project constructed – at first occupancy
6.	Construct sewer lift station	If project constructed – at first occupancy
7.	Construct 5 traffic signals	If project constructed – at first occupancy
8.	Construct Avenue 17 improvements	If project constructed – at first occupancy
9.	Re-stripe SR 99 NB Ramp	If project constructed – at first occupancy
10.	Construct basin and floodway (Schmidt Creek) improvements	If project constructed – at first occupancy
11.	Dedicate basin and floodway improvements to the City	After completion of improvements, and acceptance by City Engineer
12.	Construct SR 99/Avenue 17 Interchange Improvements	If project constructed – at first occupancy
13.	Pay Phase 1 Interchange Impact Fee	If project constructed – at first occupancy
14.	Dedicate 20' wildlife corridor	Unspecified. (Assumed to occur with dedication of floodway improvements)
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

**MADERA MUNICIPAL CODE EXCERPT  
DEVELOPMENT AGREEMENTS PERIODIC REVIEW**

**10-3.1715 PERIODIC REVIEW**

(A) The city shall review each development agreement every 12 months from the date the agreement is entered into. The time for review may be modified to be more frequent either by agreement between the parties or by initiation in one or more of the following ways:

- (1) Affirmative vote of at least four members of the Planning Commission; or,
- (2) Affirmative vote of at least three members of the City Council.

(B) The Community Development Director shall begin the review proceeding by giving notice that the city intends to undertake a periodic review of the development agreement to the property owner. Notice shall be provided at least ten days in advance of the time at which the matter will be considered by the Planning Commission.

(C) Annual review of development agreements shall be conducted by the Planning Commission at a public hearing at which the property owner shall demonstrate good faith compliance with the terms of development agreement. The burden of proof on this issue is upon the property owner.

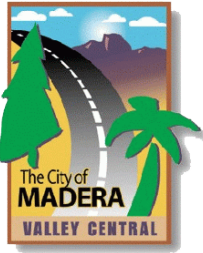
(D) The Planning Commission shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the development agreement.

(E) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall by resolution adopt a statement of compliance certifying such compliance in a form suitable for recording in the County Recorder's Office. Upon recording of a statement of compliance, the review for that period is concluded. A resolution adopting a statement of compliance shall be final ten days after the Planning Commission decision, unless a notice of appeal has been filed pursuant to the provisions of the municipal code.

(F) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the Planning Commission may recommend to the City Council that the development agreement be modified or terminated.

(G) The procedure for modifying or terminating a development agreement shall be the same as the procedure for entering into a development agreement, except that the owner shall be given at least 30 days notice of the hearing by the City Council to consider such modification or termination.

(Ord. 817 C.S., passed 6-20-07)



CITY OF MADERA  
PLANNING COMMISSION

205 W. Fourth Street  
Madera CA 93637  
(559) 661-5430

**Staff Report: Madera Travel Center  
Development Agreement Annual Review and  
Environmental Determination  
Item #3 - February 13, 2018**

---

**PROPOSAL:** A public hearing for the annual review of the Development Agreement approved in conjunction with the Madera Travel Center (Ordinance 938 C.S.).

---

<b>APPLICANT:</b>	Love's Travel Stops and Country Stores	<b>OWNER:</b>	Love's Travel Stops and Country Stores
<b>ADDRESS:</b>	Avenue 17/SR 99	<b>APN:</b>	013-240-004, 005, 006 & 007
<b>APPLICATIONS:</b>	Development Agreement Annual Review	<b>CEQA:</b>	Previously Certified Environmental Impact Report

---

**LOCATION:** The project site is located on the southeast corner of State Route 99 and Avenue 17.

**STREET ACCESS:** Avenue 17 and the future Sharon Boulevard.

**PARCEL SIZE:** Four parcels encompassing a total of approximately 24.40 acres.

**GENERAL PLAN DESIGNATION:** C (Commercial)

**ZONING DISTRICT:** C2 (Heavy Commercial)

---

**SITE CHARACTERISTICS:** The project site is located on the south side of Avenue 17, east of the State Route 99 corridor. Vacant, commercially designated land is located to the south and to the north. Rural residential property is located to the east. The Union Pacific Railroad/State Route 99 transportation corridor is immediately west, with vacant lands and the Airport Industrial Park beyond.

**ENVIRONMENTAL REVIEW:** An environmental impact report (EIR) was prepared for the overall project, including the potential for a development agreement. The EIR was certified by the Planning Commission at its August 16, 2016 meeting. No additional environmental review is required in conjunction with the annual review of the Development Agreement.

---

**SUMMARY & RECOMMENDATION:** The Madera Travel Center Development Agreement was considered by the Planning Commission in November of 2016 and approved by the City Council on December 21, 2016. The primary purpose of the agreement was to establish certainty with regard to the developer's ability to develop the site in accordance with defined regulations and to establish a program addressing project costs and reimbursements. An annual review of the development agreement is required pursuant to the California Government Code and the Madera Municipal Code to verify that the developer has complied in good faith with the terms of the agreement.

**APPLICABLE CODES:** California Government Code Sections 65864-65869.5 authorize cities to enter into binding development agreements. Madera Municipal Code Sections 10-3-1701 thru 1718 establish the procedures and regulations applicable to the consideration and adoption of development agreements in Madera. Both the Government Code and the Madera Municipal Code specify that all development agreements be reviewed, by the City on an annual basis to determine whether the applicant has complied in good faith with the terms of the agreement.

**BACKGROUND:**

The Madera Travel Center project spans four parcels encompassing a total of approximately 24.4 acres. The Project includes multiple entitlements that cumulatively provide for the development of the overall site. Primary features of the Project include an 11,981 square-foot Travel Stop building, including 7,965 square feet within the store portion and a 4,016 square foot, branded food restaurant with drive-through, served by on-site parking for passenger vehicles and trailer trucks. Gasoline, diesel fuel, and propane; will be sold on site, with nine covered fuel islands for trucks, and nine separate fuel islands for automobiles, as well as truck scales, oil-water separator, RV dump, and both above ground diesel fuel tanks and underground gasoline tanks, as well as an underground diesel exhaust fluid tank.

The project proponent, Love's Travel Stops and Country Stores, requested the approval of a development agreement in conjunction with the Madera Travel Center Project. Local agencies are authorized, but not required by state law, to enter into binding development agreements with property owners addressing the development of real property. Development agreements are used for vesting land use entitlements and may also establish financing and construction responsibilities, as well as timelines for the installation of on-and-off-site improvements. Development agreements provide for a form of vested rights in that they may supersede any change in planning, zoning, subdivision or building regulations adopted after the execution of such an agreement. The Development Agreement was approved by the Planning Commission in November of 2016 and by the City Council on December 21, 2016 (Ord. 938 C. S.).

**ANALYSIS:**

The cumulative approvals issued to date require the construction and/or installation of a significant number of public improvements to serve the site at significant cost to the developer. The Development Agreement defines the set of requirements, which are applicable to the site, focusing on requirements for the construction of off-site public improvements. The agreement also specifies a reimbursement structure under which the developer would receive reimbursements under a set schedule. Funding, typically utilized for capital improvement projects is utilized to reimburse some of the eligible improvements, while a portion of the sales tax and transit occupancy tax generated by the project reimburses the remaining amounts.

A brief, bullet point summary of major focal points of the agreement is included as follows:

- Building Permits for Phase 1 of the Project (everything except the freestanding restaurant and Boat/RV Storage Facility) must be submitted within 3 years and issued within 4 Years of the Effective Date of the Agreement. Occupancy Permits need to be issued within 5 years. If these timelines are met the Agreement will have a full term of 20 Years.
- During the term of the Development Agreement, the cumulative development requirements applied to the project will not change.



- Development exactions will be locked in during the term of the agreement and would not increase.
- The project will develop infrastructure and utilities consisting of a water well, water pipelines, sewer lines, drainage pipelines, two (2) traffic signals, Avenue 17 and Sharon Boulevard street frontage improvements, and Freeway 99 ramp improvements. The improvements will be completed, prior to occupancy.
- The project will develop a “Historic Pedestrian Plaza” as referenced in the approvals granted by the Planning Commission, with construction completed no later than the occupancy of the final building to be constructed in Phase 1 of the Project.
- The City will credit the applicable categories of the project’s capital facility “impact” fees towards the cost of the off-site improvements (i.e. sewer impact fees credited towards off-site sewer line construction).
- The City will reimburse the developer for the full and complete costs of the water well, upon completion and acceptance of the well.
- In addition to the water well reimbursement, the City will reimburse the developer for off-site construction costs at a maximum total of \$6,870,000 during the term of the agreement. These represent costs beyond the typical frontage improvements in which all projects are responsible.
- In no event shall the aggregate of the fee credits and the reimbursement amounts exceed the developer's reasonable and actual costs and expense of constructing and installing the Infrastructure Improvements. The City will pay actual costs up to the maximum total identified above.
- The non-water well reimbursements will be in phases. Approximately \$1,000,000 will be reimbursed in a lump sum upon completion and acceptance of the improvements by the City. After one year of operations, a second lump sum of approximately \$4,200,000 will be reimbursed. The remaining amount will be reimbursed in annual payments starting the second year of operations.
- Unless otherwise directed by the City Council, the bulk of the improvements will be treated much like large capital improvement projects and lump sum payments will be made from funding sources traditionally used for capital projects. Costs in excess of the lump sum payments will be reimbursed from a portion of the City’s share of sales tax and transient occupancy tax revenue generated by the project. One-half of the amount of these revenues generated by the project will be reimbursed to the Developer until all costs are reimbursed up to the maximum amount.

The Travel Center project is located in an area, which requires the extension of infrastructure and public services. Significant costs involved with constructing these improvements make the project financially infeasible. In response to these concerns, the development agreement defines and locks in the requirements of the project, sets the fee schedule and City reimbursements to the developer for a portion of the total costs of the off-site improvements, those that are beyond the typical frontage improvement costs required of all projects. The development agreement supports the timely development and installation of infrastructure and public utilities identified in the General Plan and the City of Madera sewer, water, and storm drain master plans. On the basis that that the project is infeasible absent the terms of the development agreement, and that the project benefits the City of Madera, the use of a

development agreement may, be viewed as an appropriate tool to establish certainty with regard to development requirements and the off-site improvement reimbursement structure.

A table highlighting the basic terms of the agreement that trigger compliance by the applicant, and summarizing the status of each item is provided (Table 1).

**Table 1**  
**Development Agreement Terms Triggering Compliance by Applicant**

	<b>Description</b>	<b>Timing of Compliance</b>
1.	Building Permits for Phase 1 of the Project	Within three (3) years
2.	Occupancy Permits issued for Phase 1	Within five (5) years
3.	If 1 and 2 are satisfied.	Agreement will have a full term of 20 Years.
4.	The project will develop a water well.	Prior to occupancy of Phase I
5.	Construct sewer lines.	Prior to occupancy of Phase I
6.	Construct water lines.	Prior to occupancy of Phase I
7.	Construct storm drainage pipelines.	Prior to occupancy of Phase I
8.	Construct temporary drainage basin.	Prior to occupancy of Phase I
9.	Construct two (2) traffic signals.	Prior to occupancy of Phase I
10.	Construct Avenue 17 improvements.	Prior to occupancy of Phase I
11.	Construct Sharon Blvd. improvements.	Prior to occupancy of Phase I
12.	Construct miscellaneous street and utility improvements.	Prior to occupancy of Phase I
13.	Construct SR 99/Avenue 17 NB Freeway Ramp Improvements.	Prior to occupancy of Phase I
14.	Develop a "Historic Pedestrian Plaza"	Prior to occupancy of last building in Phase I
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

As shown in Table 1, the development agreement outlines a series of obligations that the project developer, Love's Travel Stops and Country Stores, will need to comply with. The

majority of these obligations relate to the construction and dedication of public improvements and the successful construction of the individual components of the project. The Development Agreement specifies that the completion of these improvements should occur within the first five years of the Development Agreement, with subsequent reimbursements occurring over the lifespan of the agreement. It should also be noted that some of the improvements referenced in the Madera Travel Center Development Agreement are also required in conjunction with the Madera Travel Center (Love's). If Love's constructs these improvements first, it will relieve Zelman from the requirement to do so and Zelman would not be reimbursed for those improvements.

The components of Phase I (as well as the RV and Boat Storage component not required as a component of Phase I) are currently in building permit plan check. The project is currently developing consistent with the requirement of the development agreement.

### **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Though the annual review of development agreements are not specifically addressed in the vision or action plans, the overall project does indirectly support **Action 115.2** – *As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...;*

### **SUMMARY OF RECOMMENDATIONS:**

The information presented in this report supports a determination that Love's Travel Stops and Country Stores has complied in good faith with the terms of the development agreement.

### **PLANNING COMMISSION ACTION:**

The Commission will be making a determination as to whether the applicant has complied in good faith with the terms of the development agreement.

Motion 1: Move to approve a resolution declaring a statement of compliance under periodic review for the development agreement approved in conjunction with the Madera Travel Center Project (Ord 938), for the period through December 21, 2017.

#### Findings

- As summarized in Table 1 of this staff report, Love's Travel Stops and Country Stores has complied with the terms of the development agreement which trigger compliance on the part of the applicant. There are no developer obligations which required compliance during the period through December 21, 2017.

### **(OR)**

Motion 2: Move to find that Love's Travel Stops and Country Stores has not complied in good faith with the terms of the development agreement approved in conjunction with the Madera Travel Center Project (Ord 938), for the period through December 12, 2017.

#### Findings

- The Planning Commission will identify the terms of the development agreement where compliance has not occurred and the substantial evidence relied on in making that determination.

**(OR)**

Motion 3: Move to continue the public hearing, to a date specified, for the following reasons or in order for the following information to be provided: (please specify)

**ATTACHMENTS**

Planning Commission Resolution Declaring a Statement of Compliance  
Municipal Code Section 10-3.1715 – Periodic Review of Development Agreements  
Ordinance 938 C.S. Development Agreement between City of Madera and Love’s Travel Stops  
and Country Stores

**RESOLUTION NO. 1823**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA DECLARING A STATEMENT OF COMPLIANCE UNDER PERIODIC REVIEW FOR THE DEVELOPMENT AGREEMENT APPROVED IN CONJUNCTION WITH THE MADERA TRAVEL CENTER PROJECT (ORD 938 C.S.), FOR THE PERIOD THROUGH DECEMBER 21, 2017

WHEREAS, in 2016, the City of Madera and Love's Travel Stops and Country Stores entered into a development agreement in conjunction with the Madera Travel Center shopping center project; and

WHEREAS, the development agreement was entered into before Love's Travel Stops and Country Stores purchased the subject property outright; and

WHEREAS, in accordance with the terms of the Development Agreement, Love's Travel Stops and Country Stores is a successor in interest and is bound by the Development Agreement as the current owner of the property; and

WHEREAS, the City of Madera Community Development Director ("the Community Development Director") initiated a Periodic Review for the Development Agreement approved in conjunction with the Madera Travel Center project (Ordinance 938 C.S.), as required under Zoning Ordinance Section 10-3.1715; and

WHEREAS, the Planning Commission held a public hearing on this matter on February 13, 2018 and considered the information provided in a written staff report; and

WHEREAS, the Planning Commission has made the following finding:

1. Love's Travel Stops and Country Stores, Inc has complied with the terms and conditions of the Development Agreement (ORD 938 C.S.), through December 21, 2017 as summarized in Exhibit A, attached hereto and incorporated by reference, and, Love's Travel Stops and Country Stores has demonstrated a continuing good faith effort to implement the terms and conditions as set forth in the Development Agreement.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MADERA AS FOLLOWS:

1. The above recitals are true and correct.
2. The Planning Commission of the City of Madera hereby declares that the Love's Travel Stops and Country Stores, Inc. is in compliance with the terms and conditions of the Development Agreement approved in conjunction with the Madera Travel Center project (Ord 938 C.S.), through December 21, 2017.
3. This resolution is effective immediately upon adoption.

\* \* \* \* \*

Passed and adopted by the Planning Commission of the City of Madera this 13<sup>th</sup> day of February, 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
Chairperson  
City of Madera Planning Commission

Attest:

\_\_\_\_\_  
Christopher Boyle  
Planning Manager

## Exhibit A

### Madera Travel Center Development Agreement Status of Terms Triggering Performance or Compliance by Applicant

	Description	Timing of Compliance
1.	Building Permits for Phase 1 of the Project	Within three (3) years
2.	Occupancy Permits issued for Phase 1	Within five (5) years
3.	If 1 and 2 are satisfied.	Agreement will have a full term of 20 Years.
4.	The project will develop a water well.	Prior to occupancy of Phase I
5.	Construct sewer lines.	Prior to occupancy of Phase I
6.	Construct water lines.	Prior to occupancy of Phase I
7.	Construct storm drainage pipelines.	Prior to occupancy of Phase I
8.	Construct temporary drainage basin.	Prior to occupancy of Phase I
9.	Construct two (2) traffic signals.	Prior to occupancy of Phase I
10.	Construct Avenue 17 improvements.	Prior to occupancy of Phase I
11.	Construct Sharon Blvd. improvements.	Prior to occupancy of Phase I
12.	Construct miscellaneous street and utility improvements.	Prior to occupancy of Phase I
13.	Construct SR 99/Avenue 17 NB Freeway Ramp Improvements.	Prior to occupancy of Phase I
14.	Develop a "Historic Pedestrian Plaza"	Prior to occupancy of last building in Phase I
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

## SEC.10-3.1715 – PERIODIC REVIEW OF DEVELOPMENT AGREEMENTS

### § 10-3.1715 PERIODIC REVIEW.

(A) The city shall review each development agreement every 12 months from the date the agreement is entered into. The time for review may be modified to be more frequent either by agreement between the parties or by initiation in one or more of the following ways:

- (1) Affirmative vote of at least four members of the Planning Commission; or,
- (2) Affirmative vote of at least three members of the City Council.

(B) The Community Development Director shall begin the review proceeding by giving notice that the city intends to undertake a periodic review of the development agreement to the property owner. Notice shall be provided at least ten days in advance of the time at which the matter will be considered by the Planning Commission.

(C) Annual review of development agreements shall be conducted by the Planning Commission at a public hearing at which the property owner shall demonstrate good faith compliance with the terms of development agreement. The burden of proof on this issue is upon the property owner.

(D) The Planning Commission shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the development agreement.

(E) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall by resolution adopt a statement of compliance certifying such compliance in a form suitable for recording in the County Recorder's Office. Upon recording of a statement of compliance, the review for that period is concluded. A resolution adopting a statement of compliance shall be final ten days after the Planning Commission decision, unless a notice of appeal has been filed pursuant to the provisions of the municipal code.

(F) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the Planning Commission may recommend to the City Council that the development agreement be modified or terminated.

(G) The procedure for modifying or terminating a development agreement shall be the same as the procedure for entering into a development agreement, except that the owner shall be given at least 30 days notice of the hearing by the City Council to consider such modification or termination.

(Ord. 817 C. S., passed 6-20-2007)



**ORDINANCE NO. 938 C.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AND ADOPTING THE DEVELOPMENT AGREEMENT BETWEEN LOVE'S TRAVEL STOPS AND COUNTRY STORES AND THE CITY OF MADERA**

WHEREAS, at its August 16, 2016 meeting, the Planning Commission approved various applications in support of the development of the Madera Travel Center project, located on approximately 25 acres of a 48.36 acre parcel at the southeast corner of the intersection of Avenue 17 and Freeway 99; and

WHEREAS, the approved Madera Travel Center Project is comprised of an 11,981 square-foot Travel Stop building, including 7,965 square feet within the store portion and a 4,016 square foot branded food restaurant(s) with drive-through, served by on-site parking for passenger vehicles and trailer trucks. Gasoline and diesel fuel, and propane will be sold on site, with nine covered fuel islands for trucks, and nine separate fuel islands for automobiles, as well as truck scales, oil-water separator, RV dump, and both above ground diesel fuel tanks and underground gasoline tanks, and an underground diesel exhaust fluid tank; and

WHEREAS, an environmental impact report was certified in conjunction with the approval of the Madera Travel Center project on by the Planning Commission on August 16, 2016; and

WHEREAS, Government Code Sections 65864 through 65869.5 provide the statutory authority for development agreements between municipalities and persons owning real property interest in the City; and

WHEREAS, pursuant to Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements as set forth in § 10-3.1701 et. Seq. of the Madera Municipal Code; and

WHEREAS, the City received an application to consider a development agreement in conjunction with the Madera Travel Center.

WHEREAS, the proposed Development Agreement has been reviewed by City staff and the Planning Commission in conformance with the applicable requirements of Government Code and the Madera Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. The provisions of the Development Agreement are consistent with the objectives, policies, general land uses and programs specified by the General Plan and the Zoning Ordinance, as amended.

SECTION 2. The Development Agreement is within the scope of the previously certified environmental impact report.

SECTION 3. The Development Agreement contains all information required by the California Government Code and Section 10-3.1702 of the Madera Municipal Code.

SECTION 4. The City Council finds that the development of a travel center, as contemplated by the Development Agreement, is compatible with the uses authorized in, and the regulations prescribed for, the C (Commercial) General Plan designation and C2 (Heavy Commercial) zone district.

SECTION 5. The Development Agreement is fair, just, and reasonable in light of both the scope of the project and the terms of the agreement, and is prompted by the necessities of the project which require that development of the project be allowed under a defined set of requirements and with a defined cost structure.

SECTION 6. The Development Agreement serves to encourage the achievement of growth management policies and objectives, and is in conformity with public convenience, general welfare and good land use practice. The agreement facilitates the extension of urban infrastructure within the designated Urban Growth Boundary and within the sphere of influence to and through properties which are presently inside the city limits or within the likely path of annexation. The proposal will not adversely affect the orderly development of property or the preservation of property values.

SECTION 7. The City Council hereby approves the Development Agreement substantially in the form attached hereto as Exhibit A, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

SECTION 8. The Mayor of the City of Madera is hereby authorized and directed to execute the Agreement on behalf of the City of Madera.

SECTION 9. The City Clerk is directed to transmit the Development Agreement to the County Recorder for recordation no later than ten (10) days after the adoption of this ordinance.

SECTION 10. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 11: This Ordinance shall not be codified in the Madera Municipal Code.

The foregoing Ordinance No. 938 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 7<sup>th</sup> day of December, 2016 and adopted after a second reading at a regular meeting of the City Council held on the 21<sup>st</sup> day of December, 2016 by the following vote:

AYES: Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver, Rigby.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

APPROVED:



ANDREW J. MEDELLIN, Mayor

ATTEST:

  
SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:

  
BRENT RICHARDSON, City Attorney



Recorded in Official Records, Madera County

12/28/2016

**REBECCA MARTINEZ**

12:07 PM

Madera County Recorder

1

CIT Madera City

Recording requested by:  
City of Madera

After Recording Return to:

Doc#: 2016032980

Titles: 1 Pages: 50

City Clerk  
City of Madera  
205 West Fourth Street  
Madera, California 93637-3527



Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

Fee Waived Per Section 27383 of the Government Code. No Document Tax Due \$ -0-

### DEVELOPMENT AGREEMENT

Between the City of Madera, Lisa M. Guzman, Trustee of the Bypass Trust under the Guzman Living Trust Dated May 13, 2013 and Trustee of the Survivor's Trust under the Guzman Living Trust Dated May 13, 2013, and Love's Country Stores of California, Inc.

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF MADERA, LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN  
LIVING TRUST DATED MAY 13, 2013 AND TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING  
TRUST DATED MAY 13, 2013, AND LOVE'S COUNTRY STORES OF CALIFORNIA, INC.**

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is entered into to be effective on the date it is recorded with the Madera County Clerk/County Recorder (the "Effective Date"), between THE CITY OF MADERA, a California general law city ("City"); LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013, AND TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013, (collectively, "Landowner"); and LOVE'S COUNTRY STORES OF CALIFORNIA, INC., a California corporation ("Developer"). Each of the City, Landowner and Developer may be referred to as a "Party" hereunder and collectively as the "Parties."

**RECITALS**

A. The Legislature of the State of California has adopted California Government Code Sections 65864-65869.5 ("Development Agreement Statute") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things: encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public land; and provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules, and regulations and subject to the conditions of approval of such projects, as provided in such annexation and/or development agreements.

B. Landowner owns an approximately 50 acre parcel of real property located within the City, near the northern edge of the City limits, at the Avenue 17/State Route 99 ("SR 99") interchange (APN 013-240-003)(the "Property"), as particularly described on Exhibit A.

C. Developer intends to develop approximately 25 acres of the Property, as generally depicted on Exhibit B (the "Project Site"), as a full service travel center, to include an approximately 11,981 square-foot travel stop building, comprised of an approximately 7,965 square foot convenience store and 4,016 square foot branded restaurant with drive-through, served by on-site parking for passenger vehicles and tractor-trailers, nine covered fuel islands for trucks and nine separate covered fuel islands for automobiles, as well as a truck tire care facility and approximately 4,400 square foot branded restaurant (in proposed areas separate from the travel stop building), truck scales, a hotel, a self-storage facility and an RV and boat storage facility, and other related services and amenities for the motoring public, including a historical pedestrian plaza in the southwest corner of Avenue 17 and Sharon Boulevard, which will address a part of Madera history (the "Project"). The remaining undeveloped portion of the Property will be separated from the travel center site through a parcel map.

D. At the time the Project Site is developed, Developer will be required to construct certain off-site public infrastructure improvements, which was a condition of regulatory approval of the Project, including the development approvals described in the Recitals, such improvements will include roadway improvements, freeway ramp improvements, sanitary sewer lines, storm drainage improvements, a water well and water lines and certain other utility and general improvements that will provide benefits to City and other property owners near the Developer's property who may wish to develop their properties in the future. City has agreed to reimburse Developer for a portion of the costs of constructing such off-site infrastructure improvements, and to

credit Developer for a portion of the otherwise applicable development impact fees. The City Council finds and determines that the aggregate amount of such reimbursement and credit will be less than the cost of such improvements and has further found that the City will not maintain any proprietary interest in the Project.

E. Pursuant and subject to the Development Agreement Statute, the City's Municipal Code and the City's police powers, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries thereby establishing the conditions under which such property may be developed in the City.

F. City has granted the Developer a series of Development Approvals (as defined herein below) to implement the Project, which are incorporated and made a part of this Agreement. The Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by Government Code §65864.

G. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for the Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for the orderly and measured build-out of the Project consistent with the General Plan and the desires of the City to assure integration of the new development into the existing community.

H. The terms and conditions of this Development Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, and the City Council of City and have been found to be fair, just, and reasonable.

I. City's City Council finds and determines that it will be in the best interests of City's citizens and the public health, safety, and welfare will be served by entering into this Development Agreement.

J. All of the procedures of the California Environmental Quality Act have been met with respect to the Project and this Development Agreement by the approval of Planning Commission Resolution No: 1812 adopted on August 16, 2016, which certified the final Environmental Impact Report for the Madera Travel Center dated July, 2016 (the "EIR").

K. City's City Council has approved this Development Agreement by Ordinance No. 938 C.S. adopted on December 21, 2016 and effective on December 28, 2016.

**NOW THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS.** In this Development Agreement, the following words and phrases shall have the meanings ascribed below:

A. "County" is the County of Madera.

B. "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approvals for the payment of fees, including impact fees and mitigation fees, or other monetary payments or exactions, imposed by City in order to lessen, offset, mitigate, or compensate for the impacts of new development on the environment or other public interests, whether such exactions constitute impositions made under Development Approvals or the City's General Regulations. The applicable Development Exactions in effect under the Existing Land Use Regulations are set forth in Exhibit C.

C. "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with the development of the Project Site, including, but not limited to:

- (1) Site Plan Reviews;
- (2) Tentative and final parcel and/or subdivision maps;
- (3) Conditional use or special use permits, variances or other modifications to the City's development regulations;
- (4) Grading and building permits.

D. "Development Plan" means the Existing Development Approvals defined in Section 1(F) below and vested in Section 11 below, which are applicable to development of the Project.

E. "Effective Date" means the date upon which this Development Agreement is recorded with the County Clerk/County Recorder of the County, or the date upon which Ordinance No. 938 C.S. becomes effective, whichever occurs later.

F. "Existing Development Approvals" means this Development Agreement and those certain development approvals granted by the City of Madera Planning Commission at its August 16, 2016 meeting, as follows:

- (a) SPR 2015-18: Approving and establishing requirements for the overall development of the Project Site.
- (b) TPM 2015-01: Approving and establishing requirements for division of the subject property into 4 parcels and a remainder.
- (c) CUP 2015-09: Approving and establishing requirements for a changeable copy (gasoline prices) in association with a freeway sign on the Project Site.
- (d) CUP 2015-10: Approving and establishing requirements for the sale of beer and wine as a component of the operations of the travel stop component of the Project.
- (e) CUP 2015-11: Approving and establishing requirements for a drive-thru restaurant as a component of the travel stop component of the Project.
- (f) CUP 2015-12: Approving and establishing requirements for the truck stop component of the Project.
- (g) CUP 2015-13: Approving and establishing requirements for the automotive repair facility (Tire Care Facility) component of the Project.

- (h) CUP 2015-14: Approving and establishing requirements for the sale of beer and wine in conjunction with the freestanding restaurant component of the Project.
- (i) CUP 2015-15: Approving and establishing requirements for a drive-thru component as part of a freestanding restaurant on the Project Site.
- (j) CUP 2015-16: Approving and establishing requirements for a hotel on the Project Site.
- (k) CUP 2015-17: Approving and establishing requirements for a recreational vehicle and boat self-storage facility on the Project Site.
- (l) VAR 2015-02: Approving the construction of a freeway sign taller than forty feet.
- (m) Final EIR: Environmental Impact Report prepared in conformance with the California Environmental Quality Act and certified by the Planning Commission

G. "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date.

H. "Fee Credit" means that portion of Development Exactions fees which shall be credited by the City to Developer, as specified on Exhibit C-1 and as set forth in Section 8(B) below.

I. "Future General Regulations" means those "General Regulations" adopted by the City after the Effective Date of this Development Agreement.

J. "General Regulations" means those ordinances, rules, regulations, initiatives, policies, requirements, guidelines, constraints, or other similar actions of the City, other than site-specific Project approvals, which affect, govern, or apply to the Project Site or the implementation of the Development Plan. General Regulations are applicable to more than one property within the City.

K. "Infrastructure Improvements" means collectively, that portion of off-site public improvements to be dedicated to or owned by City and constructed by Developer pursuant to the terms of Section 7 of this Development Agreement, which will be installed at the locations identified on Exhibits E-I, inclusive, and which shall include the Roadway Improvements, Ramp Improvements, Sewer Improvements, Storm Drainage Improvements, Water Well Improvements, Water Line Improvements, and Utility and General Improvements, all as more specifically described in Section 7.

L. "Land Use Regulations" means all ordinances, resolutions, codes, rules regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Project Site that are a matter of public record on the Effective Date of this Development Agreement. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation, or official policy, governing:

- (1) The conduct of businesses, professions, and occupations;
- (2) Taxes and assessments;
- (3) The control and abatement of nuisances;



- (4) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and
- (5) The exercise of the power of eminent domain.

M. "Owner" means the person having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof.

N. "Phase 1 Project" shall mean the approximately 11,981 square-foot travel stop building, comprised of an approximately 7,965 square foot convenience store and approximately 4,016 square foot branded restaurant(s) with drive-through, served by on-site parking for passenger vehicles and trailer trucks, nine covered fuel islands for trucks and nine separate fuel islands for automobiles, a truck tire care facility, truck scales, and an approximately 81 room hotel.

O. "Reimbursement Amount" shall mean the amount set forth in Section 8 below, which shall be payable by City to Developer to reimburse Developer for a portion of the cost and expense of designing and installing the Infrastructure Improvements. The Reimbursement Amount shall be due and payable as set forth in Section 8 below.

P. "State" shall mean the State of California.

Q. "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Project Site.

R. "Subsequent Land Use Regulation" means any Land Use Regulation adopted and effective after the Effective Date.

S. "Substantially Complete Building Permit Application" shall mean an application or request for a building permit that substantially satisfies the requirements of the General Regulations and the requirements specified in the Existing Development Approvals.

2. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals and all defined terms set forth therein are hereby incorporated into this Agreement as if set forth herein in full. All exhibits attached hereto are incorporated by reference.

3. **INTERESTS OF LANDOWNER AND DEVELOPER; BINDING EFFECT OF DEVELOPMENT AGREEMENT.** Developer represents that it has an equitable or other interest in the Property sufficient to be bound by this Development Agreement. That portion of the Property which comprises the Project Site, as described in Recital C, is hereby made subject to this Development Agreement. Development of the Project Site is hereby authorized and shall be carried out in accordance with the terms of this Development Agreement. Upon recordation of the Development Agreement, the provisions of this Development Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to and assigns of the Parties hereto. Developer's right to develop the Project Site in accordance with the Development Approvals and the terms of this Development Agreement including the obligations set forth herein shall not become effective unless and until Developer acquires the Project Site. Upon conveyance of Landowner's fee interest in the Project Site to Developer, Landowner shall have no further rights or privileges, and shall be fully released from any further liability or obligation under this Development Agreement with respect to the Project Site and the remainder of the Property retained by Landowner.

**4. PURPOSE OF THIS AGREEMENT.**

A. Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Statute, and with full recognition of City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with Existing Land Use Regulations subject to the terms of this Development Agreement and City's Subsequent Land Use Regulations. In the absence of this Development Agreement, Developer would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Development Agreement. This Development Agreement, therefore, is necessary to assure Developer that the Project will not be (i) reduced in density, intensity or use, or (ii) subjected to new rules, regulations, ordinances or official policies or delays which are not permitted by this Development Agreement or the Reservation of Authority (as defined in Section 10 below).

B. Mutual Objectives. Development of the Project in accordance with this Development Agreement will provide for the orderly development of the Project. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Project, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The Parties believe that such orderly development of the Project will provide many public benefits to City through the imposition of development standards and requirements under the provisions and conditions of this Development Agreement, including without limitation, increased tax revenues, installation of off-site infrastructure improvements, and job creation. Additionally, although development of the Project in accordance with this Development Agreement will restrain City's land use or other relevant police powers, this Development Agreement provides City with sufficient Reservation of Authority during the term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, Developer will receive assurance that the Project may be developed during the term of this Development Agreement in accordance with the Existing Land Use Regulations and Reservation of Authority.

C. Mutual Benefits; Acknowledgment of Consideration. By this Development Agreement, City and Developer desire to set forth the terms under which Developer will receive certain reimbursements for commercial development and economic performance on the Project Site. The City has determined to offer Developer reimbursements and credits for a portion of the costs incurred by Developer in its installation of the Infrastructure Improvements because the same will provide significant benefits to City by increasing the capacity of and expanding City's water, storm drainage and sewer service systems, by the installation of traffic signals and a new roadway to promote the orderly flow of traffic and increase City's street network capacity, and otherwise. The aggregate amount of such reimbursement and all credits provided to Developer hereunder will not exceed the actual and reasonable cost incurred by Developer in connection with construction and installation of the Infrastructure Improvements as determined pursuant to Section 8 below. The Project will also promote the economic wellbeing of City by attracting businesses that will provide City with a significant, long-term revenue stream and a source of employment for residents of the community. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Development Agreement is fair, just, and reasonable.

5. EXHIBITS. The following exhibits are incorporated into and made a part of this Development Agreement by this reference:

- |                    |  |
|--------------------|--|
| <u>Exhibit A</u>   | Legal Description of Property  |
| <u>Exhibit B</u>   | Depiction of Project Site  |
| <u>Exhibit C-1</u> | Development Exactions (Fees) and Project Fee Credits                               |
| <u>Exhibit C-2</u> | Traffic and Transportation Mitigation Fees   |
| <u>Exhibit D</u>   | General Description of Infrastructure Improvements, Costs and Reimbursable Amounts |

<u>Exhibit E</u>	Depiction of Roadway Improvements/Roadway Work
<u>Exhibit F</u>	Depiction of Sewer Improvements/Sewer Work
<u>Exhibit G</u>	Depiction of Storm Drainage Improvements/Storm Drainage Work
<u>Exhibit H</u>	Depiction of Water Improvements/Water Work
<u>Exhibit I</u>	Depiction of Utility and General Improvements/Utility and General Improvements Work
<u>Exhibit J</u>	Form of Assignment and Assumption Agreement

**6. TERM AND TERMINATION.**

A. Term. The term of this Development Agreement shall commence on the Effective Date and shall terminate thirty six (36) months from the Effective Date [subject to Section 22(I)], provided, however, that the Term may be extended pursuant to the following:

- 1) If Developer submits a properly completed Substantially Complete Building Permit Application for each building in the Phase 1 Project prior to the expiration of the 36-month initial term, then such term shall automatically be extended to a date forty eight (48) months from the Effective Date, without the need for further action by the Parties. Thereupon, the City shall promptly take action on such applications, as contemplated in Section 7(D)(1) below.
- 2) If the term has been extended as permitted by Section 6(A)(1) of this Agreement and if the Building Permits are issued by the City, as contemplated, then such term shall automatically be extended to a date sixty (60) months from the Effective date, without the need for further action by the Parties.
- 3) If the term has been extended by Section 6(A)(2) of this Agreement and if Developer completes each building in the Phase 1 Project and receives a temporary or final certificate of occupancy within sixty (60) months of the Effective Date, the term of this Agreement shall automatically be extended to a date twenty (20) years from the Effective Date, without the need for further action by the Parties.

B. Termination in the Event of Order or Judgment. This Development Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Development Agreement. In the event that this Agreement or any of the Development Approvals are subjected to legal challenge by a third party, and Developer is unable, or elects not to proceed with the Project due to such legal action, the term of and timing for obligations imposed pursuant to this Agreement shall be automatically tolled during such legal action.

C. Termination of Agreement Does not Terminate Project Approvals. Termination of this Development Agreement shall not constitute termination of any other land use entitlement approved for the Project Site prior to the Effective Date of this Development Agreement, or to any Subsequent Development Approvals issued by the City during the term of the Agreement. Upon termination of this Development Agreement, no party shall have any further right or obligation hereunder except with respect to (1) any obligation to have been performed prior to such termination, (2) any default in the performance of the provisions of this Development Agreement which has accrued prior to such termination, and/or (3) any provision which is noted to survive such termination, or which, by its nature, is intended to survive such termination. Pursuant to California *Government Code* §66452.6(a) the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement.

7. DEVELOPER'S PROVISIONS OF INFRASTRUCTURE IMPROVEMENTS; TIMING AND CITY ASSISTANCE.

A. Developer's Provision of Infrastructure Improvements. If the Project or any portion thereof is constructed, Developer agrees to construct and install the following Infrastructure Improvements:

(1) Roadway Improvements. Developer will construct and install (a) two traffic signals (the "Traffic Signals"); (b) certain street lights, street signage and striping on or along Avenue 17 and Sharon Boulevard; (c) all paving, curbs, gutters and sidewalks to widen Avenue 17 (the "Avenue 17 Street Widening"); and (d) paving, curbs, gutters and a portion of the parkway landscaping and sidewalk (to the extent not being constructed by a third-party developer) for Sharon Boulevard, all as generally described on Exhibit D and at the locations identified on Exhibit E ("Sharon Boulevard Work") (the Traffic Signals, the Avenue 17 Street Widening, the Sharon Boulevard Work and all related improvements are collectively, the "Roadway Improvements" and the associated work, the "Roadway Work").

(2) Freeway Ramp Improvements. Developer will construct and install a dedicated right turn lane on the north bound exit ramp of the Freeway 99 and Avenue 17 interchange, as generally described on Exhibit D and at locations specified on Exhibit E, (the "Ramp Improvements").

(3) Sewer Improvements. Developer will construct and install a sewer line to connect the Property to City's existing sewer system at a point located within Sharon Boulevard, north of Ellis Street, as generally described on Exhibit D and at the locations identified on Exhibit E, which pipeline will run from such point north of and then within the Sharon Boulevard right of way (the Sewer Line and all related improvements, collectively, the "Sewer Improvements" and the associated work, the "Sewer Work").

(4) Storm Drainage Improvements. Developer will construct and install a storm drain pipeline approximately 18" in diameter within the Avenue 17 right of way and a storm drain pipeline approximately 30" in diameter within the Sharon Boulevard right of way to connect to a privately owned and maintained temporary storm retention basin to be installed by Developer at the southernmost point of the Project site, all as generally described on Exhibit D and to be installed at the locations identified on Exhibit G, and with such temporary storm retention basin to be used until a permanent storm drain connection to the south becomes available (collectively, with all related improvements, the "Storm Drainage Improvements" and the associated work, the "Storm Drainage Work"). Upon completion of the permanent storm retention basin off-site, Developer may remove the temporary retention basin facility and devote that portion of the Project Site to other purposes in conformance with the conditions of approval adopted by the Planning Commission in conjunction its approval of the Existing Development Approvals.

(5) Water Well and Water Line Improvements. Developer agrees to develop a water well site on certain land contiguous to the Property to the south, as shown on Exhibit H (the "Well Site"), with rights to so construct and utilize the Well Site to be secured by City, as depicted on Exhibit H, subject to approval by the City engineer. In addition to the Well Site, Developer shall construct and install a 24" diameter PVC water pipeline connecting the well on the Well Site to the existing City water system at a point north of the Project site, as shown on Exhibit H (collectively, with all related improvements, the "Water Well and Water Line Improvements" and the associated work, the "Water Work"), with any rights in third-party property necessary to complete the Water Work to be secured by City. Any interest of Developer in or to the Well Site (and/or associated infrastructure) shall be dedicated to City in the manner prescribed by the Existing Land Use Regulations after completion of the Water Work and acceptance thereof by the City engineer. Notwithstanding anything to the contrary herein, in the event City is unable to secure third-party rights as contemplated above, City will work with Developer in good faith and with due diligence to provide an alternate location for the Well Site and/or connection point of the subject water pipeline to the City water system, all at City's expense.

(6) Miscellaneous Street and Utility Improvements. Developer will construct and install (a) median and parkway landscaping; and (b) dry utility trenching, conduits and pull boxes, all as generally described on Exhibit D and at locations identified on Exhibit I (collectively, with all related improvements, the "Utility and General Improvements" and all the associated work, the "Utility and General Improvements Work").

B. City's Share of Costs and Expenses. The City's reasonable and fair share of the costs and expenses associated with designing, constructing and installing the Infrastructure Improvements (based on the relative value of the Infrastructure Improvements to the City and neighboring landowners as compared to the value to Developer and the Project), shall be included in the Reimbursement Amount set forth in Section 8 below.

C. Obligation to Install Infrastructure Improvements as Condition to Certificate of Occupancy; Timing. Developer shall construct and install the Infrastructure Improvements concurrently with and as a condition precedent to the issuance of a certificate of occupancy for any improvement in the Project. All Infrastructure Improvements shall be designed, constructed and installed in accordance with standard engineering and construction industry practices and the Existing Land Use Regulations and, to the extent not addressed by the Existing Land Use Regulations, other applicable codes, rules, City standards, regulations and laws, in a good and workmanlike condition, at Developer's sole cost and expense (except as provided herein).

D. City Obligations to Assist with the Infrastructure Improvements. In addition to City's obligation to pay the Reimbursement Amount and Fee Credit to Developer, as set forth in Section 8 below, in connection with Developer's installation of any of the Infrastructure Improvements, the Parties agree as follows:

(1) Cooperation. City shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing, for discretionary permits, tract or parcel maps, building permits, or other land use permits or entitlements for development of the Project, in accordance with the provisions of this Development Agreement and the Development Approvals. City shall cooperate with Developer in providing expeditious review of any such applications, permits, or land use entitlements and, upon request and payment of any costs and/or extra fees associated therewith by Developer, City shall assign to the Project planners, building inspectors, and/or other staff personnel as required to ensure the timely processing and completion of the Project.

(2) Obtaining Easements and Rights of Way. City shall (a) grant to Developer any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements or otherwise develop the Project over, on or under City owned land; (b) assist Developer in obtaining any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements over, on or under County owned land; and (c) secure, in favor of Developer, any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements over, on or under other third-party land, including without limitation, those required in regard to the Well Site and Water Work addressed in Section 7(A)(5) above, and in each case, temporary construction easements for pedestrian and vehicular ingress and egress and vehicular parking and the placing and storing of construction machinery, equipment, supplies, materials, dirt and fill. The Parties agree to cooperate in good faith in regard to the foregoing to facilitate obtaining such easements or rights of way as expeditiously as reasonably possible. In any event, City shall promptly provide to Developer a copy of any such easements obtained by City in favor of Developer. In the event the Developer and/or City is unable, after exercising all reasonable efforts, to acquire the real property interests necessary for the construction of such Infrastructure Improvements, as contemplated herein, by the time any final map is filed with the City, the City shall negotiate the purchase of the necessary real property interests to allow the Developer to construct the Infrastructure Improvements as required by this Agreement and, if

necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests.

(3) Approval by City Engineer; Dedication and Acceptance. Upon substantial completion of the Infrastructure Improvements by Developer in accordance with the terms of this Agreement, the City Engineer shall inspect and approve the same, which approval shall not be unreasonably withheld or delayed. Upon such approval by City Engineer and Developer's dedication of the Infrastructure Improvements to City in the manner prescribed by applicable City codes, ordinances, and regulations, City shall accept the same, subject to Developer's compliance with the Existing Land Use Regulations.

(4) Operation and Maintenance of Infrastructure Improvements; Warranty. Upon acceptance of the Infrastructure Improvements by City, as contemplated above, (a) City shall, at its sole cost and expense, operate and maintain the Infrastructure Improvements in good and working order as part of its public systems; and (b) Developer shall have no further interest in or obligation in regard to the Infrastructure Improvements beyond that inuring to the public in general.

**8. FEE CREDIT; CITY OBLIGATION TO REIMBURSE DEVELOPER.** Developer, pursuant to this Agreement, will be financing the construction of Infrastructure Improvements that otherwise would be paid for by City or other parties, or would serve other properties beyond the Project Site, or would be financed by City Development Exaction Fees and other public utility and infrastructure funding sources. In consideration of the financing of such improvements by Developer, and in consideration of the substantial public benefits to be achieved by the Project during each year of the term of this Development Agreement, City and Developers agree that Developers shall be entitled to fee credits and reimbursement as provided in this Section 8. Pursuant to this Section 8, City shall offer fee credit and/or reimburse Developer for the City's fair and reasonable share of Developer's reasonable and actual cost and expense incurred in connection with the construction and installation of the Infrastructure Improvements (the "Reimbursement Amount"). Developer shall provide to City satisfactory evidence of such costs and expenses as actually incurred by Developer, as provided by Section 8(J) below.

A. Reimbursement Amount. The total Reimbursement Amount, not including costs associated with the Water Well Improvements or the Ramp Improvements Excess Cost (as defined below), shall not exceed Six Million Eight Hundred Seventy Thousand Dollars (\$6,870,000). This Reimbursement Amount, established based on the maximum reimbursement schedule set forth in Exhibit D, constitutes the City's fair and reasonable share of the Developer's reasonable and actual costs. City and Developer agree that due to the variability of potential costs associated with the Water Well Improvements and the Ramp Improvements, those costs are not fully included in the maximum Reimbursement Amount, but will be reimbursed in accordance with the terms set forth in Section 8(C) and Section 8(D) of this Agreement, respectively. In no event shall the City be required to reimburse an amount above Developer's actual costs and expenses. Developer shall provide to City satisfactory evidence of actual costs and expenses pursuant to Section 8(J) of this Agreement.

B. Fee Credit. To the extent Developer dedicates land, funds or constructs Infrastructure Improvements that exceed the size or capacity required to serve the Project Site for the benefit of other properties, or if such dedication or Infrastructure Improvements benefit other properties, regardless of their size or capacity, City shall provide Developer with credit against the Development Exaction Fees applicable to the Project, as generally set forth in Exhibit C-1. The fee credit shall equal (and shall not exceed) Developer's aggregate hard and soft costs (including land costs, if applicable) actually paid by Developer for the particular Infrastructure Improvement in question. Fee credit shall be given by the City at the time the applicable Development Exaction Fees would otherwise be paid by Developer.

C. Water Well Reimbursement. Upon Developer's completion and City's acceptance of the Water Well Improvements, City shall reimburse to Developer the full and complete actual costs to develop the Water Well, less any fee credits applicable to water well costs that are available to Developer in accordance with Section 8(B), subject to the terms and conditions set forth in this Section 8(C).

(1) Reimbursable costs for the Development of the Water Well shall include all items required by the City Engineer to develop and make operational a water well to City Standards. Design and Engineering Costs, City permit and inspection fees, and Contract Overhead not to exceed 10% shall be eligible for reimbursement. Costs shall be documented in the manner described in Section 8(J) of this Agreement.

(2) Prior to the selection of a contractor and commencement of work, Developer shall submit for approval by the City Engineer an itemized cost proposal for all improvements and associated expenses which will be eligible for reimbursement.

(3) Reimbursement for the Water Well Improvements shall be made within 60 days of the City Engineer's determination of Actual Expenses Costs and Expenses as described in Section 8(J) of this Agreement.

D. Ramp Improvement Excess Cost. As set forth in Exhibit D, the total Reimbursement Amount includes estimated costs for the Ramp Improvements of One Million Ninety Thousand Seventy Six Dollars (\$1,090,076). The Parties recognize and agree that the actual cost of the Ramp Improvements may substantially deviate from the estimated cost shown in Exhibit D due to design changes that may be required by Caltrans after the Effective Date (such increased costs, the "Ramp Improvement Excess Costs"). City shall reimburse to Developer the full and complete actual costs to develop the Ramp Improvements up to a maximum total cost of Two Million Dollars (\$2,000,000), less the amount of One Million Ninety Thousand Seventy Six Dollars (\$1,090,076), if paid to Developer pursuant to Sections 8(E) and 8(F), subject to the terms and conditions set forth in this Section 8(D).

(1) Reimbursable costs for the development of the Ramp Improvements shall include all items required by Caltrans, in consultation with the City. Design and Engineering Costs, City or Caltrans permit and inspection fees, and Contract Overhead not to exceed 10% shall be eligible for reimbursement. Costs shall be documented in the manner described in Section 8(J) of this Agreement.

(2) Prior to the selection of a contractor and commencement of work, Developer shall submit for approval by the City Engineer an itemized cost proposal for all improvements and associated expenses which will be eligible for reimbursement.

(3) Reimbursement for the Ramp Improvement Excess Costs shall be made through Supplemental Payments pursuant to Section 8(G), below.

(4) To the extent that the actual cost of Infrastructure Improvements (not including costs associated with the Water Well Improvements or the Ramp Improvements Excess Cost) are below the total Reimbursement Amount, the difference shall be subtracted from the amount of the Ramp Improvement Excess Cost otherwise payable to Developer under this Section.

E. Partial Lump Sum Reimbursement at Completion and Acceptance of Infrastructure Improvements. In addition to any amount of fee credits or reimbursements made to Developer pursuant to Sections 8(B) through 8(D) of this Agreement, upon Developer's completion and City's acceptance of all Infrastructure Improvements as defined in this Agreement, City shall reimburse to Developer a sum of not less than one million dollars (\$1,000,000).

Any amount the City elects to reimburse to Developer in excess of \$1,000,000 pursuant to this Section may be credited against the amount to be reimbursed to Developer pursuant to Section 8(F) below. Partial Reimbursement of the Infrastructure Improvements pursuant to this Section shall be made within 60 days of the City Engineer's determination of Actual Costs and Expenses as described in Section 8(J) of this Agreement.

F. Partial Lump Sum Reimbursement After One Year of Phase 1 Project Operation. In addition to any amount of fee credits or reimbursements made to Developer pursuant to Sections 8(B), 8(C), 8(D) and 8(E) of this Agreement, upon the one-year anniversary of the issuance of a certificate of occupancy for the final building to be occupied in the Phase 1 Project, City shall reimburse to Developer an amount equal to the lesser of: (1) the actual, total combined costs for all Roadway Improvements and Traffic and Transportation Mitigation Fees, less any amount reimbursed to Developer pursuant to Section 8(E) of this Agreement; or (2) the sum of Five Million Two Hundred Thousand Dollars (\$5,200,000), less any amount reimbursed or scheduled to be reimbursed to Developer pursuant to Section 8(E) of this Agreement.

G. Reimbursement From Future Sales Taxes and Transient Occupancy Taxes - "Supplemental Payments". In addition to fee credits and reimbursements provided pursuant to Sections 8(B) through 8(F) of this Agreement, in order to reimburse Developer for a portion of the Developer's unreimbursed cost of the Infrastructure Improvements, City agrees to make periodic supplemental reimbursement payments ("Supplemental Payments") to Developer in the amounts, at the times, and subject to the terms and conditions set forth in this Section 8(G).

(1) Calculation of Supplemental Payments. The Supplemental Payments required to be made by City hereunder shall be calculated based upon the amount of Sales Taxes and Transient Occupancy Tax generated by the Project Site. "Sales Taxes" shall mean the sales tax revenues from the imposition of the Bradley-Burns Uniform Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code), as the same may be amended from time to time, that the California State Board of Equalization ("SBOE") determines are generated by the Project Site and are paid to the City. Any sales tax revenues generated by the Project Site that the SBOE determines are payable to any jurisdiction other than City shall be excluded in the calculation of Sales Taxes hereunder. "Transient Occupancy Tax" shall mean the special tax levied within the City of Madera pursuant to Chapter 4 of Title VIII of the Madera Municipal Code on the privilege of occupying a room or rooms, or other living space, in a hotel or other transient lodging facility where the occupancy is less than 30 days. In no event shall the Supplemental Payments required to be made hereunder be secured by the City's general fund.

(2) Timing of Supplemental Payments. The Supplemental Payments shall be made by the City semi-annually, in arrears, no later than May 15th (for the preceding July 1st through December 31st period) and November 15th (for the preceding January 1st through June 30th period). The first calendar year for which Supplemental Payments are made shall be the second calendar year during which the Project is open to the public for business and Sales Taxes and Transient Occupancy Taxes are generated. After the supplemental payments commence, City's obligation shall continue until the earlier of (a) the expiration of the term of this Development Agreement, or (b) the date on which the total amount of Supplemental Payments made to Developer pursuant to this Section, plus the fee credits and reimbursements previously received by Developer pursuant to Sections 8(B) through 8(F), equal the total Reimbursement Amount.

(3) Amount of Supplemental Payment. For each calendar year for which Developer is entitled to receive a Supplemental Payment hereunder, the Supplemental Payment for such calendar year shall be not less than one-half of the total combined amount of Sales Tax and Transient Occupancy Tax generated by the Project Site and received by the City.



(4) Calculation of Supplemental Payment. The City, prior to making each semi-annual Supplemental Payment, shall determine the total Sales Taxes and Transient Occupancy Tax generated from the Project Site during the prior semi-annual period and actually paid to the City for such period based on the data provided by the SBOE (Sales Tax) and the operator of the Project Site Hotel (Transient Occupancy Tax) to City, and based upon such determination and the formula described in Section 8(G)(3) above, the amount of the applicable semi-annual Supplemental Payment. Such determination as between City and Developer shall be conclusive and binding on City and Developer, except that either party shall have the right to contest the Sales Tax data provided by SBOE in accordance with the procedures available under applicable law. If any final decision in such contest results in a recalculation of such data, then the Parties shall make such adjustments in the amounts credited pursuant to this Section as are necessary to reflect the final determination. In the event that Developer is entitled to receive a Supplemental Payment for the prior semiannual period in accordance herewith, then City shall, in the ordinary course of business, remit the amount of the Supplemental Payment to Developer.

(5) Developer Cooperation. Developer shall cooperate with City in providing to City such information that Developer may have regarding Sales Taxes and Transient Occupancy Taxes, subject to any nondisclosure or confidentiality provisions in Developer's leases with its tenants, if any. Specifically, Developer shall provide and shall require any of its tenants, licensees, franchisees or transferees to provide to City copies of the quarterly sales tax reports submitted to the SBOE concurrently with submission to the SBOE.

H. Reimbursement from Benefited Properties. The Parties recognize that certain of the Infrastructure Improvements will significantly benefit the future development of other properties (the "Benefited Properties"). To facilitate equitable distribution of costs among benefitted properties, the City shall require that all individual developers of Benefited Properties reimburse the City for their fair share costs of the Infrastructure Improvements paid for by Developer. For each Benefited Property, full reimbursement shall be required as a condition precedent to the issuance of the first building permit for that Benefited Property. The City shall implement this requirement through the imposition of a condition of approval on the use permit or first tentative subdivision map of any nature approved for each Benefited Property and/or as a requirement of any development agreement entered into for a Benefited Property. The City shall not be obligated to pay reimbursements to Developer from funds received from individual developers of Benefited Properties. City shall have the option to utilize any such funds it collects to make the annual Supplemental Payment to the Developer in lieu of using Sales Tax and Transient Occupancy Tax generated by the Project Site as contemplated by Section 8(G) of this Agreement.

I. Waiver of Further Reimbursement. Except for the Reimbursement Amount, as set forth in this Development Agreement, Developer hereby waives all rights to any other reimbursements in relation to the Infrastructure Improvements.

J. Developer's Cost Documentation. Within ninety (90) days of City's acceptance of the Infrastructure Improvements, Developer shall provide City with evidence of actual and reasonable costs and expenses for the Infrastructure Improvements for which reimbursements are to be made, in order to determine the final Reimbursement Amount. Such evidence shall include executed contracts, invoices, cancelled checks, and other documents reasonably required by the City Engineer to determine the reasonable and actual costs of the Infrastructure Improvements, together with a written certification signed by an officer of Developer setting forth hard and soft costs paid by Developer for the Infrastructure Improvements (the "Developer's Cost Documentation"). The actual Reimbursement Amount and the Fee Credit shall be determined in the reasonable discretion of the City Engineer, in good faith, based on the Developer's Cost Documentation.

K. Right to Reimbursement. All rights to reimbursement shall be personal to the Developer and such rights shall not run with the Property. Notwithstanding the foregoing, Developer may transfer or convey its right to fee credit or reimbursement to a third party, upon written notification to the City of said transfer or conveyance.

L. Term for Credits and Reimbursements. City shall not be obligated to pay any funds to Developer toward the Reimbursement Amount following the expiration of the term of this Development Agreement.

M. Installation of Monuments as Condition Precedent to Reimbursements. The installation of monuments required in conjunction with the approval and recordation of the Parcel Map creating the Project Site (TPM 2015-01) shall occur prior to the issuance of any reimbursements specified in Section 8 of this Agreement.

9. CONSTRUCTION OF HISTORIC PEDESTRIAN PLAZA. Notwithstanding any other provision of this Agreement, Developer shall construct and complete the Historic Pedestrian Plaza as identified in Recital C and the Existing Development Approvals, no later than issuance of a certificate of occupancy for the final building to be occupied in the Phase 1 Project.

10. RESERVATION OF AUTHORITY. The following shall be referred to as City's "Reservation of Authority":

A. Limitations, Reservations, and Exceptions. Notwithstanding any other provision of this Development Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Project Site:

- (1) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals, provided such fees are consistent with fees and charges imposed generally by City on all new development.
- (2) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.
- (3) Regulations governing construction standards and specifications, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.
- (4) Regulations which are in conflict with the Development Plan provided Developer has given written consent to the application of such regulations to development of the Project Site.
- (5) Regulations required to be adopted by changes in State or Federal law.

B. Subsequent Development Approvals. This Development Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Development Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or Subsequent Land Use Regulations not in conflict with the Development Plan.

C. Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Development Agreement prevent or preclude compliance with one or more of the provisions of this Development Agreement, such provisions of this Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations and the remainder of this Development Agreement shall remain in full force and effect.

D. Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Project Site separately from or jointly with City. This Development Agreement does not limit the authority of such other public agencies.

11. DEVELOPMENT OF THE PROPERTY; TIMING AND CHANGES/AMENDMENTS.

A. Rights to Develop. Subject to the terms of this Development Agreement, Developer shall have a vested right to develop the Project in accordance with and to the extent of the Development Plan. The Project shall be subject to all Subsequent Development Approvals, if any, required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Development Agreement, the permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan. The Project shall be subject to all mitigation measures specified in the Final EIR and Mitigation Monitoring Program as certified and adopted by the Planning Commission on August 16, 2016. In addition, City agrees that (i) the City shall not require any additional land dedications, additional construction of infrastructure improvements or any additional impact mitigation measures beyond those required by the Existing Land Use Approvals, including this Development Agreement, in connection with, and as a condition to, the development and construction of any portion of the Project, and the Project shall not be subject to any such additional requirements imposed pursuant to Future General Regulations or Subsequent Land Use Regulations; and (ii) the Development Exactions imposed in connection with, and as a condition to, the development and construction of any portion of the Project shall be limited to the Development Exactions as set forth on Exhibits C-1 and C-2 and the Project shall not be subject to any additional Development Exactions imposed pursuant to Future General Regulations or Subsequent Land Use Regulations.

B. Timing of Development. It is anticipated that the Infrastructure Improvements will be constructed in conjunction with Developer's development of its travel center and related improvements on the Project Site, as referenced in Recital C. The Parties acknowledge that Developer cannot at this time predict when or the rate at which the Project Site will be developed, since the same depends upon numerous factors which are not within the control of Developer, including without limitation, timing of Developer obtaining fee title to the Project Site, delay in obtaining necessary easement or other rights in third-party property, and market and weather conditions. Since the California Supreme Court held in *Pardee Construction v. City of Camarillo*, 37 Cal. 3d 465 (1984) that the failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Project Site in such order and at such rate and at such times as Developer deems appropriate within the exercise of Developer's subjective business judgment, subject only to any timing requirements set forth in the Existing Development Approvals and the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Project Site shall be deemed to conflict with the Existing Development Approvals and therefore shall not be applicable to the development of the Project Site.

C. Effect of Development Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Development Agreement, the rules, regulations, and official policies governing permitted uses of the Project Site, the density and intensity of use of the property, the maximum height and size of proposed buildings, and the design, improvement, and construction standards and specifications applicable to development of the Project Site shall be the Existing Land Use Regulations. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Development Plan, and as provided by this Development Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Developer, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the cost of which shall be borne by Developer.

D. Amendments and Modifications.

(1) Major Amendments. Any amendment to this Development Agreement which affects or relates to (a) the term of this Development Agreement; (b) permitted uses of the Project Site; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Project Site or the maximum height or gross square footage of proposed buildings; or (f) monetary contributions by Developer, shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a Minor Modification (as further defined in and subject to Section 11(D)(2) below). The City Manager or his or her designee shall have the authority, in his or her reasonable discretion, to determine if an amendment is a Major Amendment subject to this Section 11(D)(1) or a Minor Modification subject to Section 11(D)(2) below. The City Manager's determination may be appealed to the City Council.

(2) Minor Modifications. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Development Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Development Agreement. If and when the Parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment under Section 11(D)(1) (each a "Minor Modification"), they shall effectuate such Minor Modification through a written instrument executed by the Developer and City Manager. Unless otherwise required by law or the Municipal Code, no Minor Modification shall require prior notice or hearing, nor shall it constitute an amendment to this Development Agreement.

**12. PERIODIC REVIEW FOR COMPLIANCE WITH DEVELOPMENT AGREEMENT.** In accordance with California Government Code Section 65865.1, City shall review this Development Agreement at least once during every twelve (12) month period from the Effective Date of this Development Agreement, at which time Developer shall demonstrate good faith compliance with the terms of this Development Agreement, as reasonably requested by City. Failure by City in any given calendar year to undertake and complete its annual review of the Agreement shall constitute a finding by City that Developer is in compliance with all of the terms and conditions of this Agreement for that calendar year.

**13. AMENDMENT OR CANCELLATION OF DEVELOPMENT AGREEMENT.** This Development Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties and in the manner provided for in California Government Code Sections 65867, 65867.5, and 65868. The provisions of this Section do not impact the rights or remedies of the Parties (including without limitation, the right to terminate this Development Agreement) in the case of a Developer Default or City Default, as addressed in Section 14 below.

**14. EVENTS OF DEFAULT; REMEDIES.**

A. Default By Developer; City's Remedies. Developer is in default under this Development Agreement (a "Developer Default") if City makes a finding and determination that upon the basis of substantial evidence (as provided to Developer) the Developer has not complied in good faith with one or more of the material terms or conditions of this Development Agreement for ninety (90) days after receipt of written notice thereof, or such longer cure period as agreed to by City. In the case of a Developer Default, City shall conduct a hearing utilizing the periodic review procedures of Section 12 before City may terminate this Development Agreement. In such case, Developer acknowledges that City shall have such termination right because the remedies provided by law, including, but not limited to, damages, are deemed by City to be inadequate to fully remedy a Developer Default and due to the extreme difficulty of assessing with certainty damages for such Developer Default. The above

notwithstanding, if City elects to terminate this Development Agreement, the Developer may challenge such termination by instituting legal proceedings, in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

B. Default By City; Developer's Remedies. City is in default under this Development Agreement (a "City Default") if Developer makes a finding and determination that upon the basis of substantial evidence (as provided to City), City has not complied in good faith with one or more of the material terms or conditions of this Development Agreement for ninety (90) days after receipt of written notice thereof, or such longer cure period as agreed to by Developer. In the case of a City Default, Developer may pursue any legal or equitable remedies available to it under this Development Agreement or otherwise.

C. Waiver and Nature of Remedies. No default under this Development Agreement can be waived unless in writing. Waiver of any one default shall not be deemed to be a waiver of any other default of the same or any other provision hereof. Failure or delay in giving written notice of default shall not waive a party's right to give future notice of the same or any other default. Remedies under this Development Agreement shall be deemed cumulative and not exclusive.

D. Limitation of Liability. Notwithstanding anything in this Development Agreement to the contrary, neither party, under any circumstances, shall be liable to the other party for any punitive or exemplary damages arising out of this Development Agreement. This Section 14(D) shall survive termination of the Development Agreement.

15. UNIFORM CODES. This Development Agreement does not prevent the City from adopting and amending in compliance with State law certain Uniform Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including that portion of the Property subject to this Development Agreement. Such Uniform Codes include, but are not limited to, the *Uniform Building Code, Uniform Mechanical Code, National Electrical Code, and Uniform Fire Code.*

16. PREVAILING WAGE COMPLIANCE. Developer shall comply with all state and federal labor laws, including without limitation, those requiring the payment of prevailing wage. All fee credits and the Reimbursement Amount are intended to compensate Developer for no more than the cost associated with the construction and installation of Infrastructure Improvements required as a condition of regulatory approval. In accordance with California Labor Code Section 1720(c)(2), such compliance shall require Developer to pay prevailing wages in connection with the construction of and installation of all Infrastructure Improvements for which Developer is receiving a portion of the Reimbursement Amount or fee or fee credits, but not in connection with the construction of any other portion of the Project.

17. LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT. In regard to Avenue 17 and Sharon Boulevard median landscaping comprising part of the Infrastructure Improvements, City and Developer agree to reasonably cooperate in either (i) the creation of a landscape and lighting maintenance district ("LMD"); or (ii) annexing the relevant landscaping site into existing Zone 51 LMD, pursuant to California Streets and Highways Code Section 22500, et seq., for purposes of the payment of operation, maintenance and other covered costs associated with the such landscaping and lighting improvements. In the event City desires to create a new LMD, Developer agrees to reasonably cooperate in the proceedings for such creation by not opposing the formation of the LMD and, as applicable, casting a vote in favor of the LMD's creation; provided that the initial amount of the maximum assessment shall be in accordance with the Engineer's Report prepared for the LMD, and annual adjustments to the special tax shall not exceed the rate of inflation.

**18. PUBLIC HEALTH AND SAFETY CONCERNS; APPLICATION OF FUTURE REGULATIONS.**

A. This Development Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to the Project and the Project Site, provided that City's City Council adopts findings that a failure to apply such Future General Regulations would create a fire, life, or safety hazard. These findings shall be based upon substantial evidence in the record from a hearing conducted by City's City Council as to which the Developer was provided at least ten (10) days advance written notice.

B. Notwithstanding Section 18(A) above, the City shall not apply to the Project or the Project Site any Future General Regulations which prevent, preclude, or unreasonably delay or alter or in any way affect the implementation of all or any portion of the Development Plan, unless City's City Council, in accordance with subsection (A) above, also makes a finding that such Future General Regulations are reasonably necessary to correct or avoid such injurious or detrimental condition. Any Future General Regulations applied to the Project or the Project Site pursuant to this subsection shall only apply for the duration necessary to correct and avoid such injurious or detrimental condition.

**19. ASSIGNMENT, TRANSFER OR SALE.**

A. Right to Assign. Developer shall have the right to sell, transfer or assign the Project Site in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, *et seq.*) to any person, partnership, joint venture, firm, corporation or other entity at any time during the term of this Development Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights (including the right to receive all or any portion of the Reimbursement Amount), duties, and obligations arising under or from this Development Agreement to the extent reasonably applicable to the transferred portion of the Project Site and be made in strict compliance with the following conditions precedent:

- (1) No sale, transfer, or assignment of any right or interest under this Development Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Project Site. Developer agrees to provide specific notice of this Development Agreement, including the record or document number, where a true and correct copy of this Development Agreement may be obtained from the County Clerk/County Recorder of the County of Madera, in any grant deed or other document purporting to transfer the title or an interest in the Project Site during the term of this Development Agreement or any extension thereof.
- (2) Concurrent with any such sale, transfer, or assignment, or within fifteen (15) business days thereafter, Developer shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed Assignment and Assumption Agreement, substantially in the form specified in Exhibit J, by the purchaser, transferee, or assignee, providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the Owner/Developer under this Development Agreement to the extent allocable to the portion of the Project Site transferred, other than duties that are expressly reserved and retained by the transferor in such agreement, where the transferor still owns a portion of the Project Site. Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Developer under this Development Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required under this section, the burdens of this Development Agreement shall be binding upon such purchaser, transferee, or assignee, to the extent allocable to the portion of the Project Site transferred, but the benefits of this Development Agreement shall not inure to such purchaser, transferee, or assignee until and unless such assumption agreement is executed.

- (3) Reorganization Not an Assignment. Notwithstanding anything to the contrary set forth above, the following shall not be deemed an assignment under this Development Agreement: (i) any sale, pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such reorganization or City's request for backup information, as applicable.

B. Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, Developer or any successor Owner thereof shall continue to be obligated under this Development Agreement unless Developer or such subsequent Owner is given a release in writing, signed by City, which release shall be provided by City upon the full satisfaction by Developer or such subsequent Owner of all of the following conditions:

- (1) Developer or Owner no longer has a legal interest in all or any part of the Project site except as a beneficiary under a deed of trust; or if such requested release relates only to a portion of the Project site, Developer or Owner no longer has a legal interest in such portion of the Project site except as a beneficiary under a deed of trust.
- (2) Developer or Owner is not then in default under this Development Agreement beyond the applicable cure period.
- (3) Developer or Owner or purchaser has provided City with the notice and executed assumption agreement required under Section 19(A)(2) above.
- (4) Developer or Owner has reimbursed City for any and all reasonable City costs associated with Developer or Owner's transfer of all or a portion of the Project Site.

20. **NOTICE**. Unless expressly provided otherwise in this Development Agreement, any notices, reports, communications, and payments hereunder must be in writing and given by personal delivery or sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) facsimile transmission, addressed as follows (unless written notice of change thereof is provided):

**To City:**

City Clerk  
City of Madera City Hall  
205 West Fourth Street  
Madera, California 93637  
Facsimile: (559) 674-2972

**With copy to (at same address):**

City Attorney  
Facsimile: (559) 673-1304

**To Landowner:**

Lisa M. Guzman  
7173 North Blackstone Street  
Fresno, CA 93650

**To Developer:**

Love's Country Stores of California, Inc.  
10601 N. Pennsylvania Ave.  
Oklahoma City, OK 73120  
Attention: Kym VanDyke, Project Manager  
Facsimile: (405) 463.3581

**With copy to (at same address):**

General Counsel and Director of Legal Services  
Facsimile: (405) 463.3576

Notice shall be deemed received on the earlier of (a) actual receipt, (b) 3 business days after deposit in the U.S. Mail, (c) the first business day after deposit with an overnight courier, or (d) if by facsimile transmittal, upon receipt of proof of transmission. Any notice or communication not received because of a change of address or facsimile number, without notice to the other party thereof, or refusal to accept delivery, will be deemed received, notwithstanding the same, as set forth above.

**21. MORTGAGEE PROTECTION.** The Parties hereto agree that this Development Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Project Site, except as limited by the provisions of this section. City acknowledges that the lenders providing such financing may require certain Development Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Development Agreement. Any mortgagee of the Project Site shall be entitled to the following rights and privileges:

A. Neither entering into this Development Agreement nor a breach of this Development Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project Site made in good faith and for value, unless otherwise required by law.

B. The mortgagee of any mortgage or deed of trust encumbering the Project Site, or any part thereof, which mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Development Agreement.

C. If City receives a timely request from a mortgagee requesting a copy of any notice of default given to Developer under the terms of this Development Agreement, City shall provide a copy of that notice to the mortgagee within ten (10) days of sending the notice of default to Developer. The mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Developer under this Development Agreement.

D. Any mortgagee who comes into possession of the Project Site, or any part thereof, by any means, whether pursuant to foreclosure of the mortgage deed of trust, or deed in lieu of such foreclosure or otherwise, shall take the Project Site, or part thereof, subject to the terms of this Development Agreement. Notwithstanding any other provision of this Development Agreement to the contrary, no mortgagee shall have an obligation or duty under this Development Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any mortgagee in possession shall be subject to the provisions of Section 19 of this Agreement.



## 22. MISCELLANEOUS.

A. Entire Agreement; Binding Effect. This Development Agreement contains the entire agreement and understanding of Developer and City in regard to the Project and supersedes all negotiations and proposed agreements, whether oral or written, between Developer and City in regard to the subject matter hereof. Each party acknowledges that it has read this Development Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by the other, or the other party's attorneys or representatives, except as expressly set forth in this Development Agreement. This Development Agreement is and shall be binding upon and shall inure to the benefit of the affiliates, subsidiaries, successors, assigns, agents, officers, current employees and administrators of each of Developer and City.

B. Interpretation. Developer and City expressly intend that this Development Agreement shall not be construed against either party, as this Development Agreement was negotiated at arms' length between City and Developer, both of whom were represented by legal counsel, and all of whom contributed to the drafting of this Development Agreement. Any reference within this Development Agreement to a Section shall be construed to reference all Subsections of that referenced Section.

C. Enforcement. Developer and City agree that the Superior Court in Madera County shall have jurisdiction over the implementation and enforcement of this Development Agreement, and shall have the power and authority to make such further or supplemental orders, directions, and other relief as may be necessary or appropriate for the interpretation, enforcement, or carrying out of this Development Agreement.

D. Governing Law. Except as expressly provided in this Development Agreement, all questions with respect to this Development Agreement, and the rights and liabilities of the Developer and City, shall be governed by the laws of the State of California.

E. Further Actions. Each party shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Development Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file of record such required instruments and writings and take any actions as may be reasonably necessary, to implement this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

F. Counterpart Execution. This Development Agreement may be executed in counterparts. When each party has signed and delivered its respective counterpart to the other party, each counterpart shall be deemed an original, and when taken together will constitute one and the same Development Agreement, which will be binding and effective as to Developer and City.

G. Attorneys' Fees. To the extent permitted by law, if either party commences legal action against the other to enforce its rights hereunder, the prevailing party in such action shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental thereto.

H. Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party (and to the extent true), (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Developer.

I. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Development Agreement, all deadlines under this Agreement, including but not limited the deadline for Developer to submit a Substantially Complete Building Permit Application under Section 6(A) shall be extended; and the performance by any Party of its obligations under this Agreement shall not be deemed to be in Default, and the time for performance of such obligation shall be extended where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, acts of terrorism, governmental restrictions or permitting delays imposed or mandated by governmental entities including the City (in the case of another Party relying on the Force Majeure Event), delays in securing or obtaining necessary easements or rights of way, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, seasonal species or habitat surveying or remediation requirements, litigation, or similar bases for excused performance beyond the reasonable control of the party relying thereupon to excuse performance hereunder (each a "Force Majeure Event"). If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted by the City Manager in writing for the period of the enforced delay, or longer as may be mutually agreed upon. In any event, the party relying on any such Force Majeure Event to excuse performance hereunder shall act in good faith, and with due diligence, to recommence performance at the earliest possible date.

J. Indemnity. Developer agrees to and shall defend, indemnify and hold harmless the City, its City Council, boards and commissions, officers, agents, employees, volunteers and other representatives (collectively referred to as "City Indemnified Parties") from and against any and all loss, liability, damages, cost, expense, claims, demands, suits, attorney's fees and judgments (collectively referred to as "Damages"), including but not limited to claims for damage for personal injury (including death) and claims for property damage arising directly or indirectly from the following: (1) for any act or omission of Developer or those of its officers, board members, agents, employees, volunteers, contractors, subcontractors or other persons acting on its behalf (collectively referred to as the "Developer Parties") which occurs during the Term and relates to this Agreement; (2) for any act or omission related to the operations of Developer Parties, including but not limited to the maintenance and operation of areas on the Project Site accessible to the public. Developer's obligation to defend, indemnify and hold harmless applies to all actions and omissions of Developer Parties as described above caused or alleged to have been caused in connection with the Project or Agreement, except to the extent any Damages are caused by the active negligence or willful misconduct of any City Indemnified Parties. This Section 22(J) applies to all Damages suffered or alleged to have been suffered by the City Indemnified Parties regardless of whether or not the City prepared, supplied or approved plans or specifications or both for the Project. During the term of the Agreement, Developer shall maintain insurance in a form and amount acceptable to the City Attorney, with a maximum per-occurrence combined single limit of one million dollars (\$1,000,000), to assure Developer's ability to satisfy the indemnification requirements of this Section 22(J). Developer may satisfy the insurance requirements of this Section through self-coverage or through existing insurance coverage maintained by Developer.

K. City's Right to Defense. The City shall have the right to approve legal counsel retained by Developer to defend any claim, action or proceeding which Developer is obligated to defend pursuant to Section 22(J), which approval shall not be unreasonably withheld, conditioned or delayed. If any conflict of interest results during the mutual representation of the City and Developer in defense of any such action, or if the City is reasonably dissatisfied with legal counsel retained by Developer, the City shall have the right (a) at Developer's costs and expense, to have the City Attorney undertake and continue the City's defense, or (b) with Developer's approval, which shall not be reasonably withheld or delayed, to select separate outside legal counsel to undertake and continue the City's defense.

[EXECUTION PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, City and Developer have agreed to and executed this Development Agreement having an Effective Date of December 28, 2016 (to be the date of recording, following full execution, with Madera County Clerk/County Recorder).

BY: [Signature]  
MAYOR, Andrew J. Medellin

ATTEST:  
[Signature] CITY CLERK

By: Sonia Alvarez  
City Clerk  
(Seal)



APPROVED AS TO FORM:  
[Signature]  
City Attorney, Brent Richardson

DATE: 12-28-16

City of Madera  
205 West Fourth Street  
Madera, CA 93637  
(559) 661-5405

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

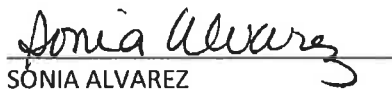
STATE OF CALIFORNIA )

COUNTY OF MADERA )

On 12/28/16 before me, Sonia Alvarez, City Clerk personally appeared **Andrew J. Medellin**, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
SONIA ALVAREZ  
City Clerk, City of Madera



---

**DESCRIPTION OF ATTACHED DOCUMENT (OPTIONAL)**

**Title or Type of Document:** Development Agreement

**Document Date:**

**Number of Pages:**

**Signer(s) Other Than Named Above:**

**CAPACITY(IES) CLAIMED BY SIGNER(S)**

**Signer's Name:** Andrew J. Medellin

**Signer's Name:**

**Title:** Mayor, City of Madera

**Title:**

DEVELOPER:

LOVE'S COUNTRY STORES OF CALIFORNIA, INC.

By: Douglas J. Stussi

Its: Vice President, CFO and Treasurer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Oklahoma )

County of Oklahoma )

On Dec. 23, 2016 before me, Carla Berry

Date personally appeared Doug Stussi Here Insert Name and Title of Officer

Name(s) of Signer(s) Vice President, CFO & Treasurer

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

I certify under PENALTY OF PERJURY under the laws of the State of Oklahoma that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla K. Berry

(Seal)



LANDOWNER:

*Lisa M. Guzman*

LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Madera )

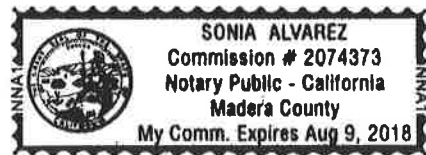
On 12/27/16 before me, Sonia Alvarez, Notary Public  
Date Here Insert Name and Title of Officer  
personally appeared Lisa M. Guzman  
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sonia Alvarez (Seal)



LANDOWNER:

*Lisa M. Guzman*

LISA M. GUZMAN, TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Madera )

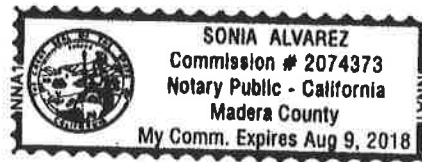
On 12/27/16 before me, Sonia Alvarez, Notary Public  
Date Here Insert Name and Title of Officer  
personally appeared Lisa M. Guzman  
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Sonia Alvarez* (Seal)



**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 013-240-003**

---

Beginning at the Northeast corner of Section 10, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, County of Madera, State of California; thence along the East line of Section 10, South 0° 10' East 1,331.25 feet to the Southeast corner of the North half of the Northeast quarter of Section 10; thence along the North line of a 51.272 acre tract of land conveyed by Henry Miller to Charles Schmidt, on December 5, 1893, South 89° 55' West 1,029.12 feet along the South line of said North half of the Northeast quarter to a point on the Easterly right of way line of the Southern Pacific Railroad; thence along said Easterly right of way line North 44° 15' West 1,858.76 feet to a point on the North line of Section 10; thence leaving railroad, North 89° 58' East 2,332.30 feet to the point of beginning.

EXCEPTING THEREFROM a road easement over and upon a strip of land 30 feet in width along the North line of and within above described tract of land for use as a right of way easement for a public road, as previously reserved of record.

ALSO EXCEPTING THEREFROM that portion granted to the State of California, in Deed executed by Felisberto da Silva, et al, and recorded February 24, 1971 in Book 1081 Page 532, as Document No. 2225 of Official Records.

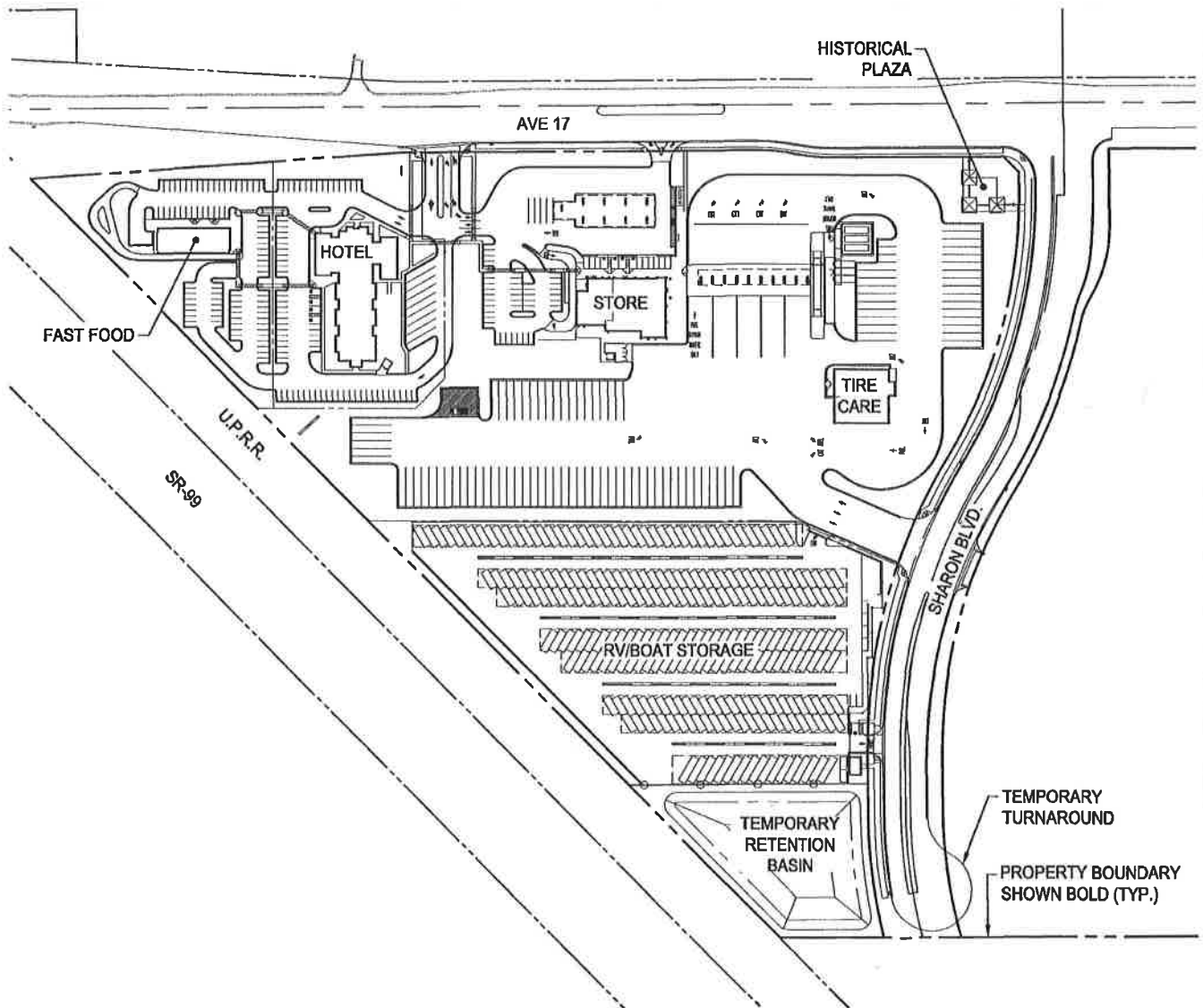
AND ALSO EXCEPTING THEREFROM that portion granted to the County of Madera, in Deed executed by Jim Vincenzo Gagliardi, et al, and recorded October 24, 2003 as Document No. 03045789 of Official Records.





LANE ENGINEERS, INC.  
CIVIL • STRUCTURAL • SURVEYING  
979 N. Blackstone Street  
Tulare, California 93274  
559.688.5263  
www.laneengineers.com

All reproduction & intellectual property rights reserved © 2016  
Lane Project No. 14271



**EXHIBIT 'B'**  
**DEPICTION OF PROJECT SITE**



Development Exactions - Development Impact Fees and Credit Amounts

DESCRIPTION	Base Calculation		Projected Credit Amount	
	QUANTITY	UNIT COST	QUANTITY	UNIT COST
A. TRAVEL STOP				
Administrative Impact Fee	20,054 SF	\$0.024	0 SF	\$0.024
Fire Department Impact Fee	20,054 SF	\$0.036	0 SF	\$0.036
General Government Impact Fee	20,054 SF	\$0.012	0 SF	\$0.012
Police Department Impact Fee	20,054 SF	\$0.072	0 SF	\$0.072
Public Works Impact Fee	20,054 SF	\$0.133	0 SF	\$0.133
Sewer Additional Impact Fee	20,054 SF	\$0.169	20,054 SF	\$3,389
Storm Drain Impact Fee	20,054 SF	\$1,210	20,054 SF	\$24,265
Sewer Exist Obi. Impact Fee	20,054 SF	\$0.036	20,054 SF	\$722
Streets (16 ft Arterial Median)	20,054 SF	\$0.142	20,054 SF	\$2,848
Streets (24 ft Collector Lane)	20,054 SF	\$0.251	20,054 SF	\$5,034
Streets (12 ft Arterial Lane)	20,054 SF	\$0.251	20,054 SF	\$5,034
Transportation Impact Fee	20,054 SF	\$0.254	20,054 SF	\$5,094
Traffic Signal Impact Fee	20,054 SF	\$0.087	20,054 SF	\$1,745
Water Impact Fee (Pipes)	20,054 SF	\$0.072	20,054 SF	\$1,444
Wastewater Treatment Plant Impact Fee	20,054 SF	\$0.763	20,054 SF	\$15,301
Water Impact Fee (Wells)	20,054 SF	\$0.133	20,054 SF	\$2,667
<b>SUB-TOTAL TRAVEL STOP</b>				<b>\$73,097</b>
				<b>\$67,542</b>

Development Exactions - Development Impact Fees and Credit Amounts

B. HOTEL									
Administrative Impact Fee	57,792	SF	\$0.024	\$1,387	0	SF	\$0.024	\$0	\$0
Fire Department Impact Fee	57,792	SF	\$0.036	\$2,081	0	SF	\$0.036	\$0	\$0
General Government Impact Fee	57,792	SF	\$0.012	\$694	0	SF	\$0.012	\$0	\$0
Police Department Impact Fee	57,792	SF	\$0.072	\$4,161	0	SF	\$0.072	\$0	\$0
Public Works Impact Fee	57,792	SF	\$0.133	\$7,686	0	SF	\$0.133	\$0	\$0
Sewer Additional Impact Fee	57,792	SF	\$0.169	\$9,767	57,792	SF	\$0.169	\$9,767	\$9,767
Storm Drain Impact Fee	57,792	SF	\$1.210	\$69,928	57,792	SF	\$1.210	\$69,928	\$69,928
Sewer Exist. Obl. Impact Fee	57,792	SF	\$0.036	\$2,081	57,792	SF	\$0.036	\$2,081	\$2,081
Streets (16 ft Arterial Median)	57,792	SF	\$0.142	\$8,206	57,792	SF	\$0.142	\$8,206	\$8,206
Streets (24 ft Collector Lane)	57,792	SF	\$0.251	\$14,506	57,792	SF	\$0.251	\$14,506	\$14,506
Streets (12 ft Arterial Lane)	57,792	SF	\$0.251	\$14,506	57,792	SF	\$0.251	\$14,506	\$14,506
Transportation Impact Fee	57,792	SF	\$0.254	\$14,679	57,792	SF	\$0.254	\$14,679	\$14,679
Traffic Signal Impact Fee	57,792	SF	\$0.087	\$5,028	57,792	SF	\$0.087	\$5,028	\$5,028
Water Impact Fee (Pipes)	57,792	SF	\$0.072	\$4,161	57,792	SF	\$0.072	\$4,161	\$4,161
Wastewater Treatment Plant Impact Fee	57,792	SF	\$0.763	\$44,095	57,792	SF	\$0.763	\$44,095	\$44,095
Water Impact Fee (Wells)	57,792	SF	\$0.133	\$7,686	57,792	SF	\$0.133	\$7,686	\$7,686
<b>SUB-TOTAL HOTEL</b>								<b>\$210,652</b>	<b>\$194,643</b>

**Development Exactions - Development Impact Fees and Credit Amounts**

<b>C. RESTAURANT PAD</b>						
Administrative Impact Fee	4,400 SF	\$0.024	\$106	0 SF	\$0.024	\$0
Fire Department Impact Fee	4,400 SF	\$0.036	\$158	0 SF	\$0.036	\$0
General Government Impact Fee	4,400 SF	\$0.012	\$53	0 SF	\$0.012	\$0
Police Department Impact Fee	4,400 SF	\$0.072	\$317	0 SF	\$0.072	\$0
Public Works Impact Fee	4,400 SF	\$0.133	\$585	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	4,400 SF	\$0.169	\$744	4,400 SF	\$0.169	\$744
Storm Drain Impact Fee	4,400 SF	\$1.210	\$5,324	4,400 SF	\$1.210	\$5,324
Sewer Exist Obi. Impact Fee	4,400 SF	\$0.036	\$158	4,400 SF	\$0.036	\$158
Streets (16 ft Arterial Median)	4,400 SF	\$0.142	\$625	4,400 SF	\$0.142	\$625
Streets (24 ft Collector Lane)	4,400 SF	\$0.251	\$1,104	4,400 SF	\$0.251	\$1,104
Streets (12 ft Arterial Lane)	4,400 SF	\$0.251	\$1,104	4,400 SF	\$0.251	\$1,104
Transportation Impact Fee	4,400 SF	\$0.254	\$1,118	4,400 SF	\$0.254	\$1,118
Traffic Signal Impact Fee	4,400 SF	\$0.087	\$383	4,400 SF	\$0.087	\$383
Water Impact Fee (Pipes)	4,400 SF	\$0.072	\$317	4,400 SF	\$0.072	\$317
Wastewater Treatment Plant Impact Fee	4,400 SF	\$0.763	\$3,357	4,400 SF	\$0.763	\$3,357
Water Impact Fee (Wells)	4,400 SF	\$0.133	\$585	4,400 SF	\$0.133	\$585
<b>SUB-TOTAL RESTAURANT PAD</b>						<b>\$14,819</b>
						<b>\$16,038</b>

**Development Exactions - Development Impact Fees and Credit Amounts**

D. RV/BOAT STORAGE									
Administrative Impact Fee	600 SF	\$0.024	\$14	0 SF	\$0.024	\$0			
Fire Department Impact Fee	600 SF	\$0.036	\$22	0 SF	\$0.036	\$0			
General Government Impact Fee	600 SF	\$0.012	\$7	0 SF	\$0.012	\$0			
Police Department Impact Fee	600 SF	\$0.072	\$43	0 SF	\$0.072	\$0			
Public Works Impact Fee	600 SF	\$0.133	\$80	0 SF	\$0.133	\$0			
Sewer Additional Impact Fee	600 SF	\$0.169	\$101	600 SF	\$0.169	\$101			
Storm Drain Impact Fee	600 SF	\$1.210	\$726	600 SF	\$1.210	\$726			
Sewer Exist Obl. Impact Fee	600 SF	\$0.036	\$22	600 SF	\$0.036	\$22			
Streets (16 ft Arterial Median)	600 SF	\$0.142	\$85	600 SF	\$0.142	\$85			
Streets (24 ft Collector Lane)	600 SF	\$0.251	\$151	600 SF	\$0.251	\$151			
Streets (12 ft Arterial Lane)	600 SF	\$0.251	\$151	600 SF	\$0.251	\$151			
Transportation Impact Fee	600 SF	\$0.254	\$152	600 SF	\$0.254	\$152			
Traffic Signal Impact Fee	600 SF	\$0.087	\$52	600 SF	\$0.087	\$52			
Water Impact Fee (Pipes)	600 SF	\$0.072	\$43	600 SF	\$0.072	\$43			
Wastewater Treatment Plant Impact Fee	600 SF	\$0.763	\$458	600 SF	\$0.763	\$458			
Water Impact Fee (Wells)	600 SF	\$0.133	\$80	600 SF	\$0.133	\$80			
<b>SUB-TOTAL RV/BOAT STORAGE</b>						<b>\$2,187</b>			

**\$279,025**

**\$301,974**

**Project Totals**

## Development Exactions - Traffic and Transportation Mitigation Fees

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>AIR SHARE %</u>	<u>COST</u>
<b>I. INTERSECTIONS</b>				
<b>A. Avenue 17 at SR 99 SB Off Ramp (Install New Traffic Signal)</b>				
Traffic Signal	1 EA	\$400,000.00	13.1%	\$52,400
				<u>\$52,400</u>
<b>B. Avenue 17 at SR 99 NB Ramps (Widen NB Approach to 2 LT and 3 RT, &amp; Install New Traffic Signal)</b>				
Sawcut Existing Pavement	1700 LF	\$2.00	19.5%	\$663
Remove Existing Pavement	3400 SF	\$2.00	19.5%	\$1,326
General Earthwork and Import	17000 CY	\$15.00	19.5%	\$49,725
Hot Mix Asphalt	1750 TN	\$92.00	19.5%	\$31,395
Aggregate Base	3800 TN	\$32.00	19.5%	\$23,712
Traffic Signal	1 EA	\$400,000.00	19.5%	\$78,000
Traffic Signal Coordination	1 LS	\$10,000.00	19.5%	\$1,950
				<u>\$186,771</u>
<b>C. Avenue 17 at Walden Drive (Install New Traffic Signal)</b>				
Traffic Signal	1 EA	\$350,000.00	2.4%	\$8,225
				<u>\$8,225</u>
<b>E. Sharon Boulevard at Driveway #3 (Install New Traffic Signal)</b>				
Traffic Signal	1 EA	\$350,000.00	60.7%	\$212,450
				<u>\$212,450</u>
<b>F. Avenue 17 at Yeager Drive (Install Traffic Signal)</b>				
Traffic Signal	1 EA	\$350,000.00	2.2%	\$7,700
				<u>\$7,700</u>
<b>II. ROADWAY SEGMENTS</b>				
<b>A. Ave 17 Westbound Expansion (Add 1 Travel Lane Between Sharon and Walden)</b>				
Sawcut Pavement	600 LF	\$2.00	2.3%	\$28
Pavement Removal	1200 SF	\$2.00	2.3%	\$55
General Earthwork and Roadway Excavation	150 CY	\$5.00	2.3%	\$17
Hot Mix Asphalt	350 TN	\$92.00	2.3%	\$741
Class 2 Aggregate Base	1000 TN	\$32.00	2.3%	\$736
				<u>\$1,577</u>

**Development Exactions - Traffic and Transportation Mitigation Fees**

**III. SR 99 FREEWAY AND RAMPS**

**A. SR 99 SB Loop On-Ramp (Widen Ramp to Add 1 Lane)**

Sawcut Pavement	850 LF	\$1.50	18.1%	\$230
Pavement Removal	1700 SF	\$2.00	18.1%	\$614
General Earthwork and Import	2000 CY	\$15.00	18.1%	\$5,415
Hot Mix Asphalt	600 TN	\$92.00	18.1%	\$9,964
Class 2 Aggregate Base	1250 TN	\$32.00	18.1%	\$7,220
				\$23,442

**B. SR 99 NB Off-Ramp (Widen Ramp to add 1 exit lane, & Auxiliary Lane)**

Sawcut Pavement	1300 LF	\$2.00	13.3%	\$345
Pavement Removal	2600 SF	\$2.00	13.3%	\$689
General Earthwork and Roadway Excavation	1700 CY	\$5.00	13.3%	\$1,126
Hot Mix Asphalt	1050 TN	\$92.00	13.3%	\$12,800
Class 2 Aggregate Base	2500 TN	\$32.00	13.3%	\$10,600
				\$25,559

**C. SR 99 NB On-Ramp (Widen Ramp to Add 1 Lane)**

Sawcut Pavement	1500 LF	\$2.00	41.8%	\$1,254
Pavement Removal	3000 SF	\$2.00	41.8%	\$2,508
General Earthwork and Import	10000 CY	\$15.00	41.8%	\$62,700
Hot Mix Asphalt	1000 TN	\$92.00	41.8%	\$38,456
Class 2 Aggregate Base	2200 TN	\$32.00	41.8%	\$29,427
				\$134,345

**D. SR 99 SB Off-Ramp (Widen Ramp to Add 1 Lane)**

Sawcut Pavement	850 LF	\$2.00	54.4%	\$925
Pavement Removal	1700 SF	\$2.00	54.4%	\$1,850
General Earthwork and Roadway Excavation	1400 CY	\$5.00	54.4%	\$3,808
Hot Mix Asphalt	850 TN	\$92.00	54.4%	\$42,541
Class 2 Aggregate Base	1850 TN	\$32.00	54.4%	\$32,205
				\$81,328

**Development Exactions - Traffic and Transportation Mitigation Fees**

---

INTERCHANGE RELATED SUBTOTAL \$503,846

CITY STREETS/ROADS SUBTOTAL \$229,952

---

GRAND TOTAL \$733,798**NOTES:**

1. The improvements described herein are based on the Final EIR and associated traffic study, certified by the City of Madera Planning Commission on 8/16/2016.
2. Improvements highlighted in orange, are improvement required within Caltrans R/W.
3. Traffic Signal, Hot Mix Asphalt, and Class 2 Aggregate Base Costs are based on the Avenue 17/SR-99 Project Study Report (PSR).
4. This estimate excludes costs related to mobilization, bonding, traffic control and other off-site related costs not specifically mentioned in this cost estimate.
5. This estimate is intended to provide an order-of-magnitude cost only. It is not based on a set of construction drawings.
6. Costs are based on prevailing wages.
7. Agency fees are included in this estimate to the extent they are listed.
8. Fees or costs associated with work related to dry utilities are not included in this estimate.



## General Description of Infrastructure Improvements, Costs, and Reimbursable Amounts

IMPROVEMENT DESCRIPTION	TOTAL INFRASTRUCTURE IMPROVEMENT COST			REIMBURSABLE AMOUNT		
	QUANTITY	UNIT	COST	QUANTITY	UNIT	COST
<b>I. AVENUE 17 ROADWORK</b>						
A.1 Avenue 17 Road Excavation [P]1	6,000	CY	\$60,000	6,000	CY	\$60,000
A.2 Avenue 17 Road Excavation [AO]1	2,000	CY	\$20,000	-	CY	\$0
A.7 Avenue 17 Pavement Removal	25,909	SF	\$51,818	25,909	SF	\$51,818
A.9 West Avenue 17 Pavement (7.0" A.C. / 8.5" A.B.) [P]1	16,379	SF	\$94,179	16,379	SF	\$94,179
A.10 West Avenue 17 Pavement (7.0" A.C. / 8.5" A.B.) [AO]1	6,728	SF	\$38,686	-	SF	\$0
A.11 East Avenue 17 Pavement (7.0" A.C. / 23" A.B.) [P]1	43,031	SF	\$344,248	43,031	SF	\$344,248
A.12 East Avenue 17 Pavement (7.0" A.C. / 23" A.B.) [AO]1	18,332	SF	\$146,656	-	SF	\$0
A.19 Sawcut Pavement (Avenue 17)	2,585	LF	\$5,170	2,585	LF	\$5,170
E.1 Traffic Control	1	LS	\$40,000.00	1	LS	\$40,000.00
Subtotal Direct Costs Avenue 17 Roadwork - Minus Curb & Gutter			\$800,757			\$588,615
Subtotal Ave 17 Soft and Indirect Costs [Note 3]			\$273,432			\$201,049
<b>Total Avenue 17 Costs</b>			<b>\$1,074,189</b>			<b>\$789,664</b>
<b>II. SHARON BOULEVARD ROADWORK</b>						
A.3 Sharon Boulevard Road Excavation [P]1	7,500	CY	\$75,000	7,500	CY	\$75,000
A.4 Sharon Boulevard Road Excavation [AO]1	2,500	CY	\$25,000	-	CY	\$0
A.13 North Sharon Boulevard Pavement (6.5" A.C. / 19.5" A.B.) [P]1	37,654	SF	\$263,578	37,654	SF	\$263,578
A.14 North Sharon Boulevard Pavement (6.5" A.C. / 19.5" A.B.) [AO]1	20,202	SF	\$141,414	-	SF	\$0
A.15 South Sharon Boulevard Pavement (6.5" A.C. / 14.0" A.B.) [P]1	15,743	SF	\$98,394	15,743	SF	\$98,394
A.16 South Sharon Boulevard Pavement (6.5" A.C. / 14.0" A.B.) [AO]1	13,897	SF	\$86,856	-	SF	\$0
A.17 Temporary A.C. Pavement (2.5" A.C. / 6.5" A.B.)	7,521	SF	\$20,683	-	SF	\$0
Subtotal Direct Costs Sharon Boulevard Road Work - Minus Curb & Gutter			\$710,924.75			\$436,972
Subtotal Sharon Boulevard - Soft and Indirect Costs [Note 3]			\$242,757			\$149,253
<b>Total Sharon Boulevard Road Work - Minus Curb &amp; Gutter</b>			<b>\$953,682</b>			<b>\$586,225</b>

**Exhibit D**

Page 2 of 5

**III. CURB AND GUTTER - ALL STREETS**

A.21	Curb & Gutter	2,879	LF	\$14.00	\$40,306	-	LF	\$14.00	\$0
	<i>Subtotal Curb and Gutter - Soft and Indirect Costs [Note 3]</i>				\$13,763				\$0
	<b>Total Curb and Gutter - All Streets - Costs</b>				<b>\$54,069</b>				<b>\$0</b>

**IV. SIDEWALKS - ALL STREETS**

A.25	Concrete Sidewalk [P]1	5,145	SF	\$4.00	\$20,580	5,145	LF	\$4.00	\$20,580
A.26	Concrete Sidewalk [AO]1	11,463	SF	\$4.00	\$45,852	-	SF	\$4.00	\$0
	Subtotal Direct Costs Sidewalks				\$66,432				\$20,580
	<i>Subtotal Sidewalks Soft and Indirect Costs [Note 3]</i>				\$22,684				\$7,029
	<b>Total Sidewalks - All Streets - Costs</b>				<b>\$89,116</b>				<b>\$27,609</b>

**V. MEDIAN ISLAND IMPROVEMENTS - ALL STREETS**

A.22	Median Curb	2,286	LF	\$16.00	\$36,576	2,286	LF	\$16.00	\$36,576
A.23	Median Concrete	2,259	SF	\$5.00	\$11,295	2,259	SF	\$5.00	\$11,295
A.24	12" A.C. Dike	780	LF	\$15.00	\$11,700	780	LF	\$15.00	\$11,700
E.5	Sharon Blvd. Median Landscaping/Irrigation	6,562	SF	\$5.00	\$32,810	6,562	SF	\$5	\$32,810
	Subtotal Direct Costs Median Islands				\$92,381				\$92,381
	<i>Subtotal Median Island - Soft and Indirect Costs [Note 3]</i>				\$31,545				\$31,554
	<b>Total Median Island Costs</b>				<b>\$123,926</b>				<b>\$123,935</b>

**VI. TRAFFIC SIGNALS**

E.2	Traffic Signal (Ave 17 & Driveway #1)	1	LS	\$300,000.00	\$300,000	1	LS	\$300,000	\$300,000
E.3	Traffic Signal (Ave 17 & Sharon Blvd.)	1	LS	\$300,000.00	\$300,000	1	LS	\$300,000	\$300,000
	Subtotal Direct Costs Traffic Signal Improvements				\$600,000				\$600,000
	<i>Subtotal Traffic Signal - Soft and Indirect Costs [Note 3]</i>				\$204,880				\$204,937
	<b>Total Traffic Signal Costs</b>				<b>\$804,880</b>				<b>\$804,937</b>

**VII. MISCELLANEOUS STREET IMPROVEMENTS (UTILITIES & MISC. CONSTRUCT.)**

E.6	Parkway Landscaping/Irrigation [P]1	14,065 SF	\$5.00	\$70,325	14,065 SF	\$5	\$70,325
E.7	Parkway Landscaping/Irrigation [AO]1	8,052 SF	\$5.00	\$40,260	- SF	\$5	\$0
E.8	Dry Utility Trenching, Conduits, Pull Boxes	3,600 LF	\$50.00	\$180,000	- LF	\$50	\$0
E.9	Street Lights (LED)	14 EA	\$4,500.00	\$63,000	- EA	\$4,500	\$0
E.10	Street Signage and Striping	1 LS	\$50,000.00	\$50,000	0.72 LS	\$50,000	\$36,042
Subtotal Direct Costs Miscellaneous Street Costs				\$403,585			\$106,367
Subtotal Miscellaneous Street and Utilities - Soft and Indirect Costs [Note 3]				\$137,811			\$36,331
<b>Total Miscellaneous Street and Utilities Costs</b>				<b>\$541,396</b>			<b>\$142,698</b>

**VIII. RAMP IMPROVEMENTS**

A.5	SR-99 N/B Ramp Import and Earthwork	12,000 CY	\$15.00	\$180,000	12,000 CY	\$15.00	\$180,000
A.8	N/B Off-ramp Pavement Removal	7,800 SF	\$2.00	\$15,600	7,800 SF	\$2.00	\$15,600
A.18	N/B Ramp Pavement (9.0" A.C. / 21.0" A.B.)2	20,000 SF	\$9.50	\$190,000	20,000 SF	\$9.50	\$190,000
A.20	Sawcut Pavement (SR-99 N/B Off Ramp)	1,000 LF	\$2.00	\$2,000	1,000 LF	\$2.00	\$2,000
E.11	SR-99 N/B Off-Ramp Signage and Striping	1 LS	\$25,000.00	\$25,000	1.00 LS	\$25,000	\$25,000
E.12	SR-99 N/B Off-Ramp Retaining Walls and other Misc.	1 LS	\$400,000.00	\$400,000	1.00 LS	\$400,000	\$400,000
Subtotal Direct Costs Ramp Improvements				\$812,600			\$812,600
Subtotal Ramp Improvements - Soft and Indirect Costs [Note 3]				\$277,476			\$277,554
<b>Total Ramp Improvements Costs</b>				<b>\$1,090,076</b>			<b>\$1,090,154</b>

**IX. SANITARY SEWER**

B.1	Connect to Existing Sewer	1 EA	\$2,200.00	\$2,200	1.00 EA	\$2,200	\$2,200
B.2	15" PVC - Non Parcel Frontage	2,324 LF	\$80.00	\$185,920	2,324 LF	\$80	\$185,920
B.3	15" PVC - Along Parcel Frontage	1,280 LF	\$80.00	\$102,400	1,280 LF	\$88	\$86,400
B.4	15" PVC (including trench repair)	1,006 LF	\$110.00	\$110,660	1,006 LF	\$110	\$110,660
B.5	24" PVC (including trench repair)	319 LF	\$235.00	\$74,965	319 LF	\$235	\$74,965
B.6	48" Diameter Sanitary Sewer Manhole	11 EA	\$4,700.00	\$51,700	11 EA	\$4,700	\$51,700
B.7	48" Diameter Sanitary Sewer Manhole (in existing pavement)	5 EA	\$8,000.00	\$40,000	5 EA	\$8,000	\$40,000
Subtotal Direct Costs Sanitary Sewer Improvements				\$567,845			\$551,845
Subtotal Sanitary Sewer - Soft and Indirect Costs [Note 3]				\$193,900			\$188,489
<b>Total Sanitary Sewer Costs</b>				<b>\$761,745</b>			<b>\$740,334</b>

**Exhibit D**

Page 4 of 5

<b>X. CITY STORM DRAINAGE FACILITY</b>									
C.1	30" CL III RCP	1,318 LF	\$120.00	\$158,160	1,318 LF	\$120	\$158,160		
C.2	18" CL III RCP	1,473 LF	\$58.00	\$85,434	1,473 LF	\$58	\$85,434		
C.3	12" CL III RCP	236 LF	\$55.00	\$12,980	236 LF	\$55	\$12,980		
C.4	12" CL III RCP (in existing pavement)	90 LF	\$95.00	\$8,550	90 LF	\$95	\$8,550		
C.5	Storm Drain Manhole	7 EA	\$6,000.00	\$42,000	7 EA	\$6,000	\$42,000		
C.6	Temporary Drain Inlet	3 EA	\$2,000.00	\$6,000	3 EA	\$2,000	\$6,000		
C.7	Curb Inlet	7 EA	\$5,200.00	\$36,400	7 EA	\$5,200	\$36,400		
	Subtotal Direct Costs City Storm Drain Improvements			\$349,524			\$349,524		
	Subtotal City Storm Drain - Soft and Indirect Costs [Note 3]			\$119,351			\$119,384		
	<b>Total City Storm Drainage Facility Costs</b>			<b>\$468,875</b>			<b>\$468,908</b>		

**XI. UN-USED IMPROVEMENT CATEGORY**

<b>XII. WATER SYSTEM IMPROVEMENTS</b>									
D.1	24" PVC Main, incl. gate valves - Non Parcel Frontage	2,278 LF	\$215.00	\$489,770	2,278 LF	\$215	\$489,770		
D.2	24" PVC Main, incl. gate valves - Along Parcel Frontage	2,500 LF	\$215.00	\$537,500	2,500 LF	\$203	\$506,250		
D.3	24" PVC Main (including trench repair)	44 LF	\$235.00	\$10,340	44 LF	\$235	\$10,340		
D.4	Fire Hydrant Assembly	4 EA	\$5,500.00	\$22,000	4 EA	\$0	\$0		
D.5	Connect to Existing Water	1 EA	\$5,700.00	\$5,700	1 EA	\$5,700	\$5,700		
	Subtotal Direct Costs Water System Improvements			\$1,065,310			\$1,012,060		
	Subtotal Water System - Soft and Indirect Costs [Note 3]			\$363,768			\$345,682		
	<b>Total Water System Costs</b>			<b>\$1,429,078</b>			<b>\$1,357,742</b>		

**XIII. OFF-SITE TRAFFIC MITIGATION FEES**

	Cumulative Year Traffic Mitigation Fees	1 LS	\$733,798	\$733,798	1.00 LS	\$733,798	\$733,798		
--	---	------	-----------	-----------	---------	-----------	-----------	--	--

TOTAL INFRASTRUCTURE IMPROVEMENT COSTS\*

\$8,124,831

TOTAL REIMBURSEMENT AMOUNT\*

\$6,866,004

\*A Municipal Water Well will be developed as part of the Infrastructure Improvements. The Costs of the Water Well are not included in this Schedule of Costs and Reimbursements, though 100% of Well Development Costs are eligible for Reimbursement.

NOTES:

- 1.) [R] = Project Frontage or Other Project Improvement  
[AO] = Additional "Oversized" Improvement Required by City
- 2.) Northbound Off-ramp pavement section is based on Caltrans Project Study Report (PSR).
- 3.) Soft and Indirect Costs include Contingencies (10%), Engineering (10%), Contractor Overhead (10%), Traffic Control, Construction Staking, Plan Check and Inspection

LANE ENGINEERS, INC.

CIVIL • STRUCTURAL • SURVEYING  
979 N. Blackstone Street  
Tulare, California 93274  
559.688.5263  
www.laneengineers.com

All reproduction & Intellectual property rights reserved © 2016  
Lane Project No. 14271

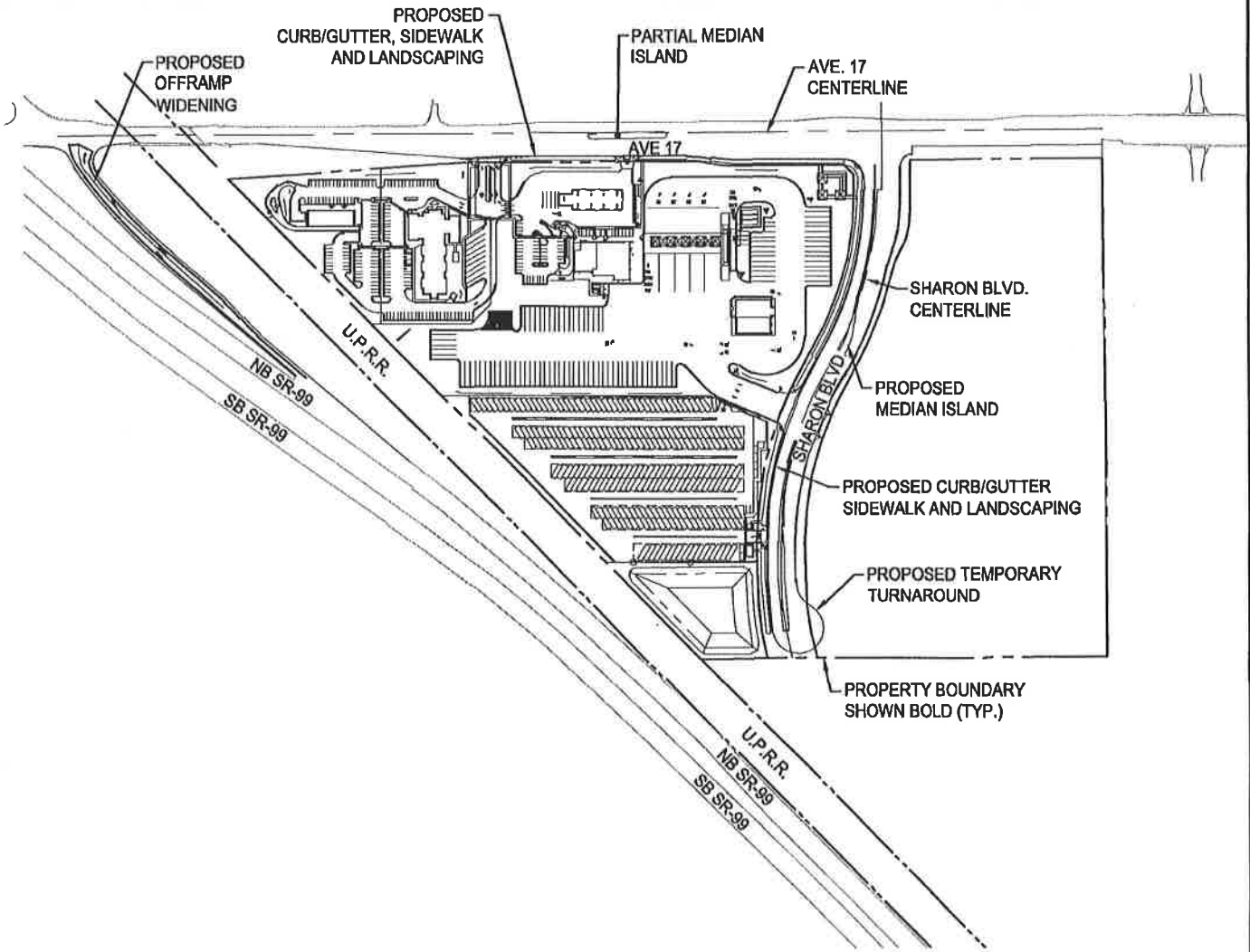
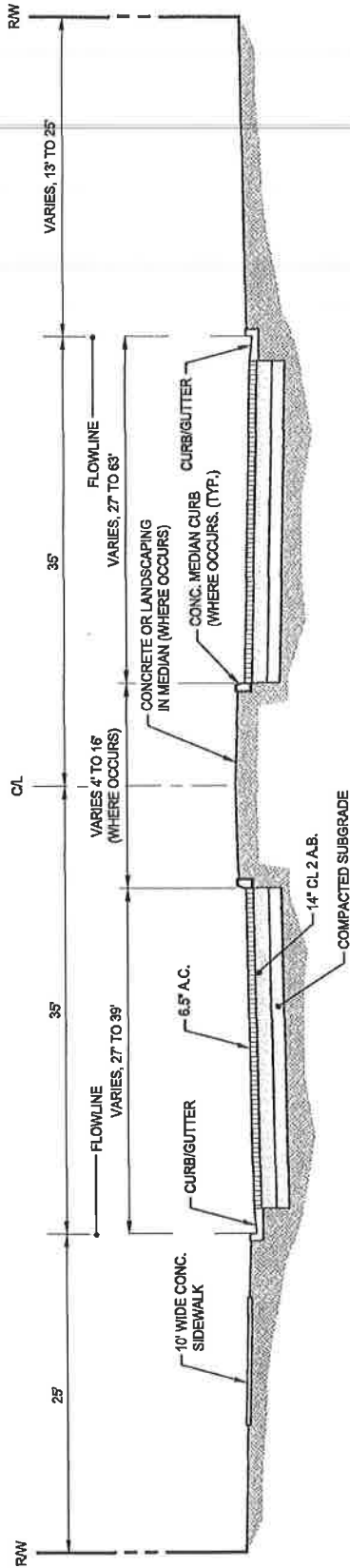
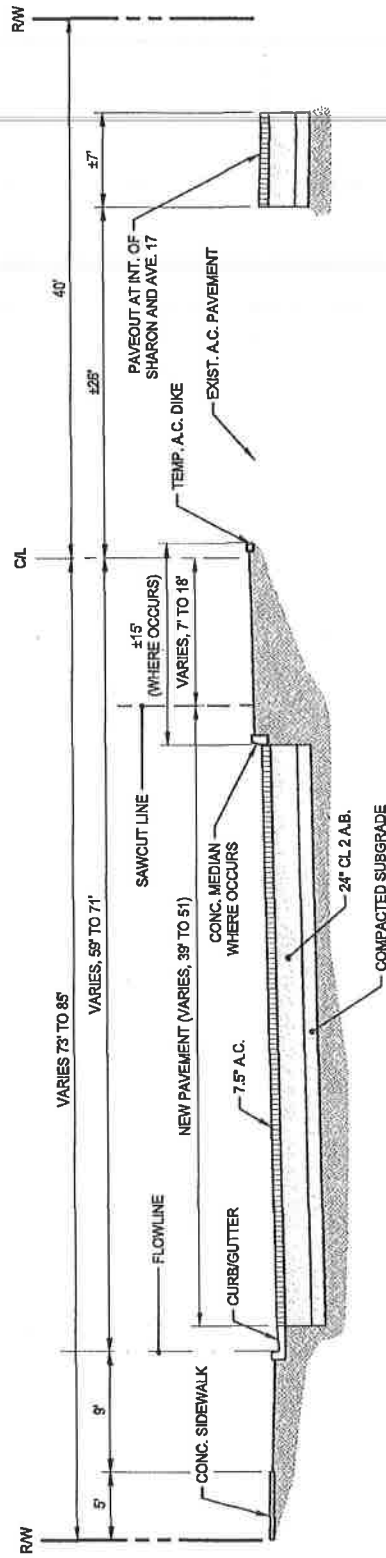


EXHIBIT 'E'  
ROADWAY IMPROVEMENTS



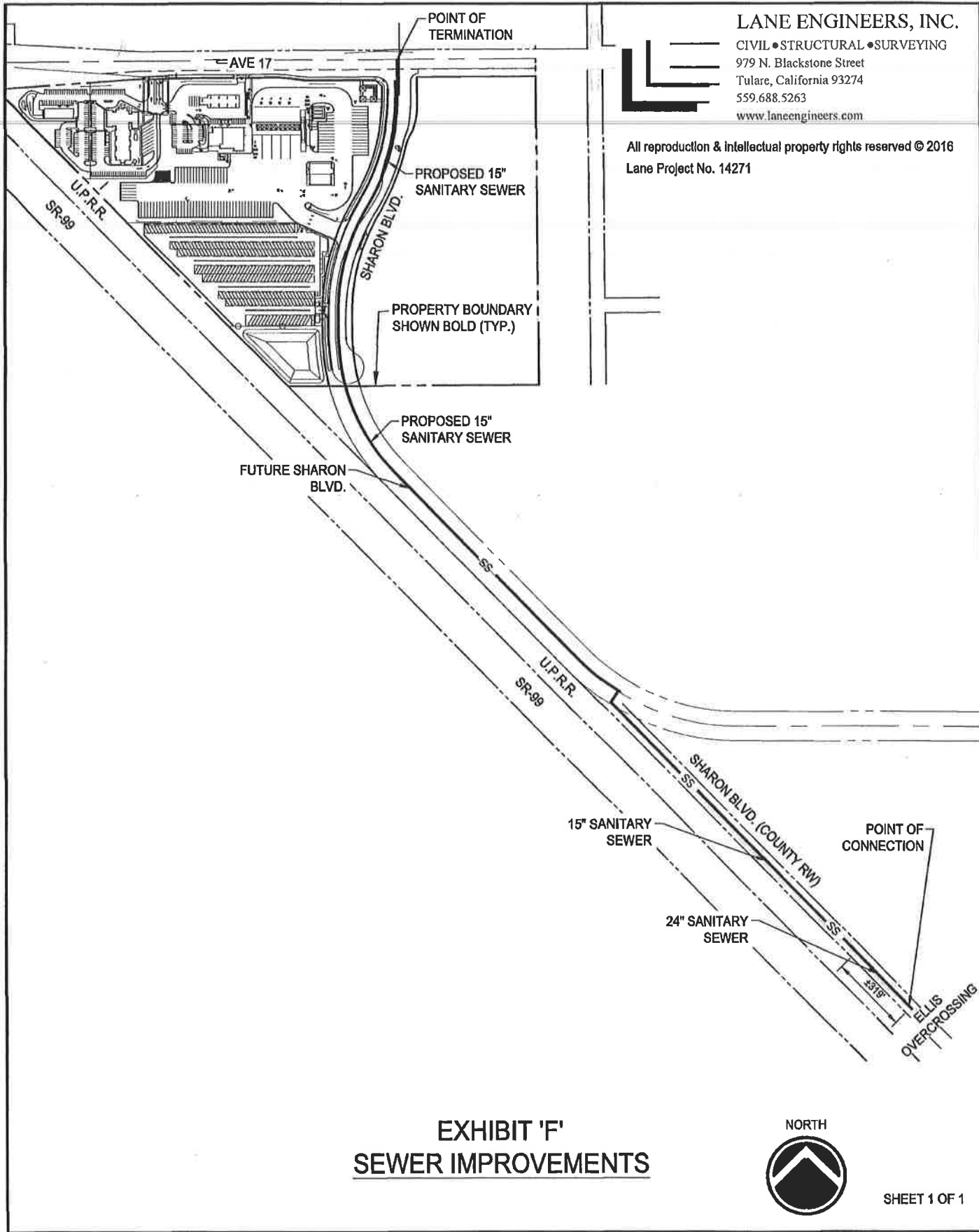


**SHARON BOULEVARD STREET SECTION (LOOKING NORTH)**



**AVENUE 17 STREET SECTION (LOOKING NORTH)**

**EXHIBIT 'E'  
 ROADWAY IMPROVEMENTS**



**LANE ENGINEERS, INC.**

CIVIL • STRUCTURAL • SURVEYING  
 979 N. Blackstone Street  
 Tulare, California 93274  
 559.688.5263  
 www.laneengineers.com

All reproduction & intellectual property rights reserved © 2016  
 Lane Project No. 14271

**EXHIBIT 'F'**  
**SEWER IMPROVEMENTS**

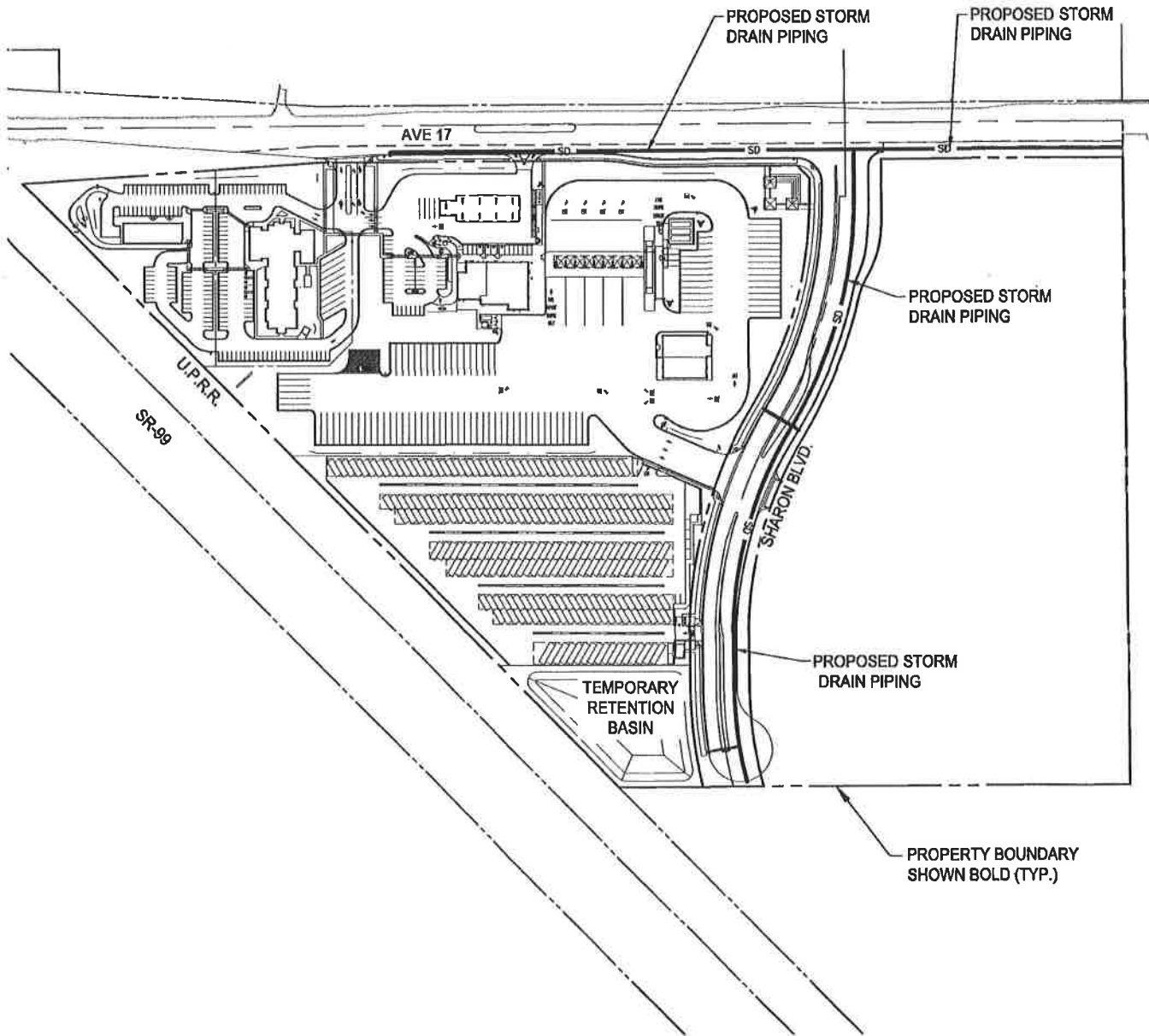






LANE ENGINEERS, INC.  
CIVIL • STRUCTURAL SURVEYING  
979 N. Blackstone Street  
Tulare, California 93274  
559.688.5263  
www.laneengineers.com

All reproduction & intellectual property rights reserved © 2016  
Lane Project No. 14271



**EXHIBIT 'G'**  
**STORM DRAIN IMPROVEMENTS**

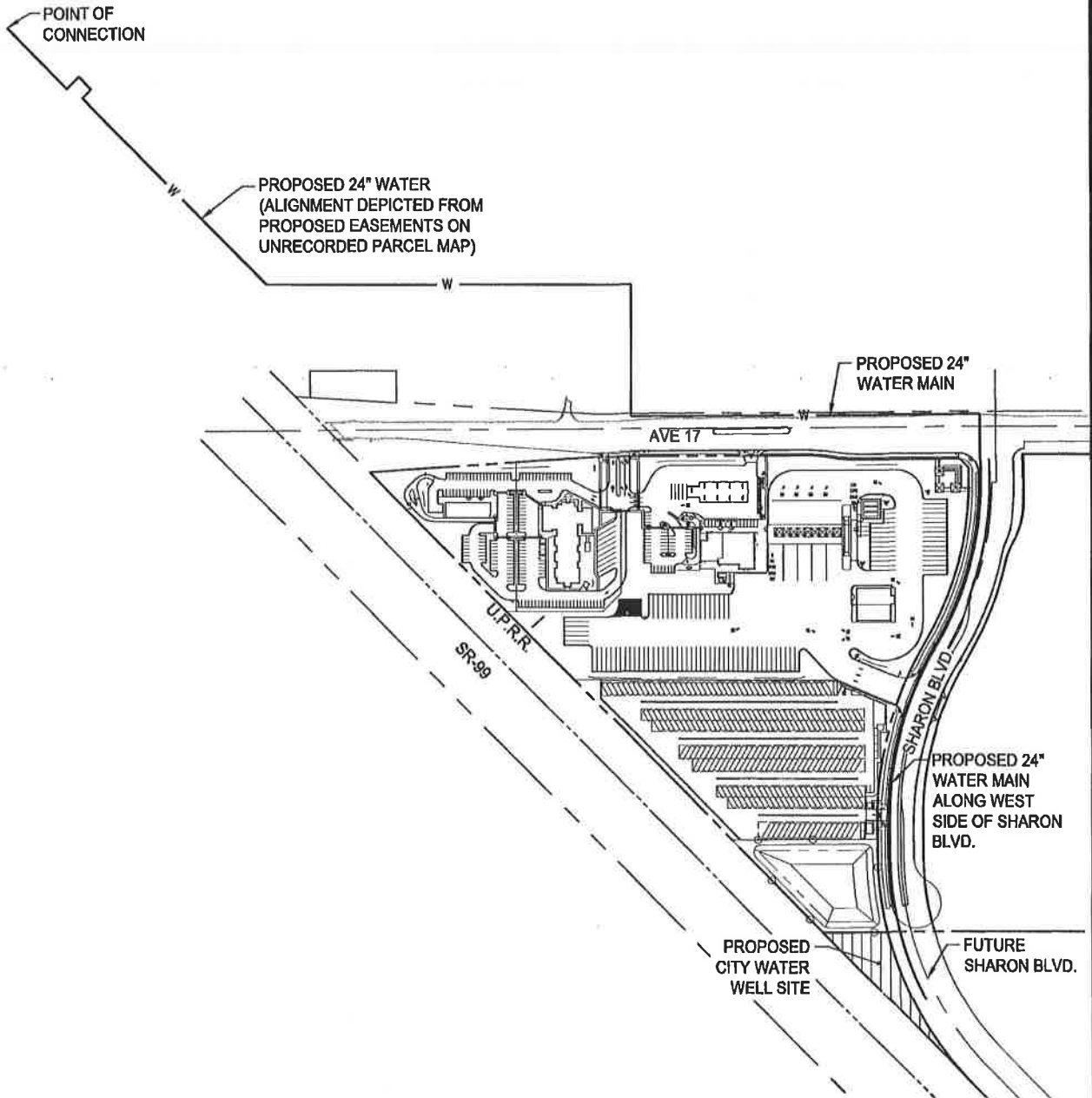




LANE ENGINEERS, INC.

CIVIL • STRUCTURAL SURVEYING  
979 N. Blackstone Street  
Tulare, California 93274  
559.688.5263  
www.lancengineers.com

All reproduction & intellectual property rights reserved © 2016  
Lane Project No. 14271



**EXHIBIT 'H'**  
**WATER IMPROVEMENTS**





LANE ENGINEERS, INC.  
CIVIL • STRUCTURAL SURVEYING  
979 N. Blackstone Street  
Tulare, California 93274  
559.688.5263  
www.laneengineers.com

All reproduction & intellectual property rights reserved © 2016  
Lane Project No. 14271

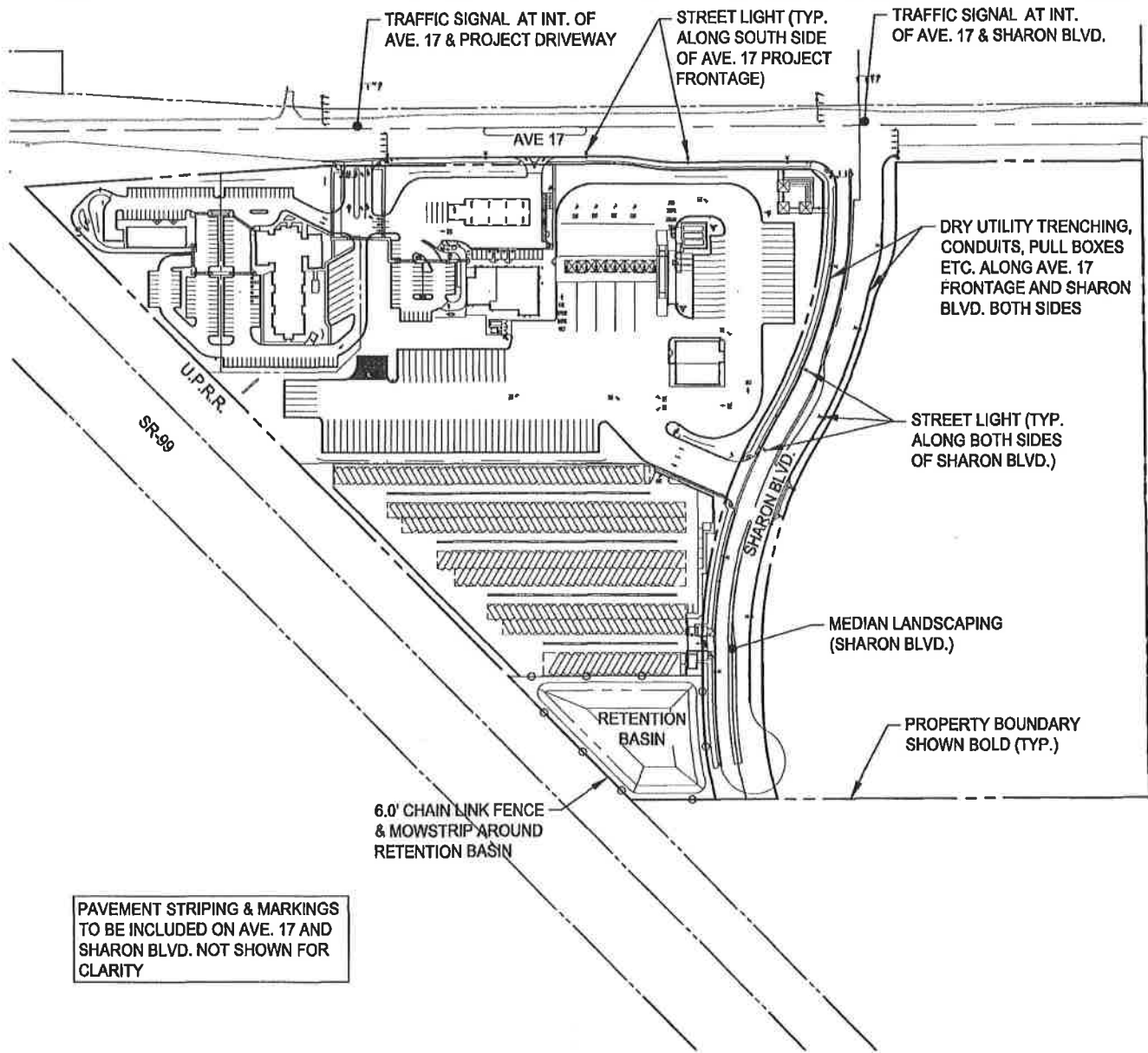


EXHIBIT 'I'  
DRY UTILITY AND MISC. IMPROVEMENTS



EXHIBIT J

Form of Assumption and Assignment Agreement

OFFICIAL BUSINESS

Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
City of Madera  
205 West Fourth Street  
Madera, CA 93637  
Attn: City Clerk

---

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made by and between Love's Country Stores of California, Inc., a California Corporation ("Love's"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

RECITALS

1. On \_\_\_\_\_, 2016, the City of Madera and Love's entered into that certain "Development Agreement" (the "Development Agreement"). Pursuant to the Development Agreement, Love's agreed to develop the Project Site (as that term is defined in the Development Agreement) as set forth in the Development Agreement. The Development Agreement was recorded against the Property in the Official Records of Madera County on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. 20\_\_\_\_ - \_\_\_\_\_.
2. Love's intends to convey the Project Site (or a portion thereof) to Assignee, as more particularly identified and described in Exhibit A attached hereto and incorporated herein by this reference (the "Assigned Parcel").
3. Love's desires to assign and Assignee desires to assume all of Love's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Love's and Assignee hereby agree as follows:

1. Love's hereby assigns, effective as of its conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Love's under the Development Agreement with respect to the Assigned Parcel. ~~Love's retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect the Project Site other than the Assigned Parcel, if any.~~

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Love's under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Love's under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Love's as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in the Development Agreement with respect to the Assigned Parcel shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. This Agreement may be signed in identical counterparts.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Love's Country Stores  
of California, Inc.

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

a \_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

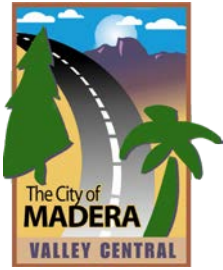
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



CITY OF MADERA  
PLANNING COMMISSION

205 W. Fourth Street  
Madera CA 93637  
(559) 661-5430

**Staff Report: Ordinance Text Amendment – OTA 2017-02  
Park Land Acquisition - Quimby Act Compliance  
Item #4 – February 13, 2018**

---

**PROPOSAL:** Consideration of adoption of a resolution recommending to the City Council adoption of an ordinance adding Sections 10-2.1300 et seq. to the Madera Municipal Code pertaining to acquisition of park lands.

---

<b>APPLICANT:</b>	City of Madera	<b>OWNER:</b>	N/A
<b>ADDRESS:</b>	N/A	<b>APN:</b>	N/A
<b>APPLICATIONS:</b>	OTA 2017-02	<b>CEQA:</b>	Not a project per Section 15378(b)(4) of CEQA

---

**LOCATION:** Citywide

**STREET ACCESS:** N/A

**PARCEL SIZE:** N/A

**GENERAL PLAN DESIGNATION:** N/A

**ZONING DISTRICT:** N/A

---

**SITE CHARACTERISTICS:** N/A

**ENVIRONMENTAL REVIEW:** The proposed ordinance is exempt under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), in that it involves the creation of a governmental funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

---

**SUMMARY:** The General Plan’s Parks and Recreation element includes Action Item PR-10.1, which directs staff to evaluate and implement a Parkland Dedication Ordinance consistent with the Quimby Act. If adopted, the City shall require new residential development projects, including mixed-use projects with residential components, to dedicate land and/or pay in-lieu fees to contribute to the acquisition of lands for parks and recreation facilities. The determination of which method (land dedication and/or payment of in-lieu fees) is appropriate shall be made at the City’s sole discretion.

## **APPLICABLE CODES AND PROCEDURES**

Government Code Section 66477  
Madera General Plan

## **PRIOR ACTION**

None.

## **BACKGROUND**

Government Code Section 66477, known commonly as the Quimby Act, was added to the state statutes in 1975.

## **ANALYSIS**

Since the passage of the Quimby Act in 1975, cities and counties have been authorized to pass ordinances requiring that developers set aside land or pay fees for park improvements. Revenues generated through the Quimby Act cannot be used for the operation and maintenance of park facilities. Instead, the act provides a consistent means of providing land acquisition for park development. The City though has never adopted a Quimby Act ordinance.

The Quimby Act recommends a ratio of three (3) acres of park space per each 1000 residents. Many municipalities require as much as five (5) acres of park space per each 1000 residents within their adopted ordinance. Per the General Plan's Parks and Recreation element Policy PR-1, the proposed ordinance has used the minimum ratio of three acres per thousand as a goal. Currently, the City provides approximately 2.2 acres of park space per each 1000 residents. Because of the shortfall of park lands, the General Plan acknowledges the need to "endeavor to acquire new parklands." Consistent with that directive, the General Plan's Parks and Recreation element includes Action Item PR-10.1, which directs staff to evaluate and implement a Parkland Dedication Ordinance consistent with the Quimby Act.

Specifically, the ordinance requires new residential development projects, including mixed-use projects with residential components, to dedicate land and/or pay in-lieu fees to contribute to the acquisition of lands for parks and recreation facilities. The determination of which method (land dedication and/or payment of in-lieu fees) is appropriate is made at the City's sole discretion. Formulas which determine the amount of land to be dedicated and/or the amount of in-lieu fee to be paid are included in the ordinance, as is a methodology to update those formulas periodically.

## **RECOMMENDATION**

Staff has evaluated the adoption of a Quimby Act ordinance as directed by the General Plan. Staff recommends approval of a resolution of the Planning Commission recommending approval of the ordinance to the City Council as the next step in the implementation of a Parkland Dedication Ordinance consistent with the Quimby Act and the General Plan.

## **PLANNING COMMISSION ACTION**

The Planning Commission will be acting on the ordinance amendment.

The Commission would be taking action regarding Ordinance Text Amendment 2017-02, determining to either:

- adopt a resolution recommending to the City Council adoption of the ordinance amendment,
- adopt a resolution recommending to the City Council adoption of the ordinance amendment subject to recommendations, or
- adopt a resolution recommending to the City Council denial of the ordinance amendment

Motion 1: Move to adopt a resolution recommending to the City Council of the City of Madera approval of Ordinance Text Amendment 2017-02, adding Section 1300 to Chapter 2 of Title X of the Madera Municipal Code in order to establish a method for coordinated acquisition and development of city park facilities, as proposed.

**(OR)**

Motion 2: Move to adopt a resolution recommending to the City Council of the City of Madera approval of Ordinance Text Amendment 2017-02, subject to the following recommendations:  
(Insert revised ordinance text)

**(OR)**

Motion 3: Move to adopt a resolution recommending to the City Council denial of Ordinance Text Amendment 2017-02.

## **ATTACHMENTS**

Planning Commission Resolution  
Draft Ordinance



**RESOLUTION NO. 1824**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF MADERA ADOPTION OF AN ORDINANCE ADDING CHAPTER 10-2.1300 TO THE MADERA MUNICIPAL CODE IN ORDER TO ESTABLISH A METHOD FOR COORDINATED ACQUISITION OF CITY PARK FACILITIES.

WHEREAS, the City of Madera has adopted the mandatory elements of the General Plan, as required by the State of California; and

WHEREAS, the City has adopted subdivision regulations to supplement and implement the Subdivision Map Act; and

WHEREAS, State law also provides for periodic review, updates, and amendments of the City's various Plans and Codes; and

WHEREAS, the General Plan states that the City shall endeavor to develop a system of public parks at a minimum of three acres of parks per one thousand residents; and

WHEREAS, the General Plan includes an Action Item directing the adoption of an ordinance consistent with Government Code section 66477 (the Quimby Act); and

WHEREAS, the City currently lacks ordinance which would implement the Quimby Act and provide for the coordinated acquisition of park lands; and

WHEREAS, the City currently provided only approximately 2.2 acres of parkland per 1000 residents, less than the recommended minimum of three acres per thousand residents; and

WHEREAS, the Planning Commission recommends to the City Council of the City of Madera adoption of an ordinance adding Chapter 10-2.1300 to the Madera Municipal Code in order to establish a method for the coordinated acquisition of City park facilities; and

WHEREAS, the Madera Municipal Code authorizes the Planning Commission to initiate Code Amendments through adoption of a Resolution; and

WHEREAS, the Planning Commission has completed its final review and evaluated information contained in the Staff Report.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MADERA AS FOLLOWS:

1. The above recitals are true and correct.
2. The proposed ordinance is not a project under Section 15378(b)(4) of the California Environmental Quality Act.
3. It is recommended that the City Council of the City of Madera adopt an ordinance adding Section 10-2.1300 to the Madera Municipal Code as set forth in the attached Exhibit 'A'.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

Passed and adopted by the Planning Commission of the City of Madera this 13<sup>th</sup> day of February, 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

---

Robert Gran Jr., Chairperson  
City Planning Commission

Attest:

---

Christopher Boyle  
Planning Manager

**PLANNING COMMISSION RESOLUTION NO. 1824**

**EXHIBIT 'A'**

**DRAFT ORDINANCE**

AN ORDINANCE ADDING SECTION 1300 TO CHAPTER 2 OF TITLE X OF THE MADERA MUNICIPAL CODE IN ORDER TO ESTABLISH A METHOD FOR COORDINATED ACQUISITION OF LAND FOR CITY PARK FACILITIES.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Madera and this Council have held public hearings and have determined that the proposed ordinance text amendment is consistent with the General Plan.

SECTION 2. The Planning Commission and this City Council have determined the ordinance text amendment to be consistent with the purpose and intent of Chapter 2 of Title X of the Madera Municipal Code.

SECTION 3. Section 1300 of Chapter 2 of Title X, Acquisition Of Land And/Or Payment Of Fees For City Park Facilities, is hereby added as follows:

***[ACQUISITION OF LAND AND/OR PAYMENT OF FEES FOR CITY PARK FACILITIES***

**§10-2.1300 PURPOSE.**

(A) The purpose of this chapter is to establish the procedures for requiring the dedication of land, the payment of fees in-lieu thereof (or a combination of both) to serve new subdivisions in accordance with the accordance with the requirements of the City's General Plan and in compliance with the requirements of California Government Code section 66477 (the "Quimby Act"). This chapter is enacted pursuant to the authority granted by the Quimby Act. The Quimby Act specifically authorizes the City to require dedication of parkland or the payment of fees in-lieu of such dedication in set amounts to meet the needs of the citizens of the community for parkland and to further the health, safety and general welfare of the community.

**§10-2.1301 DEFINITIONS.**

(A) Except where the context otherwise requires, the definitions given in this section govern the construction of this article. If any of the definitions in this section conflict with definitions in other chapters of the Municipal Code, these definitions shall prevail for the purpose of interpreting and enforcing this section. If a term is not defined in this section, or other sections of the Municipal Code, the most common dictionary definition is assumed to be correct.

(B) The following definitions are listed in alphabetical order.

***DEVELOPER.*** Every person, firm, or corporation constructing a new dwelling unit, directly or through the services of any employee, agent, independent contractor, or otherwise.

***LAND VALUE.*** The fair market value of a buildable acre of land, as determined by the City Council.

**NEW DWELLING UNIT.** Any structure of permanent character, placed in a permanent location, which is planned, designed or used for residential occupancy, including, but not limited to, one-family, two (2) family, and multifamily dwellings, apartment houses and complexes and mobile home spaces, but not including hotels, motels, and boarding houses for transient guests.

**SUBDIVISION.** Any type of construction, land division or improvement of land which provides for dwelling units identified under the provisions of Section 66424 of the California Government Code. "Subdivision" shall also include any increase in the number of mobile home spaces.

**§10-2.1302 APPLICABILITY.**

At the time of approval of the tentative map, parcel map, or final map, or upon issuance of a building permit, the Community Development Director, or his/her assignee, shall determine pursuant to Section 10-2.1304 hereof the land required for dedication and/or determine pursuant to Section 10-2.1306 the payment of a fee in lieu of dedication of land. As a condition of approval of a final subdivision map or parcel map, or upon issuance of a building permit, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the City, for neighborhood and community park or recreational purposes at the time and according to the standards and formula contained in this chapter.

**§10-2.1303 PARK ACREAGE STANDARD.**

It is hereby found and determined that the public interest, convenience, health, welfare, and safety require that a minimum of three (3) acres of property for each one thousand (1,000) persons residing within this City be devoted to local parks and recreational purposes. Said three (3) acres are justified by the existing ratio of 2.202\* acres of parks per one thousand (1,000) residents in the City, and the current maximum utilization of said acreage by the residents of Madera.

\* 66,082 residents / 145.52 acres of parks = 454.109 residents per acre.  
 1000 residents / 454.109 residents per acre = 2.202 acres per thousand residents.

**§10-2.1304 FORMULA FOR THE DEDICATION OF LAND.**

(A) The formula for determining the minimum acreage to be dedicated is based on a standard of three acres of park area per one thousand members of the population, and shall be as follows:

Average number of persons per unit / 1000 population X 3 acres of parkland X number of units in subdivision/development = land to be dedicated per unit.

Development Type	Population Per Dwelling Unit
Residential – Single Family	3.85
Residential – Multi-family	3.50
Residential – Mobile Home	1.70

Example: for a subdivision of 120 units: 3.85 / 1000 X 3 = 0.01155 X 120 = 1.386 acres to be dedicated (at a minimum).

(B) For the purpose of this section, the number of new dwelling units shall be based upon the number of parcels indicated on the tentative or parcel map when in an area zoned for one dwelling unit per parcel. When all or part of the subdivision is located in an area zoned for more than one dwelling unit per parcel, the number of proposed dwelling units in the area so zoned shall equal the maximum allowed under that zone, including any applicable density increases. In the case of a condominium project, the

number of dwelling units shall be the number of condominium units. The term “new dwelling unit” does not include dwelling units lawfully in place prior to the date on which the parcel or final map is filed.

(C) Nothing in this section shall prohibit the dedication and acceptance of land for park and recreation purposes where the developer proposes such dedication voluntarily and the land is approved by the Community Development Director.

(D) Dedication of the land shall be made in accordance with the procedures contained in Section 10-2.1311 hereof.

**§10-2.1305 STANDARDS FOR THE DEDICATION OF LAND.**

(A) The developer shall, without credit:

- (1) Provide full street improvements and utility connections including, but not limited to, curbs, gutter, street paving, traffic control devices, street trees, and sidewalks to land which is dedicated pursuant to this section;
- (2) Provide for fencing along the property line of that portion of the subdivision contiguous to the dedicated land;
- (3) Provide improved drainage through the site; and
- (4) Provide other minimal improvements which the City determines to be essential to the acceptance of the land for recreational purposes.

(B) The land to be dedicated and the improvements to be made pursuant to this section shall be reviewed at the tentative map stage in accordance with the criteria set forth in Section 10-2.1309 and approved by the Community Development Director.

(C) Use of money. The money collected hereunder shall be used only for the purpose of acquiring necessary land and developing new or rehabilitating existing park or recreational facilities reasonably related to serving the subdivision.

**§10-2.1306 AMOUNT OF FEES IN LIEU OF LAND DEDICATION.**

(A) When a fee is to be paid in lieu of land dedication, the amount of such fee shall be based upon the fair market value determined by the City Council per Section 10-2.1307. The fee shall be determined by the following formula where:

- DUs = number of new dwelling units as defined in Section 10-2.1304
- $\frac{\text{Pop}}{\text{DU}}$  = population per dwelling unit as defined in Section 10-2.1304
- FMV = fair market value determined by Section 10-2.1307
- Buildable acre = a typical acre of the subdivision, with a slope less than ten (10%) percent, and located in other than an area on which building is excluded because of flooding, easements, or other restrictions

$$\text{DUs} \times \text{Pop DU} \times \frac{3 \text{ acres}}{1,000 \text{ people}} \times \frac{\text{FMV}}{\text{buildable acre}} = \text{in-lieu fee}$$

Example: 1 DU x 3.85 Pop per DU x 3 acres / 1000 = 0.01155 X \$50,000 FMV per acre = \$577.50 in-lieu fee. The \$50,000 fair market value is used for example purposes only. The actual fair market value shall be determined by the City Council, consistent with Section 10-2.1307.

(B) Fees to be collected pursuant to this section shall be reviewed by the Community Development Director to ascertain if they comply with the formula set forth above. If compliance is found, then the fees shall be approved by the Community Development Director.

#### **§10-2.1307 DETERMINATIONS OF FAIR MARKET VALUE.**

(A) The fair market value per buildable acre shall be determined by resolution adopted by the City Council.

(B) The fair market value per buildable acre shall be updated from time to time as directed by the City Council.

#### **§10-2.1308 PARK DEVELOPMENT IMPACT FEES.**

(A) A fee shall be paid for park development by the developer of each new dwelling unit irrespective of whether the developer is required to dedicate land as set forth in Section 10-2.1304 or pay fees in lieu of land dedication as set forth in Section 10-2.1306.

(B) The park development impact fee shall be established at the rate set forth by a resolution of the City Council.

#### **§10-2.1309 DETERMINATIONS OF LAND OR FEES.**

(A) Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Section 1351 of the Civil Code, exceeds fifty (50) dwelling units, dedication of land may be required, notwithstanding that the number of parcels may be less than fifty (50).

(B) Whether the City accepts land dedication or elects to require payment of a fee in lieu thereof, or a combination of both, shall be determined by consideration of the following:

- (1) The General Plan and Parks Master Plan of the City of Madera.
- (2) The natural features, access, and location of land in the subdivision available for dedication;
- (2) The size and shape of the subdivision and land available for dedication;
- (3) The feasibility of dedication;
- (4) The compatibility of dedication with the Parks and Recreation Element of the General Plan; and,
- (5) The location of existing and proposed park sites and trailways.

#### **§10-2.1310 CREDIT FOR PRIVATE OPEN SPACE.**

(A) No credit shall be given for private open space in the subdivision except as hereinafter provided. Where private open space usable for active recreational purposes is provided in a proposed planned development or real estate development as defined in Section 4175 or 6562 of the Civil Code, partial credit, not to exceed forty-five (45%) percent, shall be given against the requirement of and dedication or payment of fees in lieu thereof if the City finds that it is in the public interest to do so and that all the following standards are met:

- (1) Yards, court areas, setbacks, and other open areas required by the zoning and building ordinances and regulations shall not be included in the computation of such private open space; and
- (2) Private park and recreational facilities shall be owned by an owners' association composed of all property owners in the subdivision and being an incorporated nonprofit organization capable of dissolution only by a one hundred (100%) percent affirmative vote of the membership and approved by the City, operated under recorded land agreements through which each lot owner in the neighborhood is automatically a member, and each lot is subject to a charge for a proportionate share of expenses for maintaining the facilities; and
- (3) Use of the private open space is restricted for park and recreation purposes by recorded covenant which runs with the land in favor of the future owners of the property and which cannot be defeated or eliminated without the consent of the City or its successor; and
- (4) The proposed private open space is reasonably adaptable for use for park and recreation purposes, taking into consideration such factors as size, shape, topography, geology, access, and location; and
- (5) The open space for which credit is given is a minimum of three (3) acres and provides a minimum of five (5) of the local park basic elements listed as follows, or a combination of such, and other recreation improvements that will meet the specific recreation needs of future residents of the area:

<b>Elements</b>	<b>Acres</b>
1. Children's play apparatus area	.50 to .75
2. Landscape park-like with quiet areas	.50 to 1.00
3. Family picnic area	.25 to .75
4. Game court area	.25 to .50
5. Turf playfield	1.00 to 3.00
6. Swimming pool (forty-two (42') feet by seventy-five (75') feet with adjacent deck and lawn areas)	.25 to .50
7. Recreation center building	.15 to .25

(B) Before credit is given, the Community Development Director shall make written findings that the above standards are met.

**§10-2.1311 PROCEDURE.**

(A) At the time of approval of the tentative map or parcel map, rezoning, or any other discretionary approval of development, the Community Development Director shall determine, pursuant to Section 10-2.1304 hereof, the land required for dedication. If the Community Development Director requires in-lieu fee payment by the developer, the Community Development Director shall set the amount of land upon which the in-lieu fee will be based at the time of final map approval. At the time of filing of final map, the subdivider shall dedicate the land. In-lieu fees and park development fees shall be paid at the time of building permit. In-lieu fees shall be established using current land values at the time of payment with the formula set forth in Section 10-2.1306. Park development fees shall be established using current park improvement costs at the time of payment with the formula set forth in Section 10-2.1308.

(B) Open space covenants for private park or recreation facilities shall be submitted to the City prior to approval of the final subdivision map or parcel map and shall be recorded contemporaneously with the final subdivision map.

(C) The land to be dedicated and/or in-lieu and park development fees to be paid, shall be subject to the latest adopted ordinances, resolutions, policies, and fees adopted by the City Council and in effect at the time of the final map review and approval.

#### **§10-2.1312 DISPOSITION OF FEES.**

(A) Fees determined pursuant to Sections 10-2.1306 and 10-2.1308 shall be paid to the City Finance Director and shall be deposited into the subdivision park trust fund, or its successor. Money in said fund, including accrued interest, shall be expended solely for acquisition, development, or rehabilitation of park land or improvements related thereto.

(B) Collected fees shall be appropriated by the local agency to which the land or fees are conveyed or paid for a specific project to serve residents of the subdivision in a budgetary year within five (5) years upon receipt of payments or within five (5) years after the issuance of building permits on one-half (1/2) of the lots created by the subdivision, whichever occurs later.

(C) If such fees are not so committed, these fees shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots in the subdivision.

(D) The City Finance Director shall report to the City at least annually on income, expenditures, and status of the subdivision park trust fund.

#### **§10-2.1613 EXEMPTIONS.**

(A) Subdivisions containing less than five (5) parcels and not used for residential purposes shall be exempted from the requirements of this article; provided, however, that a condition shall be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels, the fee may be required to be paid by the owner of each such parcel as condition to the issuance of such permit.

(B) The provisions of this article do not apply to commercial or industrial subdivisions; nor do they apply to condominium projects or stock cooperatives which consist of the subdivision of air space in an existing apartment building which is more than five (5) years old when no new dwelling units are added.

#### **§10-2.1314 DEVELOPER-PROVIDED PARK AND RECREATION IMPROVEMENTS.**

After the Planning Commission or Community Development Director determines that land is required for dedication and/or in-lieu fee payment by the developers, the developer may apply to the Engineering Department for permission to construct specified park and recreation improvements on the land of said developer required for dedication or on other land within the same service area to be developed as a park. If the Engineering Department grants the developer permission for construction of specified parks and recreation improvements on said land, said Department shall fix the dollar value of the parks and recreation improvements prior to construction. The agreed dollar value of park and recreation improvements provided by the developer may be credited against the fees, if any, required by this article, provided the improvements are constructed per the approved plans by the Engineering Department.



**§10-2.1315 SCHEDULE FOR THE USE OF LAND OR FEES.**

The Parks and Community Services Department shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve residents of the subdivision.

**§10-2.1316 ACCESS.**

All land offered for dedication for local park or recreational purposes shall have access to at least one existing or proposed public street. This requirement may be waived by the City if the City determines that public street access is unnecessary for maintenance of the park area or use thereof by residents.

**§10-2.1317 SALE OF DEDICATED LAND.**

If during the ensuing time between dedication of land for park purposes and commencements of first-stage development, circumstances arise which indicate that another site would be more suitable for local park or recreational purposes serving the subdivision and the neighborhood (such as receipt of a gift of additional park land or a change in school location), the land may be sold upon the approval of the City with the resultant funds being used for the purchase of a more suitable site.]

SECTION 4. This Ordinance shall be effective and of full force and effect at 12:01 am on the thirty-first day after its passage.

\* \* \* \* \*