

**CITY COUNCIL AGENDA  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
DECEMBER 2, 2014, 5:30 P.M.**

Call to Order  
Roll Call

**CITY COUNCIL CLOSED SESSION:**

- A. Closed Session Pursuant to:
- 1-** Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: 2701 W. Scranton Avenue, Porterville, CA. Agency Negotiator: John Lollis and Donnie Moore. Negotiating Parties: City of Porterville and Myron Short. Under Negotiation: Terms and Price.
  - 2-** Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: 42 South Plano Street, Porterville, CA. Agency Negotiator: John Lollis and Donnie Moore. Negotiating Parties: City of Porterville and Barn Theatre. Under Negotiation: Terms and Price.
  - 3-** Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN 261-020-010. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and Linda Mouton. Under Negotiation: Terms and Price.
  - 4 -** Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis, Steve Kabot, and Patrice Hildreth. Employee Organizations: Management and Confidential Series; Porterville Police Officers Association; Fire Officer Series; Porterville City Firefighters Association; Public Safety Support Unit; and all Unrepresented Management Employees.
  - 5-** Government Code Section 54956.9(d) (3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: One Case in which facts are not yet known to potential plaintiff.
  - 6-** Government Code Section 54956.9(d) (4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: One Case.
  - 7-** Government Code Section 54957 – Public Employee Performance Evaluation - Title: City Manager.
  - 8-** Government Code Section 54957 - Public Employee Performance Evaluation - Title: City Attorney.

**6:30 P.M. RECONVENE OPEN SESSION AND  
REPORT ON REPORTABLE ACTION TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led by Vice Mayor Hamilton  
Invocation

**AB 1234 REPORTS**

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Council of Cities – November 19, 2014

**REPORTS**

This is the time for all committee/commission/board reports; subcommittee reports; and staff informational items.

- I. City Commission and Committee Meetings:
  1. Parks & Leisure Services Commission
  2. Library & Literacy Commission
  3. Arts Commission
  4. Animal Control Commission – December 1, 2014
  5. Youth Commission
  6. Transactions and Use Tax Oversight Committee (TUTOC)

### **ORAL COMMUNICATIONS**

This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

### **CONSENT CALENDAR**

All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar. All items removed from the Consent Calendar for further discussion will be heard at the end of Scheduled Matters.

1. **City Council Minutes of November 18, 2014**
2. **This Item Has Been Moved to Scheduled Matters.**
3. **Authorization to “Piggy-back” on Existing Contract**  
Re: Considering authorization to “piggy-back” on the City of Visalia’s contract with Safety Striping Services, at an agreed upon amount not to exceed \$70,000, for the maintenance of traffic striping throughout the city and those under City control via mutual maintenance agreements.
4. **Authorization to Award Consultant Agreement – Analysis of Edison Street Light Purchase Program**  
Re: Considering awarding a Consultant Service Agreement to Utilities Cost Management in an amount not to exceed \$8,500 for the performance of an analysis regarding the purchase of Edison street lights.
5. **Program Supplement to the Local Agency-State Master Agreement – Newcomb Shoulder Stabilization Project**  
Re: Considering approval of a resolution approving Program Supplement Agreement No. N052 for the Newcomb Street (Roby Avenue to Olive Avenue) Shoulder Stabilization Project.
6. **Cooperative Work Agreement Extension – Jaye Street Bridge Rehabilitation**  
Re: Considering approval of a resolution approving a cooperative work agreement extension for the Jaye Street Bridge Rehabilitation Project.
7. **Reimbursement for the Construction of Master Plan Improvements – Riverview Estates No. 5 Subdivision (Gary Smee)**  
Re: Considering acceptance of the Master Plan public improvements from Smee Builders, Inc. for Riverview Estates No. 5 subdivision, generally located south of Orange Avenue and east of Matthew Street.

8. **Intent to Set Public Hearing for Concrete Improvements Construction by the City – W. North Grand Reconstruction Project (Prospect Street to Newcomb Street)**  
Re: Considering approval to schedule a Public Hearing for December 16, 2014, for consideration of the proposed construction of concrete improvements, and authorizing notification of all affected property owners.
9. **Representation by Elected Official for Providers of Public Transit**  
Re: Considering approval of Amendment 3 to the Tulare County Association of Governments Joint Powers Agreement to include language supporting the position of a Public Transit Representative in accordance with “Moving Ahead for Progress in the 21<sup>st</sup> Century.”
10. **Consideration of a Request for an Extension to CUP 2012-010; Walgreens; APNs 246-111-007 and 246-111-035**  
Re: Considering approval of a resolution approving an extension to the approval of CUP 2012-010 for a Type 20 license through December 4, 2015.
11. **Amendment to Employee Pay and Benefit Plan – Public Safety Support Unit**  
Re: Considering approval of a resolution amending the Employee Pay and Benefit Plan for Public Safety Support Unit employees.
12. **Amendment to Employee Pay & Benefit Plan – Management Confidential Series**  
Re: Considering approval of a resolution amending the Employee Pay and Benefit Plan for Management Confidential Series employees.
13. **Scheduling of Adjourned City Council Meeting for Goal Setting and to Establish 2015-16 Priorities**  
Re: Considering approval to schedule an adjourned meeting for goal setting to establish priorities on Tuesday, January 27, 2015, at 5:30 p.m.

*A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible*

#### **PUBLIC HEARINGS**

14. **Modification to Conditional Use Permit 2014-011-C**  
Re: Considering a request for modification to CUP 2014-011 and alcohol related standard conditions of approval.
15. **Request for a Conditional Use Permit (PRC 2014-019-C) to Allow for the Sale of Alcohol Under a Type 47 On-Sale General for Bona Fide Public Eating Place for Applebee’s Located at 892 W. Henderson Avenue**  
Re: Considering approval of a resolution to allow for the sale of alcohol under a Type 47 license in conjunction with a restaurant for Applebee’s located at 892 W. Henderson Avenue, within the former Blockbuster Video tenant space.
16. **General Plan Amendment & Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Center)**  
Re: Considering the adoption of resolutions and an ordinance approving a General Plan Amendment and Zone Change for the project located at the southwest corner of Henderson Avenue and Newcomb Street on four parcels totaling approximately 1.3 acres.

**17. Modifications to the Municipal Code Related to Mobile Businesses, Farmer's Markets and Yard Sales**

Re: Considering adoption of an ordinance modifying the City's Code as it pertains to mobile businesses, farmer's markets and yard sales.

**SCHEDULED MATTERS**

**18. Consideration of Modification to Loan Agreement and Amendment to License and Development Agreement with the Tulare County Junior Livestock Show and Community Fair**

Re: Consideration of modifications to the Construction Loan Agreement and License and Development Agreement between the City and the Fair.

**19. Award of Contract – Oak Avenue Transportation Enhancement (TE) Project**

Re: Considering awarding contract in the amount of \$397,809 to Hobbs Construction for the project consisting of enhancing sidewalk along the south side of Oak Avenue between Main Street and the Rails to Trails Parkway east of Fourth Street.

**ORAL COMMUNICATIONS**

**OTHER MATTERS**

**CLOSED SESSION**

Any Closed Session Items not completed prior to 6:30 p.m. will be considered at this time.

**ADJOURNMENT** - to the meeting of December 16, 2014.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the City Council after distribution of the Agenda packet are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at [www.ci.porterville.ca.us](http://www.ci.porterville.ca.us).



**CITY COUNCIL MINUTES  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
NOVEMBER 18, 2014, 5:30 P.M.**

Call to Order at 5:32 p.m.

Roll Call: Council Member Reyes, Council Member Ward, Council Member Gurrola, Vice Mayor Hamilton, Mayor Stowe

**ORAL COMMUNICATIONS**

None

**CITY COUNCIL CLOSED SESSION:**

A. Closed Session Pursuant to:

1- Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN 261-020-010. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and Linda Mourton. Under Negotiation: Terms and Price.

2 - Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis, Steve Kabot, and Patrice Hildreth. Employee Organizations: Porterville City Employees Association; Management and Confidential Series; Porterville Police Officers Association; Fire Officer Series; Porterville City Firefighters Association; Public Safety Support Unit; and all Unrepresented Management Employees.

3- Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: City of Porterville v. Corridor Group LLC, Tulare Superior Court No. PCU255344

4- Government Code Section 54956.9(d)(3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: One case in which facts are not known to potential plaintiff.

5- Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: Two Cases.

**6:30 P.M. RECONVENE OPEN SESSION AND  
REPORT ON REPORABLE ACTION TAKEN IN CLOSED SESSION**

City Attorney Julia Lew reported that no reportable action took place.

Pledge of Allegiance Led by Mayor Stowe

Invocation – a moment of silence was observed.

**PRESENTATIONS**

Outstanding Business – Golden Touch Limousine

Employee Service Awards – Ryan Smalley, Dominic Barteau, and Sarah Weaver

Rocky Hill Speedway Local Dignitary Race

**AB 1234 REPORTS**

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Tulare County Association of Governments (TCAG) – November 17, 2014

Council Member Gurrola indicated that the meeting was very short and that there was nothing to report.

2. Local Agency Formation Committee (LAFCO) – November 5, 2014  
Vice Mayor Hamilton reported on action pertaining to an annexation.

## **REPORTS**

This is the time for all committee/commission/board reports; subcommittee reports; and staff informational items.

### **I. City Commission and Committee Meetings:**

1. Parks & Leisure Services Commission – November 6, 2014  
Commissioner Moore presented the Commission's Monthly Report which consisted of park and Sports Complex improvements, the grand opening of Fallen Heroes Park, and Veterans Day Run. He also spoke of the upcoming Tree Lighting Ceremony and a request received from Porterville Little League regarding a larger field.
2. Library & Literacy Commission – November 13, 2014  
Commissioner LaVonne indicated that the Council would soon be receiving correspondence from the Commission; reported on patron statistics; expressed support for the appointment of an individual to the Commission's vacancy; and announced Santa photo opportunities at the library.
3. Arts Commission – no meeting; and no report.
4. Youth Commission – November 10, 2014  
Commissioners Stephanie Perez and Katie Murrillo from Granite Hills reported on the StepUp Banner Contest winner, and plans for a dodgeball tournament between the high schools.
5. Transactions and Use Tax Oversight Committee (TUTOC) – November 12, 2014  
Committee Chair Fletcher stated that he would be providing a report of the meeting upon completion of the minutes.
6. Animal Control Commission – November 17, 2014 – reported on the Commission's review of the draft Animal Control Ordinance.

### **II. Staff Informational Reports**

1. Water Conservation Phase II, Water System Status – no verbal report.
2. Groundwater Management Legislative Summary – no verbal report.

## **ORAL COMMUNICATIONS**

- Richard Hatfield, Porterville, requested that the City look into connecting the residences along E. Worth to City water.
- Brock Neeley, Porterville, expressed issue with sponsorship requirement as it pertained to proclamations and the status of pending appendices within the Council Handbook.
- Austin Slater, from Porterville College Young Democrats Club, spoke of the club's intent to have a presence at City Council meetings in the future.
- Patience Christenson, introduced herself and expressed her interest in serving on the Library and Literacy Commission.
- Barry Caplan, spoke of circumstances leading up to a change in the proclamation process and the implementation of said process; and suggested that the current system was

discriminatory against the LGBT community.

- Monty Schaffer, expressed an interest in wanting to open a business.
- Mike Boudreaux, Tulare County Sheriff, expressed contentment with the collaborative relationship between the Porterville Police Department and Tulare County Sheriff's Office.

## **CONSENT CALENDAR**

**COUNCIL ACTION:**      MOVED by Council Member Gurrola, SECONDED by Council Member Ward that the City Council approve Item Nos. 1 through 9. The motion carried unanimously.

### 1.      CITY COUNCIL MINUTES OF NOVEMBER 4, 2014

Recommendation:      That the City Council approve the Minutes of November 4, 2014.

Documentation:      M.O. 01-111814

Disposition:      Approved.

### 2.      AUTHORIZATION TO ADVERTISE FOR BIDS – TOMAH STORM DRAIN PROJECT

Recommendation:      That City Council:

1. Approve staff's recommended plans and project manual;
2. Authorize staff to advertise for bids on the project; and
3. Authorize the Finance Director to appropriate Developer Impact Fee Funds in the amount of \$30,000.

Documentation:      M.O. 02-111814

Disposition:      Approved.

### 3.      ACCEPTANCE OF PROJECT – TRANSIT FIBER OPTIC CONDUIT INSTALLATION PROJECT

Recommendation:      That City Council:

1. Accept the project as complete;
2. Authorize the filing of the Notice of Completion; and
3. Authorize the release of the 5% retention thirty-five (35) days after recordation, provided no stop notices have been filed.

Documentation:      M.O. 03-111814

Disposition:      Approved.

### 4.      AMENDMENT OF DEE JASPAR AND ASSOCIATES WATER WELL DESIGN AND INSPECTION SERVICE AGREEMENT – WATER SYSTEM MODELING

Recommendation: That City Council:

1. Authorize the Mayor to execute Addendum No. 3 to Dee Jaspar & Associates Service Agreement at an agreed upon fee of \$11,110 for the services described herein; and
2. Authorize progress payments up to 100% of the fee amount and authorize a 10% contingency to cover unforeseen costs.

Documentation: M.O. 04-111814

Disposition: Approved.

5. FEDERALLY DESIGNATED PROMISE ZONE FOR TULARE COUNTY

Recommendation: That the City Council authorize the Mayor to sign the letter of commitment to participate in the Promise Zone.

Documentation: M.O. 05-111814

Disposition: Approved.

6. REQUEST TO RESCHEDULE A PUBLIC HEARING FOR THE CONSIDERATION OF A CONDITIONAL USE PERMIT (PRC 2014-011-C) TO ALLOW THE UPGRADE TO A TYPE 21 GENERAL OFF-SALE LICENSE FOR ALCOHOL SALES LOCATED AT 1187 WEST HENDERSON AVENUE

Recommendation: Direct staff to publish a public notice scheduling the Conditional Use Permit (Resolution 73-2014) for reconsideration at the meeting of December 2, 2014.

Documentation: M.O. 06-111814

Disposition: Approved.

7. REQUEST FOR STREET CLOSURE – MYERS’ TWENTIETH ANNUAL CHRISTMAS TREE MEMORIAL SERVICE

Recommendation: That the City Council approve the closure of “E” Street, between Putnam and Cleveland, on December 9, 2014, from 5:00 p.m. to 9:00 p.m. subject to the conditions specified.

Documentation: M.O. 07-111814

Disposition: Approved.

8. APPROVAL FOR COMMUNITY CIVIC EVENT – PORTERVILLE CHAMBER OF COMMERCE AND ROTARY CLUB OF PORTERVILLE – CHILDREN’S CHRISTMAS PARADE – DECEMBER 4, 2014

Recommendation: That the City Council:

1. Approve the Community Civic Event application from the Porterville Chamber of Commerce and Rotary Club of Porterville subject to the Restrictions and Requirements contained in the Application, Agreement, Exhibit A and Exhibit B of the Community Civic Event Application;
2. Authorize the temporary suspension of the Fixed Route Transit System from 4:30 p.m. to 7:00 p.m. on December 4, 2014; and
3. Restrict the closure of parking spaces in front of City Hall from 3:00 p.m. to 5:00 p.m. to those at the north end of City Hall along Main Street.

Documentation: M.O. 08-111814

Disposition: Approved.

9. CANCELLING JANUARY 6, 2015 CITY COUNCIL MEETING

Recommendation: That the City Council cancel the January 6, 2015 Council Meeting.

Documentation: M.O. 09-111814

Disposition: Approved.

The Council recessed for ten minutes at 7:23 p.m.

**PUBLIC HEARINGS**

10. REQUEST FOR A CONDITIONAL USE PERMIT (PRC 2014-019-C) TO ALLOW FOR THE SALE OF ALCOHOL UNDER A TYPE 41 BEER AND WINE LICENSE IN CONJUNCTION WITH A RESTAURANT FOR APPLEBEE’S LOCATED AT 892 W. HENDERSON AVENUE

Recommendation: That the City Council:

1. Adopt the draft resolution approving Conditional Use Permit (PRC 2014-019-C) subject to conditions of approval; and
2. Authorize the mayor to sign the Letter of Public Convenience or Necessity.

City Manager John Lollis introduced the item. Community Development Director Jenni Byers indicated that the public hearing notice had incorrectly identified an application for a Type 41 license, and requested that the Council accept public comment with the knowledge that the item would be re-noticed to properly identify a Type 47 license and come back on December 2, 2014.

The public hearing was opened at 7:36 p.m.

- Brock Neeley, Porterville, presented the Council with information from the 2013 DUI-MIS Report, and expressed concern regarding a saturation of alcohol sale licenses.
- Steven Franklin, Area Director of Apple American Group Restaurants, spoke briefly about the company and their excitement about doing business in Porterville.

The public hearing was closed at 7:38 p.m.

City Attorney Lew noted that the comments made would be included in the record for the Type 47 public hearing on December 2<sup>nd</sup>.

Documentation: None

Disposition: Public Hearing to be re-noticed for December 2, 2014.

### **SCHEDULED MATTERS**

#### **11. CONSIDERATION OF CITY COUNCIL PROCEDURAL HANDBOOK**

Recommendation: That the City Council consider the City Council Procedural Handbook, and adopt changes to the Handbook and/or provide direction to staff as deemed appropriate.

City Manager Lollis introduced the item and presented the staff report.

Council Member Gurrola identified the following housekeeping items:

- Page 8 of 25 – inquired about consideration of seniority in determining Council seating arrangements;
- Page 9 of 25 letter e – she noted the process was not being practiced and inquired about the need to keep the language;
- Page 15 of 25 – delivery of hardcopy agenda packet no longer applies and requested that process be updated to reflect electronic agenda process;
- Page 19 of 25 – requested that tickets could be used by other members of the Council if the mayor and vice mayor were unable to attend; and
- Page 23 of 25 – inquired about wireless communication policy and additional language pertaining to agenda delivery.

The Council discussed the identified items, and agreed that language regarding the agenda delivery process should be updated to reflect the current electronic process and No. 2 on Page 19 of 25 regarding event tickets should be removed.

Staff indicated that a wireless communication policy had been brought to the Council in the past, but had not been adopted due to changes in technology over the years.

Lastly, Council Member Gurrola communicated her interest in changing the proclamation process to not require sponsorship for placement on the Consent Calendar for Council consideration, and made a motion as such, which died for lack of a second. Council Member Ward spoke in

opposition to the public having the power to add items to the agenda without a Council sponsor.

Council Member Gurrola then made a motion to return to the previous process which required the Mayor's approval. The motion was seconded by Council Member Reyes, who requested that members of the council be given the option of signing or not signing the proclamation.

Vice Mayor Hamilton stated that he did not subscribe to the opinion that proclamations were purely ceremonial in nature; and Council Member Ward spoke against granting the mayor the power to do something that was not supported by a majority of the council.

COUNCIL ACTION:      MOVED by Council Member Gurrola, SECONDED by Council Member Reyes that the City Council proclamation process return to Mayor's approval.

AYES:            Reyes, Gurrola  
NOES:            Ward, Hamilton, Stowe  
ABSENT:        None  
ABSTAIN:       None

Documentation;      M.O. 10-111814

COUNCIL ACTION:      MOVED by Council Member Gurrola, SECONDED by Council Member Ward that the City Council approve the identified housecleaning items. The motion carried unanimously.

Documentation:      M.O. 11-111814

Council Member Ward spoke in support of removing the requirement for a motion and a second prior to discussion, and extending the deadline for Council Member Requested Agenda Items from noon on Monday to noon on Wednesday.

COUNCIL ACTION:      MOVED by Council Member Ward, SECONDED by Vice Mayor Hamilton that the City Council approve the removal of the requirement for a motion and a second prior to discussion.

AYES:            Reyes, Ward, Hamilton, Stowe  
NOES:            Gurrola  
ABSTAIN:        None  
ABSENT:        None

Documentation:      M.O. 12-111814

COUNCIL ACTION:      MOVED by Council Member Ward, SECONDED by Vice Mayor Hamilton that the City Council approve extending the Council Member Requested Item deadline from noon on Monday to noon on Wednesday.

AYES: Reyes, Ward, Hamilton, Stowe  
NOES: Gurrola  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 13-111814

Lastly, Council Member Ward requested that Page 18, letter D be amended to require Council approval for out of state travel only. The City Attorney advised of AB1234 requirements and suggested language to that regard.

COUNCIL ACTION: MOVED by Council Member Ward, SECONDED by Vice Mayor Hamilton that the City Council approve amending Page 18, letter D to read no City Council approval needed unless it is required by AB1234. The motion carried unanimously.

Documentation: M.O. 14-111814

The Council briefly discussed the consideration of criteria for proclamations and directed staff to calendar consideration for December 16, 2014. City Attorney Lew advised of information she had previously compiled from other cities and indicated she would send it to the Council.

Disposition: Council handbook amended.

## 12. CONSIDERATION OF APPOINTMENT TO LIBRARY AND LITERACY COMMISSION

Recommendation: That the City Council appoint one individual to fill the vacancy with a term to expire in October of 2015.

City Manager Lollis introduced the item, and the staff report was presented by Administrative Services Director Hildreth. Following which, Vice Mayor Hamilton noted that one of the interested individuals, Patience Christenson, was in attendance.

COUNCIL ACTION: MOVED by Council Member Gurrola, SECONDED by Council Member Ward that the City Council appoint Patience Christenson to the Library and Literacy Commission with a term to expire in October of 2015. The motion carried unanimously.

Documentation: M.O. 15-111814

Disposition: Individual appointed.

## 13. CONSIDERATION OF ALTERNATIVES FOR UPGRADES TO THE COUNCIL CHAMBERS



Recommendation: That the Council:

1. Approve the proposed Audio/Visual Chamber Upgrades and authorize staff to engage the services of in-house staff for miscellaneous electrical upgrades not to exceed \$1,000; and ITC in an amount up to \$19,419.97; and
2. Approve one of the four options presented, or any combination thereof, with regard to live/video/audio streaming of City Council Meetings.

City Manager Lollis introduced the item, and the staff report was presented by Administrative Services Director Patrice Hildreth. During the staff report, a presentation prepared by Doug Shumway of SuiteOne was played for the Council.

At the Council's request, Deputy City Clerk Luisa Zavala and IT Manager Ted Williams addressed questions regarding the implementation of the SuiteView product and the proposed upgrades to chambers. Mr. Williams elaborated on the difficulties with replacing/repairing the dated equipment; the need to scavenge for parts on Ebay; and challenges in interfacing with newer technology. It was proposed by Vice Mayor Hamilton that said equipment should be amortized for replacement.

COUNCIL ACTION: MOVED by Council Member Gurrola, SECONDED by Council Member Reyes that the City Council approve the proposed Audio/Visual Chamber Upgrades and authorize staff to engage the services of in-house staff for miscellaneous electrical upgrades not to exceed \$1,000; and ITC in an amount up to \$19,419.97.

AYES: Reyes, Gurrola, Hamilton, Stowe

NOES: Ward

ABSTAIN: None

ABSENT: None

Documentation: M.O. 16-111814

A discussion ensued, during which Administrative Services Director Hildreth elaborated on the services proposed to be provided by SuiteOne Media, which she indicated was primarily comprised of unlimited cloud storage and bandwidth for public viewing of the video and/or audio. Director Hildreth then spoke of the benefits of having audio readily available for staff and the public, and the positive impact it would have on staff efficiency. In response to a question posed by Council, Director Hildreth indicated that a free trial period of the SuiteOne Media product was not likely available.

Will Lloyd expressed concerns regarding the production value of the proposed stationary cameras, and spoke of difficulties with his use of Vimeo to host his videos. He applauded staff for looking into live streaming, and suggested that in the event the City discontinued its current arrangement for his services, he would likely continue to video at no charge in order to continue his Council coverage on his website. Mr. Lloyd then offered to work with staff to explore alternatives for streaming his video for the public.

COUNCIL ACTION: MOVED by Council Member Gurrola, SECONDED by Vice Mayor Hamilton that the City Council approve Option No. 3.

AYES: Reyes, Gurrola  
NOES: Ward, Hamilton, Stowe  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 17-111814

COUNCIL ACTION: MOVED by Vice Mayor Hamilton, SECONDED by Council Member Gurrola that the City Council approve Option 4. The motion carried unanimously.

Documentation: M.O. 18-111814

Disposition: Approved chamber upgrades and Option 4.

The Council adjourned at 9:16 p.m. to a meeting of the Porterville Public Financing Authority.

### **PORTERVILLE PUBLIC FINANCING AUTHORITY AGENDA**

November 18, 2014

Roll Call: Director Reyes, Director Gurrola, Director Ward, Vice President Hamilton, President Stowe

### **WRITTEN COMMUNICATION**

### **ORAL COMMUNICATIONS**

None

### **PUBLIC FINANCING SCHEDULED MATTER**

PFA-1. ANNUAL MEETING OF THE PORTERVILLE PUBLIC FINANCING AUTHORITY

Recommendation: That the City Council, sitting as the Porterville Public Financing Authority, hold a public meeting in accordance with the Authority's By-laws, accept public comment, and approve the 2014 Status Report for the Redevelopment Bond Issue #1 and refinance of Tax Allocation Bond Projects.

City Manager Lollis introduced the item, and Community Development Director Byers presented the staff report.

Documentation: M.O. PFA 01-111814

Disposition: Approved.

The Board adjourned at 9:18 p.m. to a meeting of the Porterville City Council.

### **ORAL COMMUNICATIONS**

- Brock Neeley, spoke of Roberts Rules of Order, and requested that a formal contract be drafted for video services between the City and Will Lloyd.
- Barry Caplan, congratulated Council Member Reyes and Council Member Gurrola for their stance/comments regarding the proclamation process; spoke of ceremonial duties of the Mayor as written in the Charter; and spoke in support of live streaming of council meeting video.

### **OTHER MATTERS**

- Vice Mayor Hamilton, thanked individuals for their participation in the Local Dignitaries Race; announced a memorial for Chief Baca to take place on Sunday, 1:00 p.m. at the Rocky Hill Raceway.
- Council Member Gurrola, spoke of the upcoming dedication of the Elders Building at the Tule River Reservation.
- Council Member Ward, expressed an interested in reaching out to veterans to discuss placement of military banners; wished everyone a Happy Thanksgiving; suggested that the Council consider banning retailers who are open for the holiday.
- Council Member Reyes, spoke of the Dignitaries Race, Turkey Day Shoot Out, Veterans Day Parade and the need to educate the community about Veteran's Day moment of silence protocol.
- Mayor Stowe, spoke of the Veteran's Day Parade, Dignitaries Race, and Parnell "Chief" Baca's memorial service; and congratulated Council Member Reyes for being awarded Volunteer of the Year by the Chamber of Commerce.
- City Manager Lollis thanked Chief Forsyth and the Police Captains for their efforts on Monday; reported on status of showers and indemnification agreements for provision of water.

### **CLOSED SESSION**

None

### **ADJOURNMENT**

The Council adjourned at 9:35 p.m. to the meeting of December 2, 2014.

SEAL

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Luisa M. Zavala, Deputy City Clerk

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Milt Stowe, Mayor

**THIS ITEM HAS BEEN MOVED TO  
SCHEDULED MATTERS.**

COUNCIL AGENDA: DECEMBER 2, 2014

SUBJECT: AUTHORIZATION TO "PIGGY-BACK" ON EXISTING CONTRACT

SOURCE: Public Works Department – Field Services Division

COMMENT: The City of Visalia solicited bids for traffic striping and on November 17, 2014, awarded the contract to Safety Striping Services, Inc. of Goshen. The contract is in effect for one fiscal year, and upon mutually agreeable terms, can be renewed for up to four consecutive years. Since 2006, the City has contracted for this service (striping of City streets) as it is the most efficient manner in terms of cost and painting of street lines.

The City of Visalia's bid specifications established a unit price that meets our needs, and staff is requesting authorization to "piggy-back" onto the City of Visalia's contract with Safety Striping Services, Inc. of Goshen for the maintenance of traffic striping throughout the city limits.

The cost for this project shall not exceed \$70,000, an increase of \$5,000 over prior contract from 2010, and staff is seeking approval to utilize funds slated for Sign and Signal Upgrades in the amount of \$48,325. This capital improvement project was approved in the 2014/2015 Annual budget. An additional \$21,675 is needed to fully fund the maintenance of the city's traffic striping. Therefore, staff is hereby seeking approval to augment Surface Transportation Program funds for the purpose of fully funding the striping of city maintained streets this fiscal year.

RECOMMENDATION: That the City Council:

1. Authorize "piggy-backing" on the City of Visalia's contract with Safety Striping Services, at an agreed upon amount not to exceed \$70,000, for the maintenance of traffic striping throughout the city and those streets within the county's jurisdiction that are under city control via mutual maintenance agreements; and
2. Authorize the Finance Director to augment the Signs and Signal Upgrade Project with Surface Transportation Program funds in the amount of \$21,675.

ATTACHMENT: Safety Striping Services, Inc. Bid Proposal

Dir Bor Appropriated/Funded MP CM J

Item No. 3

## BID PROPOSAL

**FROM: CONTRACTOR**      Safety Striping Service, Inc.  
Company Name of bidder

Bids are required for the entire work complete and in place.

For improvement of:

**RFB No.:**            14-15-32  
**Project Name:**    **TRAFFIC STRIPING, BIKE LANE IMPLEMENTATION, AND STOP SIGN  
INSTALLATIONS**  
**Project No.:**        **2370-7200 / CP9226-999, 2370-72000/CP9923-999, 2370-72000/CP0037-  
999, and 3124-55100**

To the City Clerk of the City of Visalia:

The estimate of quantities of work to be performed and materials to be furnished are approximate only, being given as a basis for the comparison of bids, and the City of Visalia does not expressly or by implication agree that the actual amount of work will correspond therewith. The City of Visalia reserves the right to increase or decrease the amount of any part of the work, or to omit portions of the work as deemed necessary by the Engineer.

The undersigned as bidder declares that he has carefully examined the location of the proposed work, that he has examined the plans and specifications, and read the accompanying instructions to bidders, and hereby proposes and agrees, if this proposal is accepted, to furnish all materials and do all the work required to complete said work in accordance with said Plans, if any, Standard Specifications, Construction Specifications and Contract Documents in the time and manner therein prescribed, for the unit price or lump sum price set forth in the following **Bid Schedule**:

(DO NOT REMOVE FROM DOCUMENTS)

<u>ITEM NO.</u>	<u>DESCRIPTION OF WORK</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE (\$)</u>	<u>AMOUNT (\$)</u>
<b>PROJECT A - TRAFFIC STRIPING</b>					
1	White or Yellow 4-inch centerline or laneline, Detail Nos. 1 & 8 (2010 Caltrans Standard Plan A20A)	160,000	LF	0.08	12,800.00
2	One direction No-Passing pattern, Detail No. 15 (2010 Caltrans Standard Plan A20A)	100,000	LF	0.16	16,000.00
3	Two direction No-Passing pattern, Detail No. 21 (2010 Caltrans Standard Plan A20A)	160,000	LF	0.17	27,200.00
4	Left Edge Line, 4-inch yellow, Detail No. 24 or Right Edgeline, 4-inch white, Detail No. 27B (2010 Caltrans Standard Plan A20B)	80,000	LF	0.10	8,000.00

TRAFFIC STRIPING, BIKE LANE IMPLEMENTATION, AND STOP SIGN INSTALLATIONS  
2370-7200 / CP9226-999, 2370-72000/CP9923-999, 2370-72000/CP0037-999, and 3124-55100

5	Two-Way Left-Turn lane pattern, Detail No. 31 (2010 Caltrans Standard Plan A20B)	30,000	LF	0.16	4,800.00
6	8-inch white Channelizing Line, Detail No. 38A (2010 Caltrans Standard Plan A20D)	20,000	LF	0.18	3,600.00
7	Bike Lane Line, 6-inch white line, Detail No. 39 (2010 Caltrans Standard Plan A20D)	50,000	LF	0.13	6,500.00
8	Raised pavement markers	2,500	EA	3.00	7,500.00
9	Removal of Striping or Markings by lightly grinding	2,500	SF	1.65	4,125.00
10	Removal of Striping or Markings by painting black	2,000	SF	1.10	2,200.00
<b>PROJECT A TOTAL</b>					<b>\$92,725.00</b>
<b><u>PROJECT B - BIKE LANE IMPLEMENTATION</u></b>					
11	Bike Lane Intersection Line, broken 6-inch white line, Detail No. 39A (2010 Caltrans Standard Plan A20D)	85,000	LF	0.12	10,200.00
12	Bike Lane Intersection Line, broken 6-inch white line, Detail No. 39 (2010 Caltrans Standard Plan A20D)	15,000	LF	0.12	1,800.00
13	Bike Lane Arrow, (Caltrans Plate A24A)	65	EA	18.20	1,183.00
14	Stencil "BIKE LANE" (Caltrans Plate A24D)	65	EA	28.60	1,859.00
15	Shared Lane Marking, Bike Lane Symbol Without Person (Caltrans Standard Plan A24C) with chevrons	65	EA	33.80	2,197.00
16	Furnish and install 12-inch by 8-inch BIKE LANE with Symbol sign (R81(CA)) with Diamond Grade retroreflective sheeting and an anti-graffiti film	65	EA	11.00	715.00
17	Furnish and install 2-inch by 2-inch by 12-feet 14 gauge sign post	65	EA	220.00	14,300.00
<b>PROJECT B TOTAL</b>					<b>\$32,254.00</b>
<b><u>PROJECT C - STOP SIGN INSTALLATIONS</u></b>					
18	Furnish Portable Changeable Message Signs (PCMS)	6	EA	1,130.00	6,780.00
19	Furnish and install 30-inch by 30-inch STOP sign (R1-1) with Diamond Grade Cubed (DG3) retroreflective sheeting and an anti-graffiti film	4	EA	90.00	360.00

20	Furnish and install 36-inch by 36-inch STOP sign (R1-1) with Diamond Grade Cubed (DG3) retroreflective sheeting and an anti-graffiti film	8	EA	119.00	952.00
21	Furnish and install 30-inch by 30-inch STOP AHEAD sign (W3-1) with Diamond Grade Cubed (DG3) retroreflective sheeting and an anti-graffiti film	6	EA	90.00	540.00
22	Furnish and install 18-inch by 6-inch ALL WAY sign (R1-3P) with Diamond Grade Cubed (DG3) retroreflective sheeting and an anti-graffiti film	16	EA	12.00	192.00
23	Install 36-inch by 36-inch NEW TRAFFIC PATTERN AHEAD sign (W23-2)	12	EA	119.00	1,428.00
24	Install 12-inch diameter flashing red beacon on top of newly installed STOP sign	10	EA	33.00	330.00
25	Install 12-inch diameter flashing yellow beacon on top of newly installed STOP AHEAD sign	6	EA	33.00	198.00
26	Furnish and install 2-inch by 2-inch by 12-foot 14 gauge sign post	28	EA	220.00	6,160.00
27	Crosswalk and Limit Line, 12-inch white or yellow, Caltrans Plate A24E)	720	LF	2.00	1,440.00
28	"STOP" Stencil (2010 Caltrans Standard Plan A24D)	28	EA	44.00	1,232.00
29	"AHEAD" Stencil (2010 Caltrans Standard Plan A24D)	12	EA	62.00	744.00
30	Pavement Markings Arrows (2010 Caltrans Standard Plan A24A)	12	EA	30.00	360.00
<b>PROJECT C TOTAL</b>					<b>\$20,716.00</b>
<b>BID TOTAL (\$)</b>					<b>= \$145,695.00</b>
<b>PROJECT D - PAVEMENT MARKINGS (OPTIONAL)</b>					
31	Crosswalk and Limit Line, 12-inch white or yellow	9,000	LF	1.25	11,250.00
32	Pavement Markings Arrows (2010 Caltrans Standard Plan A24A)	4,500	SF	1.25	5,625.00
33	Pavement Markings Words stencil (2010 Caltrans Standard Plans A24D and A24E)	15,000	SF	1.25	18,750.00
34	Curb Marking (all colors)	2,000	LF	1.25	2,500.00
35	Parking stall line, 4-inch white or blue	10,000	LF	0.40	4,000.00



36	Parallel Parking "T" Markings	200	EA	8.00	1,600.00
37	Rail Road Crossing Symbol with limit lines (2010 Caltrans Standard Plan A24B)	30	EA	130.00	3,900.00
38	International Symbol of Accessibility (ISA) Marking (2010 Caltrans Standard Plan A24C)	200	EA	22.00	4,400.00
39	Bike Lane Symbol with Person (2010 Caltrans Standard Plan A24C)	75	EA	19.00	1,425.00
40	Shared Lane Marking, Bike Lane Symbol Without Person (Caltrans Standard Plan A24C) with chevrons	25	EA	35.00	875.00
<b>PROJECT D TOTAL</b>					<b>\$54,325.00</b>

**TOTAL PROJECT A, B, & C:** \$ One hundred Forty five thousand six hundred ninety five dollars  
and zero cents

**(WRITTEN IN WORDS)**

**TOTAL PROJECT D (Optional):** \$ Fifty Four Thousand Three hundred Twenty Five Dollars and  
zero cents

**(WRITTEN IN WORDS)**

**In case of a discrepancy between unit price and total, the unit price shall prevail.**

The award of the Contract, if it is awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements described. For projects with no alternates, the award shall be determined by comparing the base bids. When alternative bids are included in the bid proposal, the award shall be determined by comparing the lowest totals of the base bid plus the bids of those alternatives specifically identified in the bid proposal to be used for the purpose of determining the lowest bid. The City reserves the right to add or subtract any of the alternatives after the lowest bid has been determined.

If this proposal shall be accepted and the undersigned shall fail to contract as aforesaid and to deliver the payment and performance bonds in the sums to be determined as aforesaid, with surety satisfactory to the City of Visalia, and to deliver all required insurance policies within ten (10) days, not including Sundays and legal holidays, after the bidder has received notice that the contract has been awarded, the City Council may, at its option, determine that the bidder has abandoned the Contract, and thereupon this proposal and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City of Visalia.

Bidder acknowledges receipt of the following addenda:

No. 1, dated October 24, 20 14

No. \_\_\_\_\_, dated \_\_\_\_\_, 20 \_\_\_\_

No. \_\_\_\_\_, dated \_\_\_\_\_, 20 \_\_\_\_

No. \_\_\_\_\_, dated \_\_\_\_\_, 20 \_\_\_\_

No. \_\_\_\_\_, dated \_\_\_\_\_, 20 \_\_\_\_

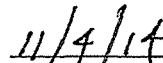
No. \_\_\_\_\_, dated \_\_\_\_\_, 20 \_\_\_\_

## NON COLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

In accordance with Title 23 United States Code section 112 and Public Contract Code 7106 the bidder declares that bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

  
Signature

  
Date


Note: The above Non-collusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

STATE OF CALIFORNIA  
**DRUG-FREE WORKPLACE CERTIFICATION**  
STD.21 (REV.12-89)

**CERTIFICATION**

*I, the official named below, hereby swear that I am duly authorized legally to bind the contractor or grant recipient to the certification described below. I am fully aware that this certification, executed on the date below, is made under penalty of perjury under the laws of the State of California.*

CONTRACTOR/BIDDER FIRM NAME Safety Striping Service, Inc.	FEDERAL ID NUMBER 95-2946627
BY (Authorized Signature) 	DATE EXECUTED 11/4/2014
PRINTED NAME AND TITLE OF PERSON SIGNING David L. Preston (President)	TELEPHONE NUMBER (Include Area Code) (559) 651-1022
TITLE President	
CONTRACTOR/BIDDER FIRM'S MAILING ADDRESS P.O. Box 1020, Goshen, CA 93227	

The contractor or grant recipient named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or grant recipient will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
  - (a) The dangers of drug abuse in the workplace,
  - (b) The person's or organization's policy of maintaining a drug-free workplace,
  - (c) Any available counseling, rehabilitation and employee assistance programs, and
  - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c), that every employee who works on the proposed contract or grant:
  - (a) Will receive a copy of the company's drug-free workplace policy statement, and
  - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.
4. At the election of the contractor or grantee, from and after the "Date Executed" and until \_\_\_\_\_ (NOT TO EXCEED 36 MONTHS), the state will regard this certificate as valid for all contracts or grants entered into between the contractor or grantee and this state agency without requiring the contractor or grantee to provide a new and individual certificate for each contract or grant. If the contractor or grantee elects to fill in the blank date, then the terms and conditions of this certificate shall have the same force, meaning effect and enforceability as if a certificate were separately, specifically, and individually provided for each contract or grant between the contractor or grantee and this state agency.

### **BID PROPOSAL CONTRACT**

Accompanying this proposal is \$(Bidders Bond) \_\_\_\_\_ cash, cashier's check, certified check, or bidder's bond in the amount equal to at least ten percent (10%) of the total bid.

The name of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, director and manager thereof and all stockholders owning more than 10% equity interest in corporation; if a co-partnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last name in full.

Safety Striping Service, Inc.

\_\_\_\_\_  
Print Name of Corporation or True Name of Firm

David L. Preston (President)

\_\_\_\_\_  
Print Officer's Name or Copartner's Name and Title

Louisa Preston (Vice President, Secretary, Treasurer)

\_\_\_\_\_  
Print Officer's/Stockholder Name or Copartner's Name and Title

\_\_\_\_\_  
Print Officer's/Stockholder Name or Copartner's Name and Title

\_\_\_\_\_  
Print Officer's/Stockholder Name or Copartner's Name and Title

\_\_\_\_\_  
Print Officer's/Stockholder Name or Copartner's Name and Title

Licensed in accordance with an act providing for the registration of Contractors,

License No. 308669, Class of License(s) A & C32,

License Expiration Date 05/31/16.

The representations made herein are made under penalty of perjury. Any bid not containing this information, or a bid containing information which is subsequently proven false, shall be considered non-responsive and shall be rejected by the City of Visalia.

Signature of Authorized Person(s)

  
Signature

\_\_\_\_\_  
President

\_\_\_\_\_  
Title

David L. Preston

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

## **SUBCONTRACTORS LIST**

In accordance with the provisions of Section 2-8 "Designation of Subcontractors," of the Standard Specifications, each bidder shall list below the name and location of place of business of each subcontractor who will perform a portion of the contract work in an amount in excess of one-half of one percent of the total contract price or \$10,000, whichever is greater. In each instance, the nature and extent of the work to be sublet shall be described.

The general Contractor to whom the contract is awarded will not be permitted, without the written consent of the Engineer, to substitute any person as subcontractor in place of the subcontractor designated in the original bid, or to permit any subcontract to be assigned or transferred, or to allow it to be performed by anyone other than the original subcontractor. The Engineer may consent to the substitution of another person as subcontractor, if the original subcontractor, after having reasonable opportunity to do so, shall fail or refuse to execute, when said written contract is based upon the conditions of the general contract and complies with the subcontractor's written bid.

The failure of the Contractor to specify a subcontractor for any portion of the contract work in excess of one-half of one percent or \$10,000 of the total contract price shall be deemed to indicate that the Contractor intends to perform such portion himself. The subletting or subcontracting of work for which is in excess of one-half of one percent or \$10,000 of the total contract price, will be allowed only with the written consent of the Engineer.

Complete Columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (559) 713-4802 within twenty-four (24) hours after the bid opening. Failure to provide complete information in Columns 1 through 4 will result in a non-responsive bid. See the following page for the SUBCONTRACTORS LIST table.

## SUBCONTRACTORS LIST

<b>Column 1</b> Business Name, Location and Contractor License Number & Class of License	<b>Column 2</b> Bid Item No(s).	<b>Column 3</b> Dollar Amount & Percent of Bid Item Subcontracted	<b>Column 4</b> Description of Subcontracted Work
N/A			

## **BIDDERS BOND**

### **TO ACCOMPANY BID PROPOSAL**

Known all men by these presents:

That we, Safety Striping Service, Inc. as principal, and The Hanover Insurance Co. as surety, are held and firmly bound unto the City of Visalia in the sum of ten percent (10%) of the total amount of the bid of the principal, to be paid to the said City or its certain attorney, its successors and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors, or assigns, jointly and severally, firmly by these presented.

In no case shall the liability of the surety hereunder exceed the sum of \$ Ten Percent of the Bid Amount.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal has submitted the above mentioned bid to the City of Visalia for certain construction specifically described as follows, for which bids are to be opened at Visalia, CA on October 31, 2014 for improvement of:

**RFB No.: 14-15-32**

**Project Name: TRAFFIC STRIPING, BIKE LANE IMPLEMENTATION, AND STOP SIGN INSTALLATIONS**

**Project No.: 2370-7200 / CP9226-999, 2370-72000/CP9923-999, 2370-72000/CP0037-999, and 3124-55100**

NOW THEREFORE, if the aforesaid principal is awarded the contract, and within the time and manner required under the specifications, after the prescribed form in accordance with the bid, and files the two bonds with the City of Visalia, one to guarantee faithful performance and the other to guarantee payment of labor and materials, as required by law, then this obligation shall be null and void, otherwise it shall be and remain in full force and virtue.



**BIDDER'S BOND**

In the event suit is brought upon this bond by the obligee and judgment is recovered, the surety shall pay all costs incurred by the obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

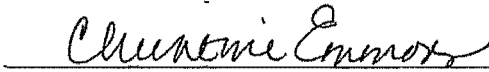
IN WITNESS WHEREOF, we have hereunto set our hands and seals on this  
30th day of October 20<sup>14</sup>.

Safety Striping Service, Inc. (Seal)

 (Seal)  
David Preston, President

(Seal)

Hanover Insurance Company (Seal)

 (Seal)  
Christine Emmons, Attorney in Fact

(Seal)

Surety The Hanover Insurance Company

5 Hutton Centre, Suite 1060

Address

Santa Ana, CA 92707

City and Zip Code

NOTE: Signatures of those executing for the surety must be properly acknowledged.

## ACKNOWLEDGMENT

State of California  
County of Tulare )

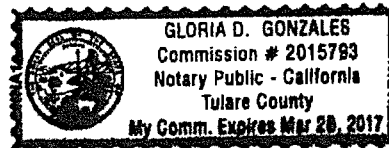
On October 30, 2014 before me, Gloria D Gonzales, Public Notary  
(insert name and title of the officer)

personally appeared David Lloyd Preston  
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 Gloria D. Gonzales (Seal)



**THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA**

**POWERS OF ATTORNEY  
CERTIFIED COPY**

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

**Christine Emmons, Shelly Weldon, Larry File, Jeanie Swan, Patty Gouthro,  
Elizabeth Newland, Gary E. Richards, Gary Cox and/or Mark Smith**

of **Fresno, CA** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

**Any such obligations in the United States, not to exceed Ten Million and No/100 (\$10,000,000) in any single instance**

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 12th day of April 2013.



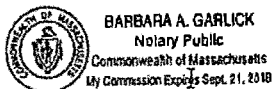
**THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA**

Robert Thomas, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

Joe Brenstrom, Vice President

On this 12th day of April 2013 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick, Notary Public  
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 30th day of October 2014.

**THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA**

J. Michael Pete, Vice President



DATE: October 24, 2014

**CITY OF VISALIA**  
**RFB-14-15-32**  
**Traffic Striping, Bike Lane Implementation, and Stop Sign Installations**

**ADDENDUM NO. 1**

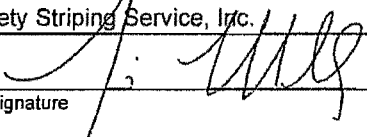
This Addendum is being issued to provide information regarding State Prevailing Wages requirements for RFB-14-15-32. The information in this addendum will become part of the RFB document.

**ITEM 1: STATE PREVAILING WAGES**

This project is subject to state prevailing wages. Please see Attachments 1 and 2 of this addendum for wage rate determinations.

**END OF ADDENDUM NO. 1**

**This addendum must be signed and returned with the bid proposal.**

Firm: Safety Striping Service, Inc. Date: 11/4/2014  
By:   
Signature

COUNCIL AGENDA: DECEMBER 2, 2014

SUBJECT: AUTHORIZATION TO AWARD CONSULTANT AGREEMENT –  
ANALYSIS OF EDISON STREET LIGHT PURCHASE PROGRAM

SOURCE: Public Works Department - Engineering Division

COMMENT: In October 2013, the City Council approved and directed the Public Works Director to move forward with preliminary steps to purchase Edison owned street lights (LS-1). To move the project forward, Edison required payment in the amount of \$10,000 to perform an appraisal of their street lights. Edison completed their appraisal effort and met with City staff on November 14, 2014. Edison appraised the value of 2,754 street lights at \$2,065,000 or \$750 per street light.

The cities of Visalia, Tulare and Porterville interviewed and selected the firm of Utility Cost Management, LLC (UCM) of Fresno to perform a variety of analytical tasks to determine if it is good business sense to consummate the purchase of Edison street lights. Visalia and Tulare have already awarded a Consultant Service Agreement to UCM and a copy of that agreement is included in Council's packet for reference. Specifically, UCM will:

1. Review and analyze Edison's appraisal report, calculations and methodology.
2. Review past sales to provide comparable data that may help reduce SCE's price.
3. Forecast utility bill savings and ongoing cost of maintenance.
4. Financing options and financial risks.
5. Retrofit options, i.e., change out existing lights to LED lighting.

UCM's fee to accomplish all tasks is \$7,100. If the City Council feels it is in the City's best interest to continue exploring the purchase of the street lights, it is staff's recommendation that the Council award a Consultant Service Agreement to UCM in an amount not to exceed \$8,500 which includes a 20% contingency to cover, as of this writing, unforeseen events that may arise in our dealings with Edison.

Dir BS Appropriated/Funded MA CM J

Item No. 4

RECOMMENDATION: That the City Council:

1. Award a Consultant Service Agreement to Utilities Cost Management (UCM) in the not to exceed amount \$8,500; and
2. Direct the Public Works Director to bring to a future Council meeting a complete and thorough Financial Feasibility Analysis Report (FFAR) with recommendations on whether to purchase or not purchase the street lights offered by Southern California Edison.

ATTACHMENT: City of Visalia Service Agreement with Utility Cost Management, LLV

**PROFESSIONAL SERVICES AGREEMENT  
SOUTHERN CALIFORNIA EDISON (SCE) STREET LIGHT PURCHASE  
FEASIBILITY ANALYSIS**

This Agreement, entered into this 20<sup>th</sup> day of March, 2014, by and between the City of Visalia, hereinafter referred to as the "CITY", and **Utility Cost Management, LLC** hereinafter referred to as the "CONSULTANT".

**W I T N E S S E I H**

**WHEREAS**, the CITY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

**WHEREAS**, the CITY has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described as "Scope of Work" in Exhibit "A", and hereinafter referred to as the "PROJECT"; and

**WHEREAS**, the CONSULTANT represents it is licensed, qualified and willing to provide such services pursuant to terms and conditions of this Agreement.

**NOW, THEREFORE**, CITY and CONSULTANT agree as follows:

**I. SERVICES TO BE PERFORMED BY THE CONSULTANT**

- A. Authorized Scope of Work: The CONSULTANT agrees to perform all work necessary to complete in a manner satisfactory to the CITY those tasks described in Exhibit "A" - Scope of Work, for the cost identified in Exhibit "B": Project Fees/Progress Payment Schedule.
- B. Additional Services: Incidental work related to the PROJECT and not provided for in Exhibit "A" may be needed during the performance of this Agreement. The CONSULTANT agrees to provide any and all additional services at the rates identified in attached Exhibit "C" - Schedule of Fees for Professional Services. Such additional services shall not be performed by CONSULTANT without the written consent of CITY.

**II. TIME OF PERFORMANCE**

The CONSULTANT shall commence performance of this Agreement within ten (10) days of Consultant's Notice to Proceed following City Council approval of this Agreement and shall complete the work within the timeframes outlined in Exhibit "A", unless otherwise extended in writing by CITY, in its sole discretion.

If the CONSULTANT fails to complete the PROJECT within the time specified, plus any extensions of time which may be granted, the CITY shall determine the percent of each work item completed and shall pay the CONSULTANT on that basis.

CONSULTANT shall not be responsible for delays which are due to causes beyond the CONSULTANT's reasonable control. In the case of any such delay, the time of completion shall be extended accordingly in a writing signed by both parties.

**III. COMPENSATION**

- A. Total Compensation: For services performed pursuant to this Agreement, the CITY agrees to pay and the CONSULTANT agrees to accept, as payment in full, a sum not to exceed **Eleven Thousand Nine Hundred Dollars (\$11,900.00)**. This amount shall constitute complete compensation,

including document production and out-of-pocket expenses for all services for the work and PROJECT identified in Exhibits "A" and "B".

- B. Payment of Compensation: The CONSULTANT shall be compensated according to the progress payment schedule set forth in Exhibit "B" upon completion of percentage of each noted phase. The CONSULTANT shall be paid no later than thirty (30) days following submission of a written, verified billing to the CITY. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

#### IV. AUTHORIZED REPRESENTATIVE

- A. CITY: The Project Manager shall represent the CITY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the City Council of the City of Visalia is specifically required.
- B. CONSULTANT: Michael Kerkorian shall represent and act as principle for CONSULTANT in all matters pertaining to the services to be rendered by it under this Agreement.

#### V. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

- A. Termination By Either Party Without Cause: The CITY or CONSULTANT may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. Termination of Agreement for Cause: The CITY may by written notice to the CONSULTANT specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:
1. If the CONSULTANT fails to perform the services called for by this Agreement within time(s) specified herein or any extension thereof; or
  2. If the CONSULTANT fails to make progress under this Agreement as to endanger performance of this Agreement in accordance with its terms, and does not correct such failure within a period of ten (10) days (or longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.
- C. Post-Termination:
1. In the event the CITY terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
  2. Except with respect to defaults of subconsultants, the CONSULTANT shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event the failure to perform is caused by the default of a subconsultant, the CONSULTANT shall not be liable for failure to perform, unless the services to be furnished by the subconsultant were obtainable from



other sources in sufficient time and within budgeted resources to permit the CONSULTANT to meet the required delivery schedule or other performance requirements.

3. Should the Agreement be terminated with or without cause, the CONSULTANT shall provide the CITY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the CONSULTANT pursuant to this Agreement.
4. Upon termination, with or without cause, CONSULTANT will be compensated for the services satisfactorily completed to the date of termination according to compensation provisions contained herein. In no event, shall the total compensation paid CONSULTANT exceed the total compensation agreed to herein.
5. If, after notice of termination of this Agreement, as provided for in this article, it is determined for any reason that the CONSULTANT was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.
6. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

#### **VI. INTEREST OF OFFICIALS AND THE CONSULTANT**

- A. No officer, member, or employee of the CITY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
  1. Participate in any decision relating to this Agreement which effects their personal interest or the interest of any corporation, partnership, or association in which they have, directly or indirectly, any interest; or
  2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his/her tenure or for one year thereafter.
- B. The CONSULTANT hereby covenants that they have, at the time of the execution of this Agreement, no interest, and that they shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

#### **VII. NO PERSONNEL, AGENCY OR COMMISSION**

The CONSULTANT warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **VIII. SUBCONTRACTING**

- A. The CONSULTANT shall not subcontract or otherwise assign any portion of the work to be

performed under this Agreement without the prior written approval of the CITY.

- B. In no event shall the CONSULTANT subcontract work in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of project.

#### **IX. INDEPENDENT CONTRACTOR**

In the performance of the services herein provided for, the CONSULTANT shall be, and is, an independent contractor and is not an agent or employee of the CITY. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder. The CONSULTANT shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters.

#### **X. SPECIFICATIONS**

All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment to this Agreement modified in writing to incorporate such changes.

#### **XI. DOCUMENTS/DATA**

- A. Ownership of Documents: All original papers and documents, produced as a result of this Agreement, shall become the property of the CITY. In addition, CITY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the CITY.

Documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement, are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or on any other project. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from CONSULTANT will be at CITY's sole risk and without liability to CONSULTANT. Further, any and all liability arising out of changes made to CONSULTANT's deliverables under this Agreement by CITY or persons other than CONSULTANT is waived as against CONSULTANT, and the CITY assumes full responsibility for such changes unless the CITY has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

- B. Publication: No report, information, or other data given or prepared or assembled by the CONSULTANT pursuant to this Agreement, shall be made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY. Notwithstanding the foregoing, however, the CONSULTANT shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.
- C. Copyrights: The CONSULTANT shall be free to copyright material developed under this Agreement with the provision that the CITY be given a nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes.

## **XII. INDEMNIFICATION AND INSURANCE**

The CONSULTANT agrees to comply with all of the Indemnification and Insurance requirements identified in Exhibit "E" – Indemnification and Insurance.

## **XIII. NON-DISCRIMINATION**

CONSULTANT and all subcontractors shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement.

## **XIV. MISCELLANEOUS PROVISIONS**

- A. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- B. Prohibition of Assignment: Neither the CITY nor CONSULTANT shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- C. Dispute/Governing Law: Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.
- D. Notices: Notice shall be sufficient hereunder if personally served upon the City Clerk of the CITY or an officer or principal of the CONSULTANT, or if sent via the United States Postal Service, postage prepaid, addressed as follows:  

CITY OF VISALIA 707 W. Acequia Ave Visalia, CA 93291 Attention: City Clerk	Utility Cost Management, LLC 6475 N. Palm Avenue, Suite 105 Fresno, CA 93704 Attn: Michael Kerkorian
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- E. Jurisdiction/Venue/Waiver Of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Tulare County, California. The CONSULTANT hereby expressly waives any right to remove any action to a county other than Tulare County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- F. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the CITY and the CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the CONSULTANT.
- G. Conflict With Law: If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.
- H. Attorney's Fees: In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or

arbitrator, shall be entitled to recovery of its attorney's fees and court costs incurred in the action brought thereon.

- I. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- J. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- K. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

CITY OF VISALIA

City Manager

CONSULTANT

Approved as to Form

City Attorney

Risk Manager

Project Manager

Attachments:

- Exhibit "A": Scope of Work
- Exhibit "B": Project Fees/Progress Payment Schedule
- Exhibit "C": Schedule of Fees for Professional Services
- Exhibit "D": Indemnification and Insurance Requirements<sup>1</sup>

## Exhibit "A": Scope of Work

### **B. Proposed Project Approach**

Municipalities interested in purchasing street lights from their electricity provider face an unusual type of sales negotiation. There is only one possible seller of the street lights, the utility, and only one possible buyer, the city. So the transaction is in no way a market-based process in which price is determined by supply and demand.

In some ways, for cities like Visalia, Tulare and Porterville ("Cities") that are evaluating a purchase, the lack of alternative sellers can be problematic. The seller, SCE, understands that it is the "only game in town" and that the Cities would like to avoid the cost of taking the street lights through eminent domain, and therefore has less incentive to compromise on price and other transaction terms.

Fortunately, California municipal street light purchases have occurred often enough during the past twenty years to offer a template on appropriate valuation methodology. The California Public Utilities Commission (CPUC) has made clear that it endorses "Replacement Cost New Less Depreciation" (RCNLD), and this technique provides a starting point for negotiations with SCE.

In approaching this project, Utility Cost Management LLC (UCM) will focus on RCNLD to arrive at a reasonable initial offer from SCE. From there, we will work to reduce the initial offer by scrutinizing SCE's figures, calculations, and assumptions in light of its testimony and workpapers in past CPUC proceedings. UCM also will analyze CPUC filings from other street light sales to provide comparable data that may help to reduce SCE's price.

Of course, the purchase price is only one of the factors that Cities will evaluate for potential street light purchases. UCM's written report will include analysis of other important considerations, such as transaction costs, forecasted utility bill savings, ongoing maintenance and other costs of ownership, financing options, retrofit options, and financial risks.

In addition to a written report, UCM will prepare an Excel-based financial model that will calculate 20-year discounted cash flows, return on investment, net present value, and simple payback of the street light purchase under various assumptions. This model will allow UCM to perform sensitivity analyses to assess "best-case", "worst-case" and "likely-case" scenarios, which will provide Cities with an understanding of the possible range of outcomes and the uncertainties that are inherent in any long-term financial projections.

The specific approach that UCM will take is described more fully below:

#### **1. Obtain SCE's Initial Offer**

UCM will contact SCE to request a written offer, along with supporting calculations and documentation. The supporting information is essential in order to establish a reasonable

valuation methodology, so that as negotiations proceed SCE will not be inclined to alter its price without proper justification.

## **2. Evaluate SCE's Initial Offer**

SCE's initial offer will be broken down in various ways to identify opportunities to lower the proposed price or otherwise secure more favorable terms for Cities:

- UCM will ensure that SCE's calculations are consistent with workpapers, testimony and CPUC rulings from Phase 2 of the utility's 2012 General Rate Case (GRC). These documents contain detailed cost accounting data for every type of SCE street light, and therefore provide an excellent basis for reviewing RCNLD calculations. For example, SCE's testimony explains its approach to deriving street light "replacement cost", its depreciation methodology, and its detailed street light operations and maintenance costs.
- UCM will review workpapers, testimony and CPUC rulings from GRC's of PG&E and SDG&E, so that it can assess whether SCE's cost assumptions are reasonable. For example, if SCE claims the total installed cost of a 30-foot concrete pole is \$2,000, but PG&E claims it is only \$1,500, then that discrepancy should be explained. Similarly, if SDG&E depreciates its street lights over a useful life of 32 years, but SCE uses 40 years, that difference will have a significant impact on RCNLD figures, and should be investigated.
- UCM has in its files over 1,200 pages of archived CPUC documents from Section 851 street light sales that have occurred since 1998. These documents were obtained in 2012 as part of an internal UCM analysis of street light purchase opportunities, and contain a wealth of information, including purchase price and terms, agreements, and detailed inventories of the assets being purchased. While none of the sales were with SCE, the information will nonetheless be useful as an additional source of comparable data.
- UCM will review SCE's mapping and inventory data to ensure that it is a reasonably accurate representation of the actual number, location, type and wattage of Cities' street lights. Rather than verify every individual street light, which would be time-consuming and costly, UCM will utilize statistical sampling to establish the accuracy of the SCE data within prescribed confidence intervals. (While this effort will require some in-field site visits, it will not include an independent appraisal of the condition of the street light system, which UCM views as outside the scope of this RFP. Cities may wish to undertake such an appraisal prior to completing any street light purchase, but UCM believes that such an appraisal is unnecessary to evaluate the feasibility of the purchases.)

### **3. Negotiate with SCE to Arrive at "True Price"**

While analyses of utility company and CPUC data will certainly enable UCM to minimize the RCNLD price, the final price and terms of Cities' street light purchases will require more than RCNLD calculations. It may be difficult to arrive at SCE's final, "true" price as part of this feasibility analysis, because UCM will not be negotiating the actual deal. However, we believe that UCM's lengthy track record of successful negotiations with California's major utilities, its reputation as an able customer advocate at the CPUC, and its familiarity with GRC cost accounting will help us to obtain SCE's lowest possible offer as part of this feasibility analysis. (See Tab "C" on UCM's Experience.)

### **4. Transaction Process and Associated Costs**

UCM's analysis will include a description of the anticipated steps involved in the purchase transaction. Some of these steps may require out-of-pocket costs (e.g., SCE administrative fees, retaining consultants and other professional services), while others may require time from Cities' staffs (e.g., obtaining city council approval, preparing RFPs). In either case, if Cities have a clear understanding of the process, they can make more informed decisions on whether or not to proceed with the purchases.

UCM's explanation of the transaction process will include a discussion of Cities' right to take the street lights through condemnation if negotiations fail. While we would not expect condemnation to be necessary because of SCE's apparent willingness to sell its street light assets, nonetheless it is important for Cities to be aware of this option. (Please note, UCM is not an attorney or a law firm and cannot provide legal advice or services.)

UCM also will discuss the process of obtaining an independent appraisal of the street light system. As mentioned above, we do not believe this is necessary as part of the feasibility analysis, but prior to the sale, the city will want to ascertain the condition of the system and the potential costs associated with deteriorating poles and other deferred maintenance. Because the cost of this appraisal could be significant, that cost must be included as part of the Cities' feasibility evaluation.

### **5. Utility Bill Savings**

The main benefit associated with the Cities' street light purchases is the resulting reduction in SCE electricity charges. While it is relatively straightforward to quantify the savings under currently applicable SCE rates, it is more difficult to project savings over the next 10, 15 or 20 years. Over longer time periods, even a seemingly modest adjustment to the escalation rate used to forecast savings – say from 2% to 3% – can have a material effect on Cities' savings.

UCM will review SCE street light rates over the past 20 years to determine how the relationship between LS1 and LS2 charges has fluctuated. This information will be combined with utility

testimony, utility workpaper calculations, and CPUC decisions in recent years to help determine whether the future differential between LS1 and LS2 charges is likely to increase, decrease or remain the same. UCM's analysis will also include calculations of expected utility bill savings if the street lights are retrofitted to more energy efficient fixtures.

## **6. Retrofit Opportunities**

Street light ownership will offer Cities the opportunity to retrofit their systems with more energy efficient technologies. UCM's analysis will include a discussion of retrofit options, including costs, benefits, financing alternatives and risks. UCM will include case studies of recently completed LED and induction retrofits that it has gathered as an advisor to various California cities.

## **7. Costs of Ownership**

Through its review of GRC testimony and workpapers, UCM will obtain SCE's average maintenance costs for various types of street lights. In addition, UCM will seek SCE's historical maintenance data specifically for Cities. This will include data on routine maintenance, such as fixture replacements and reflector cleanings, as well as event-driven repairs such as pole knock-downs and copper wire theft. UCM also will survey other California cities – both those that perform street light maintenance in-house and those that contract with third-party vendors – to provide comparable information on expected maintenance costs.

UCM will also gather information on ancillary costs and benefits of street light ownership, such as insurance, lost property tax revenue, and opportunities to generate revenue by leasing street light space to companies for placement of wireless communication devices.

## **8. Analysis of Potential Risks**

As mentioned in the above discussion of "Utility Bill Savings", it is difficult to forecast electricity rates over 10, 15 or 20 years, and this represents one of the risks associated with street light purchases. However, there are other future events that could impact financial results, and the likelihood of these events should be assessed. For example, the application of dimming and solar technologies would reduce street light electricity usage and therefore could benefit Cities, but could also result in rate changes that could lengthen the purchase payback period. Similarly, if SCE upgrades utility-owned street lights to more efficient technologies in the next several years, the benefits of ownership could be reduced significantly.

## **9. Creation of Excel-Based Financial Model to Calculate Impact of Purchase Under Various Assumptions and Scenarios**

Even with the best information, it is likely that one or more of the assumptions that are critical to Cities' analysis of the street light purchases will have to be modified as the purchases move forward. In addition, from the outset, Cities should have a clear understanding of how their



financial results will be impacted if anticipated situations do not materialize. For this reason, UCM will create an Excel-based financial model that will quickly allow the evaluation of the purchases under various scenarios. This model will be part of the work product that will be provided to Cities upon project completion.

#### 10. Timeline

We estimate the following timeline for this project. Please note, this is only an *estimated* timeline, and the project could take longer if SCE does not provide requested information timely.

Time from contract signing...	Task to be completed...
1 week	1. Notify SCE of Cities' desire to obtain written offer.
1 week to 2 weeks	2. Project kickoff meeting with participating cities.
2 weeks to 6 weeks	3. Obtain written offers from SCE.
5 weeks to 9 weeks	4. Complete initial analysis of SCE offer, and notify SCE of requested changes.
7 weeks to 11 weeks	5. Ongoing discussions with SCE, analysis of data, drafting of report, and creation of financial model.
9 weeks to 13 weeks	6. Submittal of completed report and financial model to participating cities.
10 weeks to 14 weeks	7. Meetings with participating cities to review UCM's findings, and to discuss potential next steps.

#### 11. Schedule of Deliverables

The deliverables for this project are:

- a. A written report, which will include a summary of UCM's findings and recommendations, as well as more detailed explanations and supporting documentation for each recommendation.
- b. An Excel-based financial model that will enable Cities to perform calculations based on various assumptions associated with the street light purchases.

As indicated in the above timeline, we would expect to submit the deliverables to participating cities within 8 to 12 weeks of contract signing.

## Exhibit "B": Project Fees [City of Visalia Only]

### E. Proposed Fee Structure and Schedules

UCM is proposing to provide the services described in this RFP response for a fixed fee. Assuming all three cities sign agreements with UCM within 30 days of RFP award, then the proposed fee for each of the participating cities is: 90 days

City of Visalia                      \$11,900

City of Tulare                      \$8,800

City of Porterville                \$7,100

UCM will be responsible for travel costs and other out-of-pocket costs necessary to complete the project.

UCM will invoice Cities for 30% of the total fee amount upon contract award. UCM will invoice for the remaining 70% after all work product has been delivered to Cities. UCM's invoices are due within 30 days, and past due amounts will accrue interest charges at a rate of 1% per month.

UCM believes that working with all three cities at the same time is an important way to minimize the cost of the feasibility analysis, because there are significant economies of scale available. The data that UCM will obtain from SCE and the CPUC in order to evaluate SCE's offers will be similar for each city. The information that UCM obtains from other California cities and UCM's other fact-finding efforts will enhance UCM's findings for all three cities. Certain sections of each written report will be similar for each city. The computer model that UCM will create will be useful to all three cities.

Because of these economies of scale, the above figures must increase if all three cities do not retain UCM. If only two of the three cities sign agreements with UCM within 30 days of RFP award, then UCM proposes that the above figures be increased by 15%. If only one of the three cities signs an agreement with UCM within 30 days of RFP award, then UCM proposes that the above figures be increased by 35%. 90 days

UCM's Fresno location will allow it to conduct separate meetings with each of the participating cities, in order to ensure that each city's specific concerns are addressed in UCM's findings. UCM envisions kickoff meetings with each participating city shortly after contract execution, as well as meetings with each participating city after UCM has completed its work.

The approximate breakdown of the above fees by type of service is as follows:

Obtain, Evaluate and Negotiate SCE's Initial Offer (See Sections 1-3 of "Proposed Project Approach".)	20%
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Fact-Finding and Analysis of Transaction Process, Utility Bill Savings,

Retrofit Opportunities, Costs of Ownership, and Risks (See Sections 4-8 of "Proposed Project Approach".)	30%
Creation of Excel-based Financial Model (See Section 9 of "Proposed Project Approach".)	15%
Preparation of Written Report with Supporting Documentation	30%
Preparation for and Attendance at Client Meetings	5%

## Exhibit "C": Schedule of Fees for Professional Services

All additional service shall be performed as the following rate:

Michael Kerkorian	\$175 per hour
All other UCM staff	\$ 90 per hour

## EXHIBIT D Indemnification and Insurance Requirements

### City of Visalia Indemnification and Insurance Requirements

- A. As respects acts, errors, or omissions in the performance of services, CONSULTANT agrees to indemnify and hold harmless CITY, its elected and appointed officers, employees, and CITY designated volunteers from and against any and all claims, demands, losses, defense costs, liability or consequential damages arising directly out of CONSULTANT's negligent acts, errors or omissions in the performance of his/her services under the terms of this Agreement, except to the extent those arise out of the negligence of CITY.
- B. CITY agrees to indemnify and hold harmless CONSULTANT, its officers, employees, and designated volunteers from and against any and all losses, defense costs, liability or consequential damages to the extent arising out of CITY'S negligent acts, errors or omissions in the performance of this Agreement.
- C. As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONSULTANT agrees to indemnify, defend (at CITY's option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) performance or failure to perform, under the terms of this Agreement; except to the extent those which arise out of the negligence of CITY.
- D. Without limiting CITY's right to indemnification, it is agreed that CONSULTANT shall obtain and submit within ten (10) calendar days of the Notice of Award for this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
1. Workers' compensation insurance as required by California statutes.
  2. Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent Contractor's Liability (if applicable).
  3. Professional liability insurance coverage, in an amount not less than One Million Dollars (\$1,000,000).
  4. Comprehensive Automobile Liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.
- E. CITY'S Risk Manager is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in the CITY'S best interest.
- F. Each insurance policy required by this Agreement shall contain the following clause:
- "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City Clerk, City of Visalia, 707 W. Acequia, Visalia, CA 93291."

In addition, the commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

"It is agreed that any insurance maintained by the City of Visalia shall apply in excess of and not contribute with insurance provided by this policy."

"The City of Visalia, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Visalia."

- G. Within ten (10) calendar days of the Notice of Award for this Agreement, CONSULTANT shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, CONSULTANT shall provide to CITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by CITY, it shall be CONSULTANT's responsibility to see that CITY receives documentation acceptable to CITY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. CITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.
- H. In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; or
  2. Order CONSULTANT to stop work under this Agreement and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof; or
  3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractor's performance of the work covered under this Agreement.

COUNCIL AGENDA: DECEMBER 4, 2014

SUBJECT: PROGRAM SUPPLEMENT TO THE LOCAL AGENCY-STATE MASTER AGREEMENT – NEWCOMB SHOULDER STABILIZATION PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: The Department of Transportation has submitted Program Supplement Agreement Number N052 and requests that the City execute said agreement. The executed agreement shall become a part of the Agency-State Agreement for Federal-Aid Projects No. 06-5122R.

The attached Program Supplement is for the Newcomb Street Shoulder Stabilization (Roby Avenue to Olive Avenue) Project. The project consists road reconstruction, including widening, new curb, gutter, sidewalk and storm drain.

RECOMMENDATION: That the City Council:

1. Approve the program supplement by passing a resolution authorizing the Mayor to sign the subject program supplement; and
2. Direct the City Clerk to return the signed program supplement to the Department of Transportation.

ATTACHMENTS: Program Supplement Agreement No. N052  
Resolution  
Locator Map

Dir B82 Appropriated/Funded MB CM f

Item No. 5

**PROGRAM SUPPLEMENT NO. N052**  
to  
**ADMINISTERING AGENCY-STATE AGREEMENT**  
**FOR FEDERAL-AID PROJECTS NO 06-5122R**

**Adv Project ID**      **Date:** November 3, 2014  
0613000155      **Location:** 06-TUL-0-PTRV  
**Project Number:** CML-5122(076)  
**E.A. Number:**  
**Locode:** 5122

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 02/20/07 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. \_\_\_\_\_ approved by the Administering Agency on \_\_\_\_\_  
(See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

**PROJECT LOCATION:**

On Newcomb St, from Roby Ave to Olive Ave.

**TYPE OF WORK:** Road Reconstruction, including widening, new curb, gutter, sidewalk, and drainage.      **LENGTH:** 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	M400	\$629,000.00	LOCAL	OTHER
\$988,212.00			\$359,212.00	\$0.00

**CITY OF PORTERVILLE**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Attest \_\_\_\_\_

**STATE OF CALIFORNIA**  
**Department of Transportation**

By \_\_\_\_\_  
Chief, Office of Project Implementation  
Division of Local Assistance

Date \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

**Accounting Officer** \_\_\_\_\_

**Date** 11/4/14      \$629,000.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT



## Page \_\_\_\_ of \_\_\_\_

**RQS 061500000193**

## Local Assistance

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information, call (915) 654-6410 or TDD (916) -3880 or write Records and Forms Management, 1120 N. Street, MS-89, Sacramento, CA 95814.

**SPECIAL COVENANTS OR REMARKS**

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

D. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

E. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal

**SPECIAL COVENANTS OR REMARKS**

obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

F. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

G. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at [www.sam.gov](http://www.sam.gov).

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE AUTHORIZING THE MAYOR TO SIGN  
PROGRAM SUPPLEMENT NO. N052  
TO ADMINISTER THE AGENCY-STATE AGREEMENT  
FOR FEDERAL-AID PROJECTS NO. 06-5122R

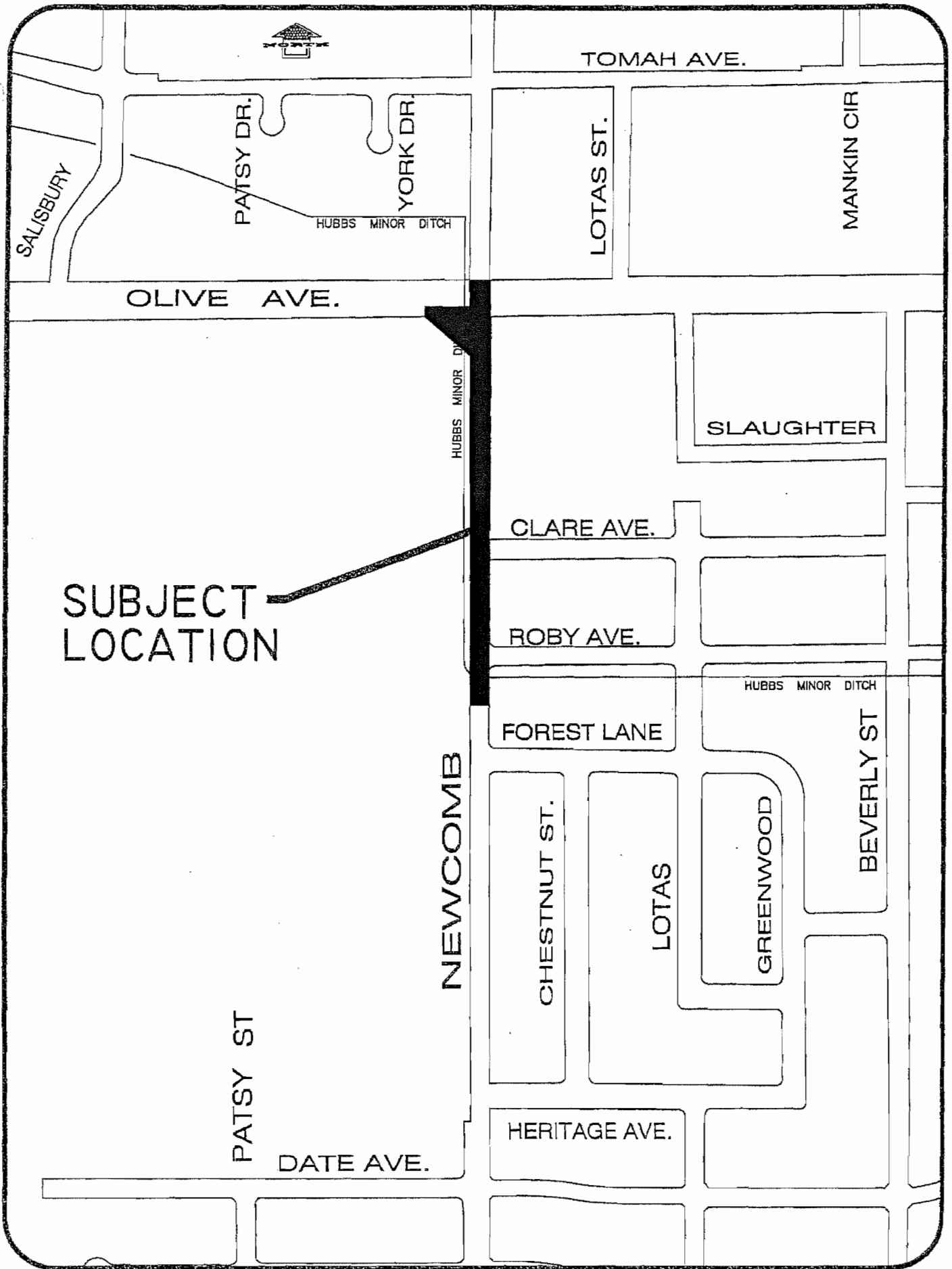
BE IT RESOLVED by the City Council of the City of Porterville that the Mayor is hereby authorized to execute the document known as Program Supplement No. N052 to the Local Agency-State Master Agreement No. 06-5122R, for the Newcomb Street Shoulder Stabilization (Roby Avenue to Olive Avenue) Project

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of December, 2014.

\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

\_\_\_\_\_  
By Patrice Hildreth, Chief Deputy City Clerk



COUNCIL AGENDA: DECEMBER 2, 2014

SUBJECT: COOPERATIVE WORK AGREEMENT EXTENSION – JAYE STREET BRIDGE REHABILITATION

SOURCE: Public Works Department - Engineering Division

COMMENT: The Department of Transportation requires that a cooperative work agreement extension be signed and submitted for any project receiving Federal Funding that will not be fully reimbursed or closed out by December 31, 2014. The Jaye Street Bridge Rehabilitation Project has appropriated funding totaling \$39,308 for the design phase of the project that will lapse should the City not take the necessary action. Filing for the extension will help ensure that the City is able to compensate the design consultant per the executed contract agreement.

The attached lapsing project detail spreadsheet is for the Jaye Street Bridge Rehabilitation Project.

RECOMMENDATION: That the City Council:

1. Approve the cooperative work agreement extension by passing a resolution authorizing the Mayor to sign the subject extension request; and
2. Direct Public Works staff to return the signed extension request to the Department of Transportation.

ATTACHMENTS: Cooperative Work Agreement Extension Resolution  
District 6 Lapsing Projects Detail Spreadsheet

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Item No. 6

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE AUTHORIZING THE MAYOR TO SIGN  
COOPERATIVE WORK AGREEMENT EXTENSION REQUEST  
FOR THE JAYE STREET BRIDGE REHABILITATION PROJECT

**BE IT RESOLVED** by the City Council of the City of Porterville that the Mayor is hereby authorized to execute the document known as the Cooperative Work Agreement Extension Request for the Jaye Street Bridge Rehabilitation project.

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of December, 2014.

\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

\_\_\_\_\_  
By Patrice Hildreth, Chief Deputy City Clerk

**2009-10 District 6 Projects Lapsing on June 30, 2015**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Project	Agency	Work Performed and Location	Federal Project #	Project Code	Project Type	Fund Description	Encumbrance Balance	Reimbursed	Unexpended Balance	TUF Lapse Date	Requesting CWA (Y/N/NA)?	Expiry Date	Reason for Lapse	Obstacles to Future Completion	Completion of CWA to get approved	Date Funding will be included if CWA executed	Contact Name, Number and Email
06	Porterville	Bridge rehabilitation on Jave St (RD 244) bridge over the Tule River, Br. No. 46C-0099.	6HLS-5122(036)	0600000563	SE1	Federal Lump Sum - 0890	\$ 118,000	\$ 88,692	\$ 99,308	N/A	Yes		2 Right of way acquisition in progress, final design cannot be completed until all details of aquisition extents are resolved.	If right of way negotiations stall, will be forced to go through eminent domain process, which will extend the acqubition time.	Will not be able to fully compensate design consultant per executed contract agreement.	9/30/2015	Baldomero Rodriguez, (559) 782-7462, brodriguez@ci.porterville.ca.us

Signature of Approving Agency's Board or Council: \_\_\_\_\_

Print Name: Milt Slowe, Mayor

Date: \_\_\_\_\_



COUNCIL AGENDA: DECEMBER 2, 2014

SUBJECT: REIMBURSEMENT FOR THE CONSTRUCTION OF MASTER PLAN IMPROVEMENTS – RIVERVIEW ESTATES NO. 5 SUBDIVISION (Gary Smee)

SOURCE: Public Works Department - Engineering Division

COMMENT: The developer of the subject subdivision, Smee Builders, Inc., is requesting reimbursement for the cost of constructing Water Master Plan improvements as a part of their phased development.


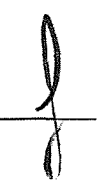
The subject phase of this development is generally located south of Orange Avenue and east of Mathew Street. The improvements constructed consist of 1,061 lineal feet of 12-inch water main pipeline, a pressure regulating valve and related appurtenances. The underground improvements constructed have enhanced the water delivery system in accordance with the City's Water Master Plan.

Section 25-32.3c of the Municipal Code of the City of Porterville states that revenues raised by payment of acreage fees (developer fees) be placed in a separate and special account and such revenues shall be used to reimburse developers who have been required to install Master Plan facilities.

The costs associated with the water main improvements constructed along the extension of Date Avenue as part of Riverview Estates No. 5 Subdivision were prepared by the Civil Engineer in charge and found to be acceptable to staff. A brief summary of reimbursement amounts per category is as follows:

WATER MAIN MASTER PLAN IMPROVEMENTS

PRV Station	\$35,057.00
1,061 L.F. 12-inch Water Main Pipeline	32,891.00
Trench Resurfacing	2,812.50
Appurtenances	10,000.00
Plan Check & Inspection	2,069.22
Administration, Engineering & Construction Staking	<u>6,153.70</u>
Total Master Plan Reimbursement:	<u>\$88,983.42</u>

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Item No. 7

These improvements were constructed in conjunction with said subdivision and were necessary for the orderly development of the area. Staff has inspected the improvements and found them to be acceptable.

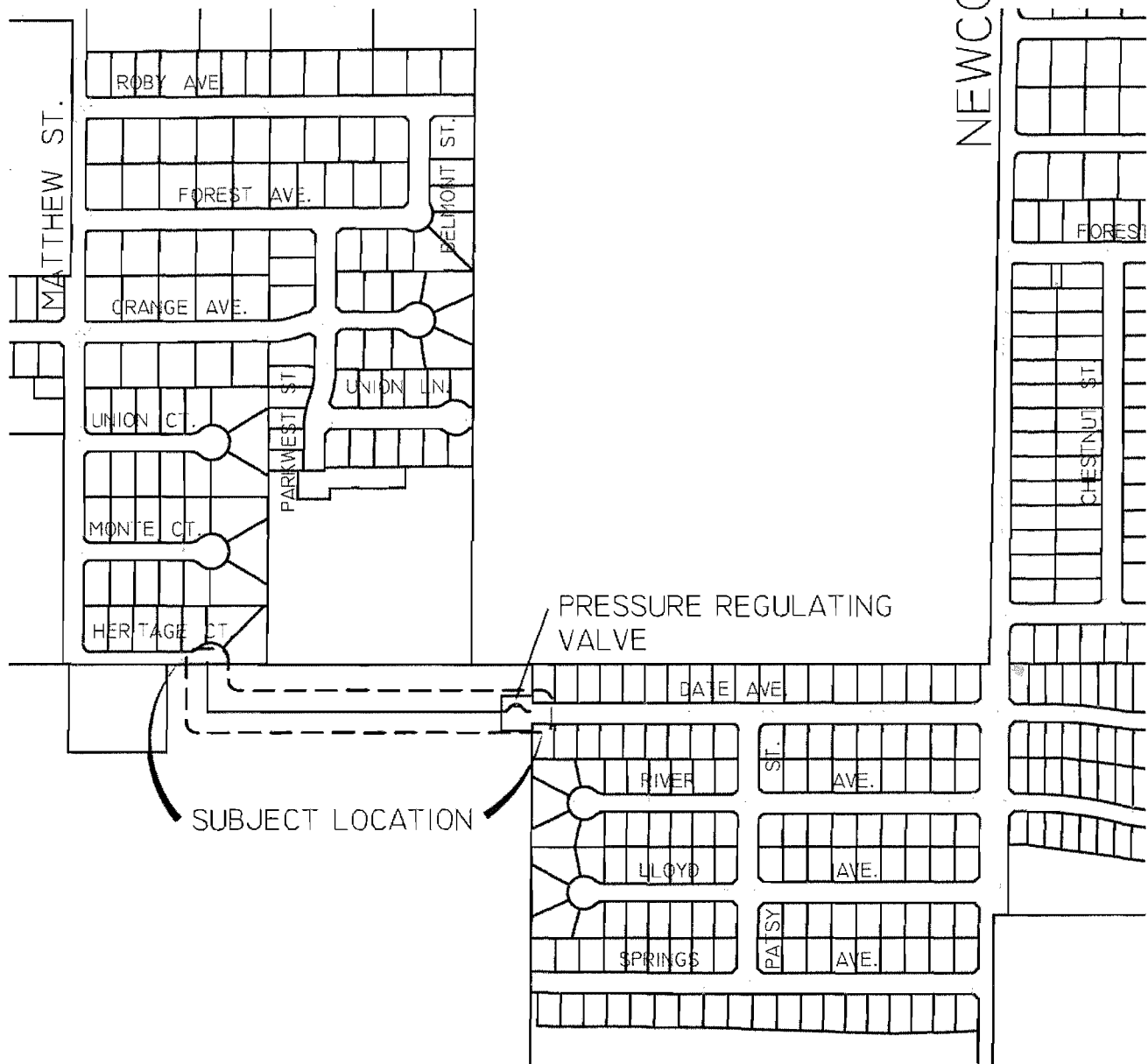
RECOMMENDATION: That the City Council:

1. Accept the Master Plan public improvements of Riverview Estates No. 5 Subdivision for maintenance; and
2. Approve reimbursement to Mr. Gary Smee per Section 25-32.3c of the City of Porterville Municipal Code. The total reimbursement amount to be disbursed shall not exceed \$88,983.42.

ATTACHMENT: Locator Map

# MASTER PLAN REIMBURSEMENT

1,061 L.F. OF 12" WATER MAIN AND  
PRESSURE REGULATING VALVE STATION



COUNCIL AGENDA: DECEMBER 02, 2014

SUBJECT: INTENT TO SET A PUBLIC HEARING FOR CONCRETE IMPROVEMENTS CONSTRUCTION BY THE CITY – W. NORTH GRAND AVENUE RECONSTRUCTION PROJECT (PROSPECT STREET TO NEWCOMB STREET)

SOURCE: Public Works Department - Engineering Division

COMMENT: The W. North Grand Avenue Reconstruction Project (Prospect Street to Newcomb Street) includes the construction of curbs, gutters, sidewalks and/or drive approaches in front of undeveloped properties and/or developed properties that lack these public improvements. Section 20-40.1 of the Municipal Code stipulates that these improvements, once constructed, shall be reimbursed to the City of Porterville upon the issuance of a new building permit. Section 20-40.2 of the Municipal Code allows the City to recover the cost of the concrete improvements when the owner pulls a building permit(s) from the City and said permit(s) has a valuation of \$18,421 or more within a two (2) year period.

Section 20-40.8 of the Municipal Code requires that each property owner affected by the project be notified of this Public Hearing. The notification clearly describes the City's intent to seek reimbursement for the concrete improvements constructed by the City. This section also requires that City Council hold at least one additional Public Hearing prior to the establishment of a fee. Once the fee is established, the City shall record a general notice of "reimbursement fee" with the office of the Tulare County Recorder. The recorded document will officially notify the current owner and potential buyers that the property is subject to a concrete reimbursement fee.

RECOMMENDATION: That the City Council:

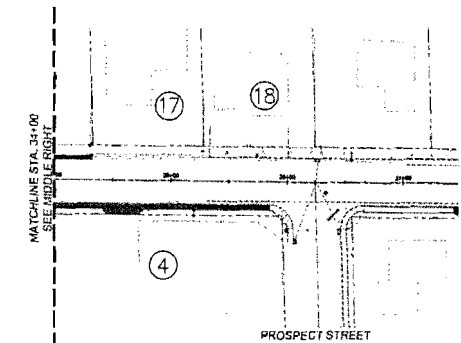
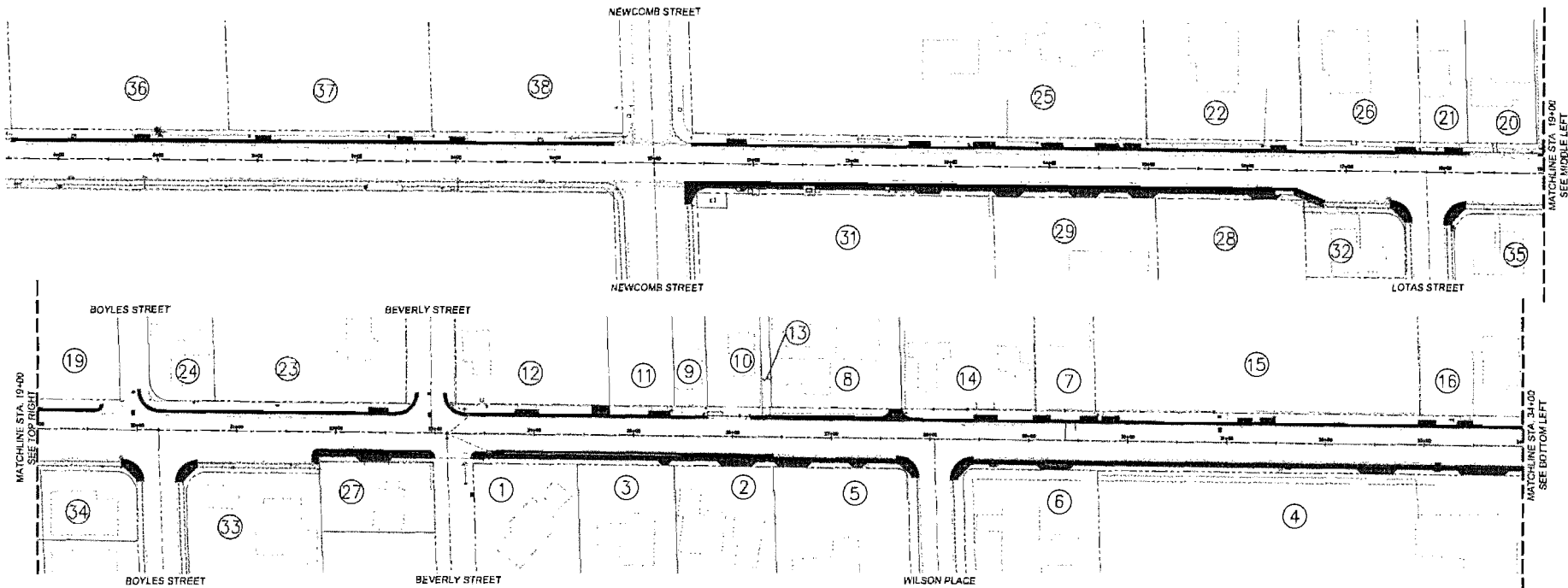
1. Set a Public Hearing for December 16, 2014, to discuss the proposed construction of concrete improvements for the subject project; and
2. Authorize staff to publish the public notice and notify all affected property owners of the Public Hearing.

ATTACHMENT: W. North Grand Avenue Reimbursement Map

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Item No. 8



Property Number	APN	SITE ADDRESS	OWNER	OWNER MAILING ADDRESS
1243 230 004	1385 W NORTH GRAND AVE	SHEDDEN ELDEEN	100 S WESTWOOD BL	PORTERVILLE CA 93257
2243 230 007	1359 W NORTH GRAND AVE	KITTELLE LISHUA D & ELLIEN	1959 N GRAND AVE	PORTERVILLE CA 93257
3243 230 020	1375 W NORTH GRAND AVE	CAMPBELL ELLEN H	300 S WESTWOOD BL	PORTERVILLE CA 93257
4243 230 033	1343 W NORTH GRAND AVE	TULARE COUNTY OF	TULARE COUNTY COURTHOUSE	STANISLA CA 95301
5243 230 035	1331 W NORTH GRAND AVE	ALALA VASANT TAPIA	1331 W NORTH GRAND AVE	PORTERVILLE CA 93257
6243 230 038	1311 W NORTH GRAND AVE	BENEDICT RAMON & MARGARET L	1311 W NORTH GRAND AVE	PORTERVILLE CA 93257
7243 240 001	1301 W NORTH GRAND AVE	WILSON ERIC	2083 W ORANGE AVE	PORTERVILLE CA 93257
8243 240 002	1344 W NORTH GRAND AVE	AMARU AILE & NAJAH MOSLEM	1340 W NORTH GRAND AVE	PORTERVILLE CA 93257
9243 240 003	1362 W NORTH GRAND AVE	GRAY BILL & MARGARET	421 W OLIVE AVE	PORTERVILLE CA 93257
10243 240 004	1354 W NORTH GRAND AVE	GUERRERO J LUIS & FRANCES	332 S F ST	PORTERVILLE CA 93257
11243 240 007	1360 W NORTH GRAND AVE	RAMIREZ GUADALUPE M	1350 W NORTH GRAND AVE	PORTERVILLE CA 93257
12243 240 008	1394 W NORTH GRAND AVE	DUNLAP GUY W & VERNAL D	1394 W NORTH GRAND AVE	PORTERVILLE CA 93257
13243 240 012	1403 W NORTH GRAND AVE	TRIVINO JUANITA	1840 W NORTH GRAND AVE	PORTERVILLE CA 93257
14243 240 014	1312 W NORTH GRAND AVE	CARRANZA ALBERTO	20860 RD 254	STATHMORE CA 93267
15243 240 015	1253 W NORTH GRAND AVE	SNH CENTER OF PORTERVILLE	1475 N HIGHLAND DR	PORTERVILLE CA 93257
16243 240 020	1239 W NORTH GRAND AVE	BUTTAN BACHITTAR SINGH	1503 N NEWCLARK ST	PORTERVILLE CA 93257
17243 240 030	1220 W NORTH GRAND AVE	WAGNER R & RUDY	1340 W NORTH GRAND AVE	PORTERVILLE CA 93257
18243 240 037	1879 W PROSPECT ST	AGUIER WILLIAM KEITH & SHARON A	1206 W NORTH GRAND	PORTERVILLE CA 93257
19243 270 014	1454 W NORTH GRAND AVE	CARRANZA ALBERTO	20860 RD 254	STATHMORE CA 93267
20243 270 015	1470 W NORTH GRAND AVE	GARCIA ELEAZAR S ELOISA (TRUST)	1470 W GRAND AVE	PORTERVILLE CA 93257
21243 270 016	1478 W NORTH GRAND AVE	BANOS NANCY	1478 W NORTH GRAND AVE	PORTERVILLE CA 93257
22243 270 017	1512 W NORTH GRAND AVE	SANCHEZ JAMES N & CATHY	1512 W NORTH GRAND AVE	PORTERVILLE CA 93257
23243 270 022	1828 N BEVERLY DR	PERAZA ANTONIO & SARI IVAN	1828 N BEVERLY DR	PORTERVILLE CA 93257
24243 270 024	1438 W NORTH GRAND AVE	MENDOZA JOSE A & MARIA R	1438 W NORTH GRAND	PORTERVILLE CA 93257
25243 270 027	1552 W NORTH GRAND AVE	FRANKLIN DAVID W & MARY J (TR)	1544 W NORTH GRAND	PORTERVILLE CA 93257
26243 270 028	1490 W NORTH GRAND AVE	MANCILLA ROSA EVELIA	1490 W NORTH GRAND AVE	PORTERVILLE CA 93257
27243 280 006	1787 N BEVELLY ST	DOMINGO KEITH R MARITISS	164 N COTTAGE ST	PORTERVILLE CA 93257
28243 280 011	1511 W NORTH GRAND AVE	LOFTLAND CHARLES R SR & DENNA M	1511 W NORTH GRAND	PORTERVILLE CA 93257
29243 280 012	1535 W NORTH GRAND AVE	SALAZAR MIGUEL	1535 W NORTH GRAND	PORTERVILLE CA 93257
30243 280 030	1768 N NEWCOMB ST	DR CALVARY BAPTIST CHURCH	1768 N NEWCOMB	PORTERVILLE CA 93257
31243 280 031	1791 N LOTAS ST	RAYA LOURDES	1791 N LOTAS	PORTERVILLE CA 93257
32243 280 052	1423 W NORTH GRAND AVE	HAUPTMANN RANDY & MICHELLE	1423 W NORTH GRAND	PORTERVILLE CA 93257
33243 280 063	1791 N BOYLES ST	SALAZAR ARMANDO	1843 W GRAYS AVE	PORTERVILLE CA 93257
34243 280 064	1790 N LOTAS ST	ROJAS RUBEN	1790 W LOTAS ST	PORTERVILLE CA 93257
35243 310 025	1658 W NORTH GRAND AVE	QUARRY GREGORY A & KAPPI C	1658 W NORTH GRAND AVE	PORTERVILLE CA 93257
36243 310 027	1648 W NORTH GRAND AVE	TERRELL GABRIEL M & ROBERTS	1642 W NORTH GRAND AVE	PORTERVILLE CA 93257
37243 310 028	1628 W NORTH GRAND AVE	SMITH ALTA	1205 W IVINSFIELD AVE	PORTERVILLE CA 93257

# CITY OF PORTERVILLE ENGINEERING DIVISION

ONE N MAIN ST PORTERVILLE, CALIFORNIA 93257 (559) 792-1162

DESIGN BY DC  
DRAWN BY CAL  
CHECKED BY DC  
DATE DECEMBER 2, 2014

CITY ENGINEER  
PUBLIC WORKS DIRECTOR  
DATE  
R.C.F.

REVISION NO.  
DATE



W. NORTH GRAND AVENUE RECONSTRUCTION,  
CONCRETE REIMBURSEMENT MAP

SHEET  
1  
OF  
1

COUNCIL AGENDA: DECEMBER 2, 2014

SUBJECT: REPRESENTATION BY ELECTED OFFICIAL FOR PROVIDERS OF PUBLIC TRANSIT

SOURCE: Public Works Department - Engineering Division

COMMENT: The President's "Moving Ahead for Progress in the 21<sup>st</sup> Century" (MAP-21) requires that each Transportation Management Area (TMA) have an elected representative from each agency that offers transit service.

Amendment 3, attached herein for Council's review and approval, modifies the existing Joint Powers Agreement (JPA) to include the appropriate language supporting the position of a Public Transit Representative. In Tulare County, the Tulare County Association of Governments (TCAG) has been designated as the TMA. The Cities of Porterville, Tulare, Visalia and the County are the only agencies in the county that offer transit service.

At the November 19, 2014, the Council of Cities appointed Councilman Cameron Hamilton to serve as the Public Transit Representative. The Public Transit Representative will represent the City of Porterville for a term of three years.

The composition of the governing board will consist of:

- a) The 5 members of the Board of Supervisors.
- b) One Councilmember from each City, which is a party to this agreement appointed by the City Council of such respective Cities.
- c) Three residents, over the age of 18, of the County to be appointed by a majority vote of the other members of the governing board.
- d) One representative, to be appointed by the Tulare County Council of Cities to serve as a representative from a provider of public transit in accordance with 23 U.S.C. as amended by MAP-21 for a three year term.

RECOMMENDATION: That the City Council:

- 1. Approve Amendment 3 to the Tulare County Association of Governments Joint Powers Agreement, which amends Paragraph 6 of the Agreement adding

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Item No. 9

Section d) to read as follows: "One representative, to be appointed by the Tulare Council of Cities to serve as a representative from a provider of public transit in accordance with 23 U.S.C. as amended by MAP-21 for a three year term".

ATTACHMENT: Amendment 3 Joint Powers Agreement

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210 N. Church Street, Suite B  
Visalia, California 93291  
Phone (559)623-0450  
Fax (559)733-6720  
[www.tularecog.org](http://www.tularecog.org)

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## MEMORANDUM

**To:** TCAG Member Agencies  
**From:** Ted Smalley, Executive Director  
**Date:** October 31, 2014  
**Subject:** TCAG Joint Powers Agreement (JPA) Amendment Three

---

Attached for your consideration is Amendment Three to the Tulare County Association of Governments' (TCAG) Joint Powers Agreement (JPA). The TCAG governing board has taken action to circulate this amendment to your respective agency for approval.

The amendment would allow a change to the TCAG Board composition to meet the requirement for a transit representative to serve on the TCAG Board. On September 15, 2014, the TCAG Board took action to support the Federal Transit Administration and the Federal Highway Administration issued joint guidance for implementing the policy for Moving Ahead for Progress in the 21<sup>st</sup> Century (Map-21). This bill, which was signed into law, is a two-year transportation bill that outlines expenditures for planning and infrastructure and policies for implementation. One of the new provisions of MAP-21 requires representation by providers of public transportation in each Metropolitan Planning Organization (MPO) that serves as a Transportation Management Area (TMA). As of 2012 TCAG is now classified as a TMA.

Each city and the county must pass a resolution approving the JPA Amendment Three with no changes in order to authorize its execution. It is respectfully requested that the amendment is considered at your agency's earliest convenience. The goal set for action by all agencies is December 31, 2014. TCAG staff will be in touch with your agency regarding the item's approval on your agenda. When the JPA has been considered by all and is approved, staff will circulate copies for signature.

Please contact me with any questions, and thank you for your collaborative effort and support for transportation in Tulare County.



BEFORE THE  
TULARE COUNTY ASSOCIATION OF GOVERNMENTS  
COUNTY OF TULARE, STATE OF CALIFORNIA

In the matter of:

APPROVING TCAG JOINT POWERS	)	Resolution No. 2014-163
AGREEMENT (JPA) AMENDMENT THREE	)	
FOR CIRCULATION TO MEMBER	)	
AGENCIES FOR THE PUROSE OF	)	
COMPLYING WITH THE MAP-21	)	
REQUIREMENT FOR REPRESENTATION	)	
BY PROVIDERS OF PUBLIC TRANSIT IN	)	
EACH METROPOLITAN ORGANIZATION	)	
(MPO) THAT SERVES AS A	)	
TRANSPORTATION MANAGEMENT AREA	)	
(TMA)	)	

WHEREAS, On July 6, 2012 President Obama signed Moving Ahead in the 21<sup>st</sup> Century (MAP-21), which is a two-year transportation bill that outlines expenditures for planning and infrastructure and policies for implementation ; and

WHEREAS, Map-21 includes a Requirement for Representation by Providers of Public Transit in each Metropolitan Planning Organization Board that serves a Transportation Management Area (TMA); and

WHEREAS, On June 2, 2014, the Federal Transit Administration and the Federal Highway Administration issued joint guidance for implementing the policy; and

WHEREAS, Tulare County Association of Governments (TCAG) is now classified as a Transportation Management Area (TMA); and

WHEREAS, the requirement involves changes to the Tulare County Association of Governments' (TCAG) board composition, and amendment to the TCAG Joint Powers Agreement (JPA) is necessary; and

WHEREAS, Tulare County Council of Cities recommended that the Council of Cities provide the nomination of an elected official from an agency providing transit services to fulfill the new position.

NOW, THEREFORE, BE IT RESOLVED that the Tulare County Association of Governments approves Joint Powers Agreement Amendment Number 3 for circulation to the member agencies for consideration in order to fulfill the Map-21 Requirement for Representation by Providers of Public Transit in each Metropolitan Planning Organization Board that serves a Transportation Management Area (TMA) as follows:

The proposed change to Section 6 (page 4) of the current JPA is as follows (change in bold and underlined):

- 6) The Association shall be administered by a governing board composed of the following members:
- a) The five (5) members of the Board of Supervisors
  - b) One (1) Councilperson from each City which is a party to this Agreement, appointed by the City Councils of such respective Cities.
  - c) Three (3) residents, over the age of 18, of the County to be appointed by a majority vote of the other members of the governing board of the Association listed in subparagraphs (a) and (b) above at a meeting of the governing board.
  - d) **One (1) representative, to be appointed by the Tulare County Council of Cities to serve as a representative from a provider of public transit in accordance with 23 U.S.C. as amended by MAP-21 for a three year term.**

The foregoing Resolution was adopted upon motion of Member Vejvoda, seconded by Member Stammer, at a regular meeting held on the 15th day of September, 2014, by the following vote:


AYES: Boyer, Vander Poel, Cox, Worthley, Ennis, Smith, Allwardt, Gomez, Gurrola, Vejvoda, Link, Holscher, Stammer, Townsend

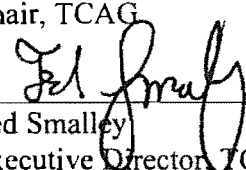
NOES:

ABSTAIN:

ABSENT: Kimball, Mendoza

TULARE COUNTY ASSOCIATION OF GOVERNMENTS

  
\_\_\_\_\_  
Phil Cox  
Chair, TCAG

  
\_\_\_\_\_  
Ted Smalley  
Executive Director, TCAG

1 AMENDMENT THREE TO THE  
2 TULARE COUNTY ASSOCIATION OF GOVERNMENTS  
3 JOINT POWERS AGREEMENT  
4

5 THIS AGREEMENT, dated for convenience as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by  
6 and between the COUNTY OF TULARE, hereinafter referred to as the "County," and the CITIES  
7 OF DINUBA, EXETER, FARMERSVILLE, LINDSAY, PORTERVILLE, TULARE, VISALIA,  
8 and WOODLAKE, or so many of said Cities as have executed this Agreement, hereinafter  
9 collectively referred to as the "Cities";  
10

11 WITNESSETH:

12 WHEREAS, THE Tulare County Association of Governments, hereinafter referred to as the  
13 "Association," will be a separate entity from the County; and

14 WHEREAS, as of the 4<sup>th</sup> day of May, 1971, the County and the Cities executed an  
15 Agreement (Tulare County Agreement No. 6460) which established the Association, and set forth  
16 the powers and duties of the Association; and

17 WHEREAS, the Joint Powers Agreement has been amended from time to time; and

18 WHEREAS, the Association incorporate subsequent amendments to the original Agreement  
19 entered into on the 4<sup>th</sup> day of May, 1971 and make changes to the Agreement to reflect current  
20 practices and terminology on the 15<sup>th</sup> day of June, 2010 (Tulare County Agreement No. 24583); and

21  
22 WHEREAS, the Association amended said Agreement to comply with Moving Ahead for  
23 Progress in the 21<sup>st</sup> Century Act (MAP-21) Requirement for Representation by Providers of Public  
24 Transit in each Metropolitan Planning Organization Board that serves a Transportation Management  
25 Area (TMA)  
26  
27  
28

1 NOW, THEREFORE, BE IT AGREED as follows:

2 (1) Paragraph (6) of said Agreement is hereby amended by adding thereto subparagraph  
3 to read as follows:

4 6) The Association shall be administered by a governing board composed of the  
5 following members:

- 6 a) The five (5) members of the Board of Supervisors  
7 b) One (1) Councilperson from each City which is a party to this Agreement,  
8 appointed by the City Councils of such respective Cities.  
9 c) Three (3) residents, over the age of 18, of the County to be appointed by a  
10 majority vote of the other members of the governing board of the  
11 Association listed in subparagraphs (a) and (b) above at a meeting of the  
12 governing board.  
13 d) **One (1) representative, to be appointed by the Tulare County Council**  
14 **of Cities to serve as a representative from a provider of public transit in**  
15 **accordance with 23 U.S.C. as amended by MAP-21 for a three year**  
16 **term.**

17 (2) Except as expressly provided herein, all other terms and conditions of the Joint  
18 Powers Agreement and the Amendments thereto shall remain in full force and effect.

19 (3) The County and Cities hereby agree that this Amendment Agreement may be  
20 executed in counterparts, each of which shall be deemed an original but all of which shall  
21 constitute the same Agreement. Notwithstanding the forgoing, the Parties hereby agree that  
22 duplicate originals shall be executed so each party may retain a fully executed counterpart of  
23 this Amendment Agreement.

24 ///

1           IN WITNESS WHEREOF, the parties hereto have caused this Amendment Agreement to be  
2       executed as of the day and year first above written pursuant to resolutions of the governing  
3       bodies of the respective parties, duly adopted, authorizing such execution.

4  
5   ATTEST: Jean M. Rousseau  
6   County Administrative Officer  
7   Clerk, Board of Supervisors

COUNTY OF TULARE

By \_\_\_\_\_  
Chairman, Board of Supervisors

8  
9   By \_\_\_\_\_  
10   Deputy

11  
12   Approved as to Form  
13   County Counsel

14  
15   By \_\_\_\_\_

16  
17   ATTEST:

CITY OF DINUBA

18  
19   By \_\_\_\_\_  
20   City Clerk

By \_\_\_\_\_  
Mayor

21  
22   ATTEST:

CITY OF EXETER

23  
24   By \_\_\_\_\_  
25   City Clerk

By \_\_\_\_\_  
Mayor

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ATTEST:

CITY OF FARMERSVILLE

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

ATTEST:

CITY OF LINDSAY

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

ATTEST:

CITY OF PORTERVILLE

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

ATTEST:

CITY OF TULARE

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

ATTEST:

CITY OF VISALIA

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

ATTEST:

CITY OF WOODLAKE

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

CITY COUNCIL AGENDA: DECEMBER 2, 2014

CONSENT CALENDAR

SUBJECT: CONSIDERATION OF A REQUEST FOR AN EXTENSION TO CUP 2012-010; WALGREENS; APNS 246-111-007, -008, AND -035.

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: On December 4, 2012, the City Council of the City of Porterville adopted Resolution 116-2012 for Conditional Use Permit (CUP) 2012-010-C. The application consisted of a request by Village Investment Partners, L.P. to develop a 14,550± square foot Walgreens Pharmacy at the northeast corner of Henderson Avenue and Prospect Street. According to the December 4, 2012, staff report the CUP was required because of the applicant's request for a Type 20 off-sale alcohol license for the pharmacy.

Resolution 116-2012 approving CUP 2012-010-C contained a condition limiting the term of the approval (Condition No. 7), which is typical for this type of discretionary action. It is therefore the only approval needing an extension at this time. The initial term of the CUP was set to expire on December 4, 2013.



On November 5, 2013, the City Council adopted Resolution 69-2013 which approved a one-year extension of CUP 2012-010-C. The term was through December 4, 2014. The applicant recently contacted staff to request an extension to the CUP, as the applicant does not yet have full control over the properties and is unable to move forward with the project until that time. Since the approval of the CUP, no additional ABC permits (licenses to serve alcohol) have been issued in this census tract.

The current extension request is within the authority granted to the City Council in Section 601.08 of the Development Ordinance.

RECOMMENDATION: That the City Council adopt the draft resolution approving the requested Extension to the approval of CUP 2012-010 for a Type 20 off-sale alcohol license within Census Tract 35.02 for the proposed Walgreens Pharmacy with a term extension for a period of one (1) year beyond the original and extended approval date through December 4, 2015.

ATTACHMENTS:

1. Resolution 116-2012
2. Resolution 69-2013
3. Draft Resolution

DD  Appropriated/Funded N/A CM 

Item No. 10

RESOLUTION NO. 116-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN  
SUPPORT OF APPROVAL OF CONDITIONAL USE PERMIT PRC-2012-010-C  
TO ALLOW THE SALE OF BEER AND WINE UNDER AN OFF-SALE TYPE 20  
ALCOHOL LICENSE TO BE LOCATED AT THE NORTHEAST CORNER OF  
HENDERSON AVENUE AND PROSPECT STREET

WHEREAS: The applicant is requesting approval of Conditional Use Permit PRC 2012-010-C to allow the sale of beer and wine under a Type 20 off-sale alcohol license at the northeast corner of Henderson Avenue and Prospect Street in the CR (Retail Centers) Zone; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 4, 2012, conducted a public hearing to consider Conditional Use Permit PRC-2012-010-C; and

WHEREAS: The City Council received testimony from all interested parties relative to said Conditional Use Permit; and

WHEREAS: Section 301.03 of the Porterville Development Ordinance requires Conditional Use Permit approval for any use involving the sale of alcoholic beverages under an on-sale or off-sale license; and

WHEREAS: The City Council made the following findings:

1. Approval of the Conditional Use Permit will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted, as follows:
  - LU-G-1 Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.
  - LU-G-21 Attract and retain specialty retail and restaurant businesses that will enhance Porterville's unique character.
  - ED-G-7 Create an image for Porterville that will attract and retain economic activity.
2. The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conforms in all significant respects with the General Plan and with any other applicable plan adopted by the City Council.

The General Plan and Zoning Map designates the proposed project site as Retail Centers (CR). The proposed project promotes and implements the specific purposes of the Retail Centers Zone, including the following purposes as set forth in Section 203 of the Development Ordinance and Retail Centers Guidelines:

- To maintain areas for regional shopping centers located at major circulation intersections.
- Ensure the provision of services and facilities needed to accommodate

**ATTACHMENT  
ITEM NO. 1**



planned population densities.

WHEREAS: That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity. Conditions of approval are included to ensure applicable development standards are met; and

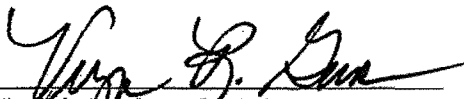
WHEREAS: The subject site is located in Census Tract 35.02 which allows, according to the Alcoholic Beverage Control Board, ten (10) off-sale licenses. At present, eight (8) off-sale licenses exist in this census tract.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit PRC-2012-010-C subject to the following conditions:

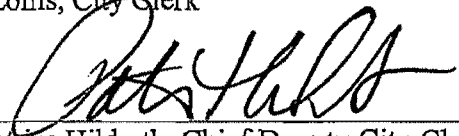
1. No advertising of alcoholic beverages shall be placed on the exterior of the building nor seen from the public right of way (i.e. no window advertising or digital signage).
2. That the applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the Conditional Use Permit as provided in Section 601.12 of the Porterville Development Ordinance.
3. Compliance with all applicable development and access laws (both State and Federal) is required.
4. The developer/applicant shall keep and maintain the beer and wine in the area as identified on Exhibit A. Any such expansion or relocation shall be approved by the City Council.
5. That the on-site consumption of alcoholic beverages shall be prohibited.
6. The Conditional Use Permit, approving off-site alcohol sales, will be subject to modification or revocation if the off-sale license is sanctioned by the State of California.
7. The Conditional Use Permit shall become null and void if not undertaken and actively and continuously pursued within one (1) year. The Conditional Use Permit will expire when the use ceases to operate for one year or more.
8. The use shall be conducted in compliance with all applicable local, state and federal regulations.

9. Truck deliveries of store merchandise and products shall be restricted to the hours of 7am – 10pm.
10. The business operation shall comply with Noise Ordinance No. 1757 of the Municipal Code.
11. The developer/applicant shall construct per the attached details (Exhibits B and C), and driveways shall be setback as far as practical from the Henderson Avenue/Prospect Street intersection. The Prospect Street driveway shall be thirty (30) feet wide.

PASSED, APPROVED AND ADOPTED this 4<sup>th</sup> day of December, 2012.

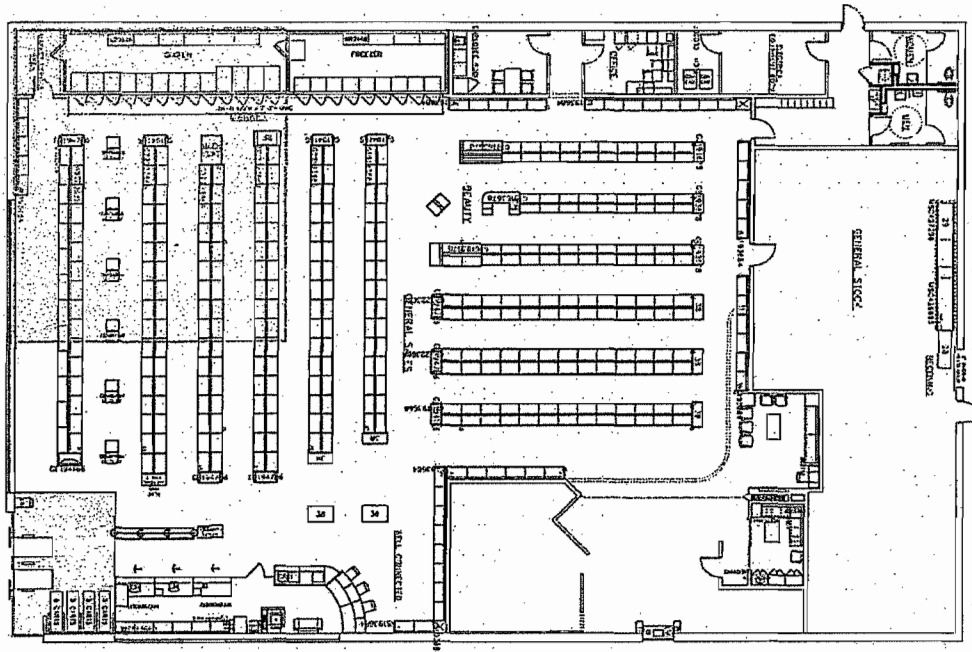
By:   
Virginia R. Gurrola, Mayor

ATTEST:  
John D. Lollis, City Clerk

By:   
Patrice Hildreth, Chief Deputy City Clerk

1 GENERAL FLOOR PLAN

MAXIMUM 40' x 50' AREA FOR BEER  
AND WINE SALES



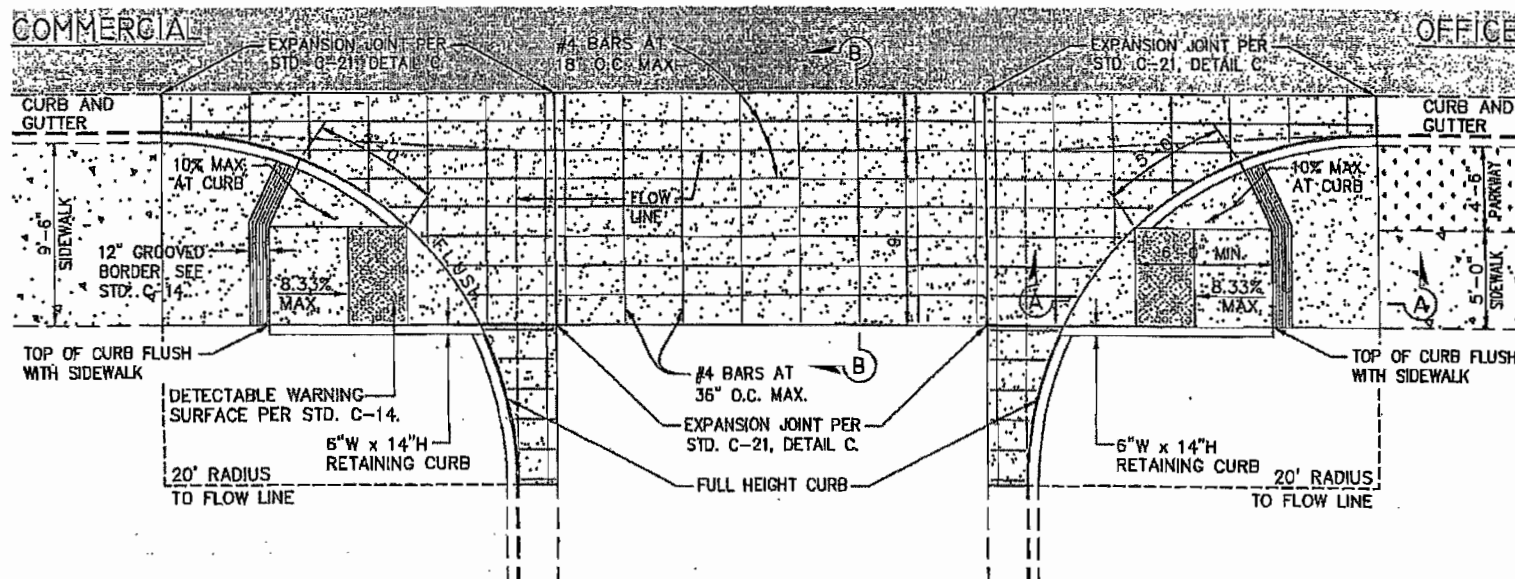
D-1	FLOOR PLAN		<b>Stantec</b> Stantec Architects Inc. 1801 N. Second Ave., Suite 200 Redlands, CA 92373 Tel: 714.762.1660 Fax: 714.762.1662 www.stantec.com 26 YEARS SERVING	I HEREBY CERTIFY THAT THIS PLAN AND SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT OR ENGINEER UNDER THE LAWS OF THE STATE OF CALIFORNIA AS INDICATED BY MY SIGNATURE AND SEAL.	 FACILITIES PLANNING DESIGN AND ENGINEERING 100 THE WEST PLAZA OAKVILLE, OH 44130
	CADD FILE:	STORE NUMBER #10390			
	DRAWN BY:	WALGREENS			
	CHECKED BY:	REC PROSPECT & HENDERSON			
	DATE: 6/1/02	PORTERVILLE, CA			
REVISIONS					

EXHIBIT A

REV. NO.	REV. DATE.	REV. BY
----------	------------	---------

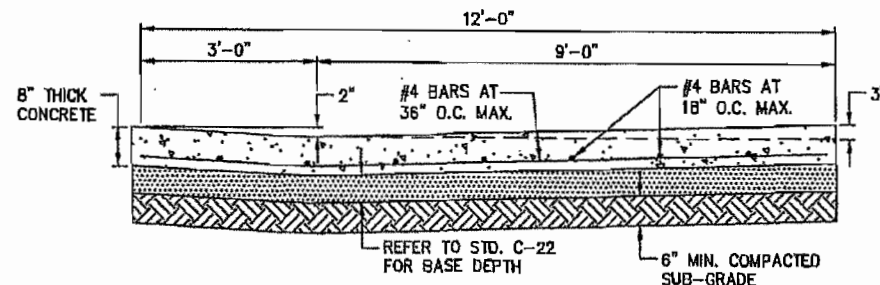
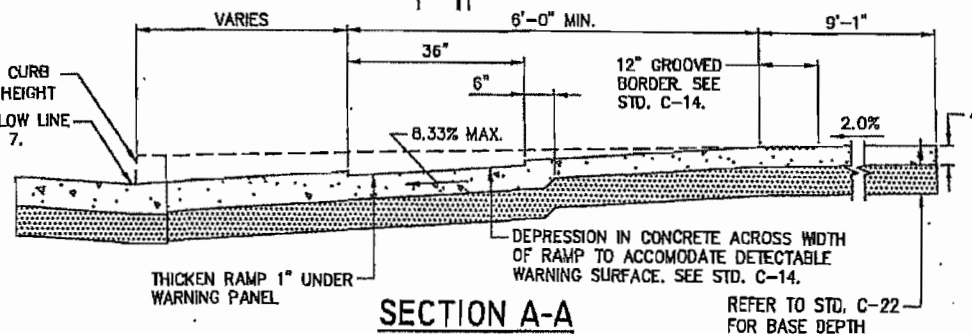
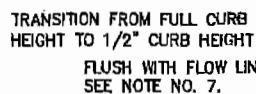
DATE: 03/10/2010 RCE 530

EXHIBIT B



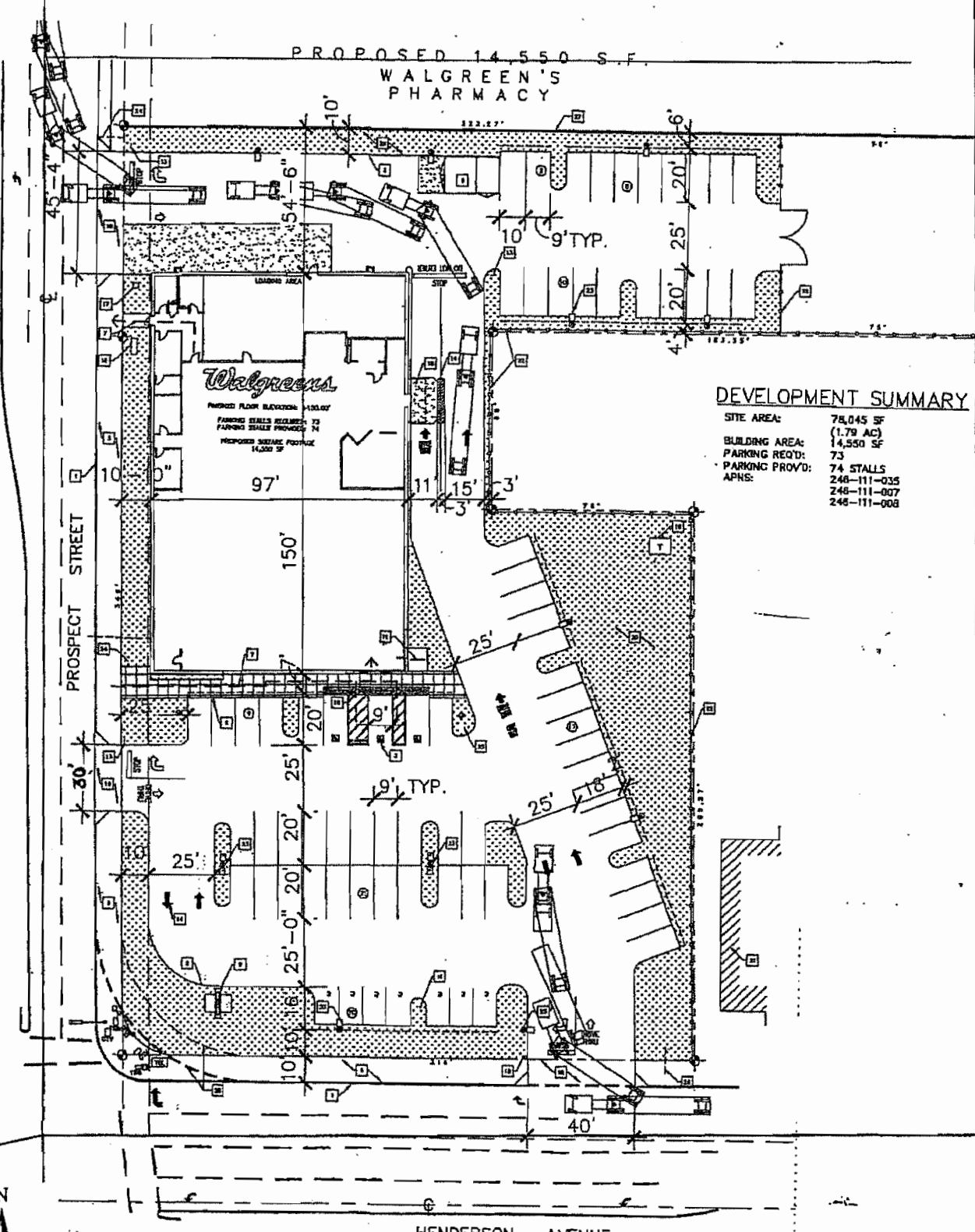
NOTES:

1. CONCRETE WORK SHALL BE 2500 P.S.I. DESIGN (5 SACK MIX), 4" MAXIMUM SLUMP.
2. ALL CONCRETE SHALL HAVE A LIGHT BROOM FINISH, EXCEPT AS NOTED.
3. WEAKENED PLANE JOINTS AT DRIVEWAY APPROACHES AND AT 20' SPACING, PER STANDARD SPECIFICATIONS. (SEE STD. DWG. C-21, DETAIL D) WEAKENED PLANE JOINTS SHALL BE A MIN. DEPTH OF 1 1/2" AND SHALL BE FINISHED WITH A SCORING TOOL LEAVING THE EDGES ROUNDED.
4. REFER TO STD. DWG. C-15 FOR DRIVEWAY SPACING.
5. BACK OF DRIVE APPROACH MAY BE SET 3" LOWER THAN THE BACK OF WALK TO FACILITATE LOT DRAINAGE.
6. FINISHED SURFACES SHALL BE TREATED WITH CLEAR CURING COMPOUND COMPLYING WITH SECTION 201-4 OF THE STANDARD SPECIFICATIONS.
7. TRANSITIONS FROM RAMPS TO WALKS, GUTTERS OR STREET SHALL BE FLUSH & FREE OF ABRUPT CHANGES.
8. REPAIRS SHALL BE MADE BY REMOVING & REPLACING THE ENTIRE UNIT BETWEEN JOINTS.



SECTION B-B

# SITEPLAN



## DEVELOPMENT SUMMARY

SITE AREA:	78,045 SF (1.79 AC)
BUILDING AREA:	14,550 SF
PARKING REQ'D:	74
PARKING PROVIDED:	74 STALLS
APHS:	248-111-035 248-111-007 248-111-008



NOT TO SCALE

# EXHIBIT C

STATE OF CALIFORNIA     )  
CITY OF PORTERVILLE     )     SS  
COUNTY OF TULARE     )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council duly called and held on the 4<sup>th</sup> day of December, 2012.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	WARD	McCRACKEN	GURROLA	SHELTON	HAMILTON
AYES:	X	X	X		X
NOES:					
ABSTAIN:				X	
ABSENT:					

JOHN D. LOLLIS, City Clerk

  
By: Luisa M. Herrera, Deputy City Clerk

RESOLUTION NO. 69 -2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF  
APPROVING AN EXTENSION TO THE APPROVAL OF CONDITIONAL USE PERMIT  
PRC-2012-010-C TO ALLOW THE SALE OF BEER AND WINE UNDER AN OFF-SALE  
TYPE 20 ALCOHOL LICENSE TO BE LOCATED AT THE NORTHEAST CORNER OF  
HENDERSON AVENUE AND PROSPECT STREET

WHEREAS: The applicant requested approval of Conditional Use Permit PRC 2012-010-C to allow the sale of beer and wine under a Type 20 off-sale alcohol license at the northeast corner of Henderson Avenue and Prospect Street in the CR (Retail Centers) Zone; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 4, 2012, conducted a public hearing to consider Conditional Use Permit PRC-2012-010-C; and

WHEREAS: On December 4, 2012, the City Council approved the request with Resolution 116-2012, Condition No. 7 of which limited the term of the associated Conditional Use Permit (CUP 2012-010) to one year; and

WHEREAS: Section 601.08 (b) of the Porterville Development Ordinance allows the City Council to approve a one (1) year extension of any permit granted under (the Development Code); and

WHEREAS: On November 5, 2013, the City Council approved the applicant's request for extension to the term of the Conditional Use Permit (CUP 2012-010) for an additional one-year term; and

WHEREAS: The City Council made the following findings:

1. The applicant submitted the required written application for extension of the CUP approval prior to permit expiration; and

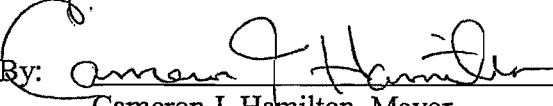
2. No fee is currently established in the Fee Schedule for the extension of a Conditional Use Permit and the applicant is therefore not required to pay a fee for the extension request; and

3. All Conditions of Approval set forth in Resolution 116-2012 approving CUP 2012-010 continue to apply to the project and associated Type 20 off-sale alcohol license. Condition No. 7 is hereby modified to provide for extension to the term of CUP 2012-010.

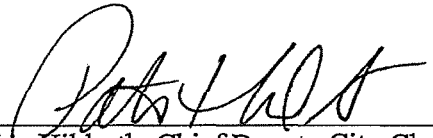
NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve a one-year extension to Conditional Use Permit PRC-2012-010-C subject to the conditions of approval contained in Resolution 116-2012.

**ATTACHMENT  
ITEM NO. 2**

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of November 2013.

By:   
Cameron J. Hamilton, Mayor

ATTEST:  
John D. Lollis, City Clerk

By:   
Patrice Hildreth, Chief Deputy City Clerk



STATE OF CALIFORNIA     )  
CITY OF PORTERVILLE    )     SS  
COUNTY OF TULARE     )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council duly called and held on the 5<sup>th</sup> day of November, 2013.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	McCRACKEN	WARD	HAMILTON	SHELTON	GURROLA
AYES:	X		X		X
NOES:					
ABSTAIN:					
ABSENT:		X		X	

JOHN D. LOLLIS, City Clerk

  
By: Luisa M. Zavala, Deputy City Clerk

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF  
APPROVING AN EXTENSION TO THE APPROVAL OF CONDITIONAL USE PERMIT  
PRC-2012-010-C TO ALLOW THE SALE OF BEER AND WINE UNDER AN OFF-SALE  
TYPE 20 ALCOHOL LICENSE TO BE LOCATED AT THE NORTHEAST CORNER OF  
HENDERSON AVENUE AND PROSPECT STREET

WHEREAS: The applicant requested approval of Conditional Use Permit PRC 2012-010-C to allow the sale of beer and wine under a Type 20 off-sale alcohol license at the northeast corner of Henderson Avenue and Prospect Street in the CR (Retail Centers) Zone; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 4, 2012, conducted a public hearing to consider Conditional Use Permit PRC-2012-010-C; and

WHEREAS: On December 4, 2012, the City Council approved the request with Resolution 116-2012, Condition No. 7 of which limited the term of the associated Conditional Use Permit (CUP 2012-010) to one year; and

WHEREAS: On November 5, 2013, the City Council adopted Resolution 69-2013, approving the applicant's request for extension to the term of the Conditional Use Permit (CUP 2012-010) for an additional one-year term; and

WHEREAS: On December 2, 2014, the City Council approved the applicant's request for an additional one-year extension to the term of the Conditional Use Permit (CUP 2012-010); and

WHEREAS: Section 601.08 (b) of the Porterville Development Ordinance allows the City Council to approve a one (1) year extension of any permit granted under (the Development Code); and

WHEREAS: The City Council made the following findings:

1. The applicant submitted the required written application for extension of the CUP approval prior to permit expiration; and
2. No fee is currently established in the Fee Schedule for the extension of a Conditional Use Permit and the applicant is therefore not required to pay a fee for the extension request; and
3. All Conditions of Approval set forth in Resolution 116-2012 approving CUP 2012-010 continue to apply to the project and associated Type 20 off-sale alcohol license. Condition No. 7 is hereby modified to provide for extension to the term of CUP 2012-010 through December 4, 2015. The Conditional Use Permit shall become null and void if not

**ATTACHMENT**  
**ITEM NO. 3**

undertaken and actively and continuously pursued within one (1) year. The Conditional Use Permit will expire when the use ceases to operate for one year or more.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve a one-year extension to Conditional Use Permit PRC-2012-010-C subject to the conditions of approval contained in Resolution 116-2012.

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of December 2014.

By: \_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

COUNCIL AGENDA – DECEMBER 2, 2014

SUBJECT: AMENDMENT TO EMPLOYEE PAY AND BENEFIT PLAN –  
PUBLIC SAFETY SUPPORT UNIT

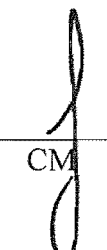
SOURCE: ADMINISTRATIVE SERVICES/ HUMAN RESOURCES

COMMENT: Within the scope of the Meyers-Milias-Brown Act, City representatives have concluded labor negotiations with the Public Safety Support Unit (PSSU). City representatives and PSSU have reached an agreement, and a written Memorandum of Understanding (MOU) has been executed restating current benefits as well as amendments pertaining to wages, benefits and working conditions.

City Council acceptance and approval of an executed MOU is most commonly demonstrated by Council authorization to change or amend, when applicable, those documents as are necessarily known to implement the points of agreement contained in the MOU.

RECOMMENDATION: That the City Council approve the draft resolution amending the Employee Pay and Benefit Plan.

Attachment: Draft Resolution

  
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Item No. 11

RESOLUTION NO. \_\_\_\_\_-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PORTERVILLE AMENDING THE EMPLOYEE PAY AND BENEFIT PLAN  
FOR THE PUBLIC SAFETY SUPPORT UNIT

WHEREAS, the City Council has determined and reiterated that an Employee Pay and Benefit Plan, Classification Plan, Personnel System Rules and Regulations, Health Plan and Retirement Plan are essential for the proper administration of the City's affairs, including employee recruitment and retention, and for proper supervision of City Employees; and

WHEREAS, the City Council recognizes the necessity of amending and/or changing the contents of such plans and regulations from time to time, and of executing instruments to implement and to keep the provisions thereof current, and to maintain the relevancy of the same; and

WHEREAS, there has been concurrence on a comprehensive Memorandum of Understanding with the Public Safety Support Unit for the period from July 1, 2014, until June 30, 2015, covering provisions to amend the Employee Pay and Benefit Plan, as they relate to employees holding positions represented by such recognized employee organization.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville that the Employee Pay and Benefit Plan, for employees holding positions represented by the aforementioned recognized employee organization, is hereby amended as follows:

I. TERM OF MEMORANDUM OF UNDERSTANDING

Twelve months, from July 1, 2014 through June 30, 2015.

II. SALARIES

Effective on the first pay-period following the date a fully executed Memorandum of Understanding (MOU) is officially accepted, PSSU employees shall receive a one percent (1%) salary increase.

Effective January 1, 2015, concurrent with the implementation of PSSU employees' two percent (2%) contribution towards healthcare coverage, PSSU employees shall receive a one percent (1%) salary increase.

III. ONE TIME OFF SCHEDULE PAYMENT

Effective concurrent with the implementation of PSSU employees' two percent (2%) contribution towards healthcare coverage, PSSU employees shall receive a one-time payment of \$408, which is equal to one percent (1%) of the total payroll within the PSSU bargaining unit averaged over all employees.

IV. EMPLOYEE HEALTH BENEFIT CONTRIBUTIONS

Effective January 1, 2015, PSSU employees shall contribute two percent (2%) of the employees' base salary towards PSSU employees' own medical coverage on the City's health plan.

Effective January 1, 2015, contribution rates for PSSU employees' dental and vision coverage, and contribution rates for PSSU dependents' medical, dental and vision coverage shall be increased as set out in the Exhibit A of Attachment 1.

V. EMPLOYEE HEALTH BENEFIT AMENDMENTS

The City shall implement changes to the healthcare benefit of PSSU employees as set forth in Attachment 1 and Exhibits. Said changes may be subject to minor modification, to the benefit of the employees, as and when all City bargaining units approve them. Further, said changes to the employees' healthcare benefit shall not become effective until such time as all bargaining units approve same.

VI. SAFETY SHOE/BOOT ALLOWANCE REIMBURSEMENT

Effective on the date of a fully executed Memorandum of Understanding (MOU), the Employee Pay and Benefit Plan and Personal Protective Equipment Administrative Policy shall be amended to state that PSSU employees shall receive a boot allowance as determined/approved by their Department Head.

VII. OVERTIME/COMPENSATORY TIME

Effective the pay-period after the Memorandum of Understanding is fully executed and officially accepted, or as soon thereafter as possible, the Employee Pay and Benefit Plan shall be amended to increase the maximum accrual of compensatory time for PSSU employees to a maximum of not more than eighty (80) hours at any given time.

VIII. WORKERS COMPENSATION BENEFIT

Effective the pay-period after the Memorandum of Understanding is fully executed and officially accepted, or as soon thereafter as possible, the Workers Compensation benefit provided by the City to PSSU employees shall be modified to provide no additional benefits other than those required by applicable state law. This item is separate and apart from any Carve-Out negotiations and/or agreement.

IX. STATEMENT OF CONTINUING BENEFITS AND WORKING CONDITIONS

Benefits and working conditions as were previously agreed upon through the Meet and Confer process, and subsequently approved and implemented by appropriate authority shall, unless herein expressly modified or eliminated, remain in effect until such time as they are subsequently modified or eliminated through the Meet and Confer process and similarly approved by appropriate authority.

BE IT FURTHER RESOLVED that the Mayor of the City of Porterville is hereby authorized to execute those documents as are necessary to implement the provisions hereof.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of December, 2014.

\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John Lollis, City Clerk

By \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk



## HEALTHCARE BENEFIT AMENDMENTS

November 24, 2014

Effective January 1, 2015, or as soon thereafter as possible, the City of Porterville ("City") proposes to amend the Employees' Healthcare benefits as follows:

1. An orthodontic benefit shall be added to the City's dental plan. Said benefit shall be for children up to age 19 only, and will have a lifetime maximum benefit of \$1,000 per child.
2. Dental implants shall be added as a covered benefit to the City's dental plan. The plan's current maximum limits shall apply to said covered benefit.
3. Progressive and transitional lenses shall be added as a covered benefit to the City's vision plan. All current maximum limits shall apply to said benefit.
4. Deductible rates for medical coverage (not including dental and vision) will increase from \$150 to \$175 for individual; and from \$300 to \$350 for family.
5. Dependent rate tier structure for medical coverage, and contribution rates for medical, dental and vision coverage shall be amended as set forth in the attached Exhibit A.
6. Co-insurance rates for out-of-network providers shall be increased from 20% to 30%. In-network rates shall remain at 20%.
7. Generic prescriptions shall be mandatory, unless specifically requested otherwise by the treating physician.
8. Mail order for all maintenance medication shall be encouraged.
9. The City shall make available Flexible Spending Accounts ("FSA") including a Healthcare FSA and Dependent Care FSA.
10. The City's Fitness Incentive Program shall be amended to eliminate quarterly fitness incentive testing. Instead, Employees who participate in the voluntary program shall receive incentive pay for verifiable healthy lifestyle choices. Eligible activities shall include verifiable regular physical exercise, completion of a certified weight loss or nutrition program, and completion of a certified smoking cessation program. The Risk Manager shall have the authority to approve or deny the eligibility of any and all proposed activities. The proposed program is more specifically set out in attached Exhibit B.



Proposed Medical Contribution Rates and New Tier Structure  
 All Bargaining Units  
 MOU 2014 - 2015

11/24/2014

MEDICAL

CURRENT MONTHLY	PROPOSED MONTHLY	
2011-Present		
Employee Only	\$0 Employee Only	2% of base salary
Plus 1	\$150 Plus Spouse	\$170
Plus 2 or more	\$230 Plus Child/children	\$160
	Plus Spouse & Child/Children	\$250
2005 - 2011		
Employee Only	\$0	
Plus 1	\$150	
Plus 2 or more	\$230	
1995 - 2005		
Employee Only	\$0	
Plus 1	\$150	
Plus 2 or more	\$230	

DENTAL

CURRENT MONTHLY	PROPOSED MONTHLY	
1995 - Present		
Employee Only	\$0 Employee Only	\$0
Plus 1	\$18.66 Plus Spouse	\$21.00
Plus 2 or more	\$25.55 Plus Child/children	\$27.00
	Plus Spouse & Child/Children	\$30

VISION

CURRENT MONTHLY	PROPOSED MONTHLY	
1995 - Present		
Employee Only	\$0 Employee Only	\$0
Plus 1	\$8.18 Plus Spouse	\$11.00
Plus 2 or more	\$19.03 Plus Child/children	\$9.00
	Plus Spouse & Child/Children	\$20

EXHIBIT A

## REGULAR PHYSICAL EXERCISE

### Monthly Incentive Rates

---

	"Good"	"Excellent"	"Superior"
Monthly Workouts	10-13 times	14-17 times	18 or more
Incentive Pay	\$30	\$40	\$50

- 1 A maximum of one workout per day shall be eligible. Further, eligible workouts must last at least one hour in duration and should include cardio exercise.
- 2 To be eligible, workouts must be verifiable (i.e. sign in/out sheets at City fitness facilities witnessed/signed by HR staff or employee supervisor; or printout provided from professional third-party gym/fitness membership/classes.)
- 3 To be eligible, participants must submit their completed workout logs (forms to be provided by HR) to HR by the 10th day of each month for the prior month. Incentive pay shall be disbursed to participants on a quarterly basis. Forms submitted after the 10th day, or not containing the appropriate supervisor/HR sign-off or verified third-party gym/class printout shall not be eligible.
- 4 Employees who knowingly sign and/or submit inaccurate/fraudulent sign in/out sheets or workout logs shall be prohibited from participating in the Regular Physical Exercise program for one year from the date of discovery. The Risk Manager maintains the right to make such a determination.

## SMOKING CESSATION PROGRAM

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Incentive Rate	A one-time payment of up to \$200
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Participating employees shall be eligible for a one time incentive payment up to \$200 for completion of a certified smoking cessation class which shall be pre-approved by the Risk Manager. Proof of completion must be provided to receive payment.

## WEIGHT LOSS & NUTRITION PROGRAM

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Incentive Rate	Two payments of up to \$50 per Calendar Year
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Participating employees shall be eligible for up to two payments of \$50 each per year for completion of a certified weight loss or nutrition program, which shall be pre-approved by the Risk Manager. Proof of completion must be provided to receive payment.

*The Risk Manager shall have the authority to approve or deny the eligibility of any and all proposed programs.*

COUNCIL AGENDA – DECEMBER 2, 2014

SUBJECT: AMENDMENT TO EMPLOYEE PAY AND BENEFIT PLAN –  
MANAGEMENT CONFIDENTIAL SERIES

SOURCE: ADMINISTRATIVE SERVICES/ HUMAN RESOURCES

COMMENT: Within the scope of the Meyers-Milias-Brown Act, City representatives have concluded labor negotiations with the Management Confidential Series (MCS). City representatives and MCS have reached an agreement, and a written Memorandum of Understanding (MOU) has been executed restating current benefits as well as amendments pertaining to wages, benefits and working conditions.

City Council acceptance and approval of an executed MOU is most commonly demonstrated by Council authorization to change or amend, when applicable, those documents as are necessarily known to implement the points of agreement contained in the MOU.

RECOMMENDATION: That the City Council approve the draft resolution amending the Employee Pay and Benefit Plan.

Attachment: Draft Resolution

  
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Funded

  
CM

Item No. 12

RESOLUTION NO. \_\_\_\_\_-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PORTERVILLE AMENDING THE EMPLOYEE PAY AND BENEFIT PLAN  
FOR THE MANAGEMENT CONFIDENTIAL SERIES

WHEREAS, the City Council has determined and reiterated that an Employee Pay and Benefit Plan, Classification Plan, Personnel System Rules and Regulations, Health Plan and Retirement Plan are essential for the proper administration of the City's affairs, including employee recruitment and retention, and for proper supervision of City Employees; and

WHEREAS, the City Council recognizes the necessity of amending and/or changing the contents of such plans and regulations from time to time, and of executing instruments to implement and to keep the provisions thereof current, and to maintain the relevancy of the same; and

WHEREAS, there has been concurrence on a Memorandum of Understanding with the Management Confidential Series for the period from July 1, 2014, until June 30, 2015, covering provisions to amend the Employee Pay and Benefit Plan, as they relate to employees holding positions represented by such recognized employee organization.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville that the Employee Pay and Benefit Plan, for employees holding positions represented by the aforementioned recognized employee organization, is hereby amended as follows:

I. TERM OF MEMORANDUM OF UNDERSTANDING

Twelve months, from July 1, 2014 through June 30, 2015.

II. SALARIES

Effective the pay-period beginning December 1, 2014, MCS employees shall receive a one percent (1%) salary increase.

Effective January 1, 2015, concurrent with the implementation of MCS employees' two percent (2%) contribution towards healthcare coverage, MCS employees shall receive a one percent (1%) salary increase.

III. ONE TIME OFF SCHEDULE PAYMENT

Effective concurrent with the implementation of MCS employees' two percent (2%) contribution towards healthcare coverage, MCS employees shall receive a one-time payment equivalent to one-percent (1%) of the employee's annual base salary.

IV. EMPLOYEE HEALTH BENEFIT CONTRIBUTIONS

Effective January 1, 2015, MCS employees shall contribute two percent (2%) of the employees' base salary towards MCS employees' own medical coverage on the City's health plan.

Effective January 1, 2015, contribution rates for MCS employees' dental and vision coverage, and contribution rates for MCS dependents' medical, dental and vision coverage shall be increased as set out in the Exhibit A of Attachment 1.

V. EMPLOYEE HEALTH BENEFIT AMENDMENTS

The City shall implement changes to the healthcare benefit of MCS employees as set forth in Attachment 1 and Exhibits. Said changes may be subject to minor modification, to the benefit of the employees, as and when all City bargaining units approve them. Further, said changes to the employees' healthcare benefit shall not become effective until such time as all bargaining units approve same.

VI. STATE DISABILITY INSURANCE

Effective as soon as possible, pending approval by MCS employees and by the State Employment Development Department, the City agrees to MCS employees' participation in the California State Disability Insurance Program

VII. WORKERS COMPENSATION BENEFIT

Effective the pay-period after the Memorandum of Understanding is fully executed and officially accepted, or as soon thereafter as possible, the Workers Compensation benefit provided by the City to MCS employees shall be modified to provide no additional

benefits other than those required by applicable state law. This item is separate and apart from any Carve-Out negotiations and/or agreement.

VIII. STATEMENT OF CONTINUING BENEFITS AND WORKING CONDITIONS

Benefits and working conditions as were previously agreed upon through the Meet and Confer process, and subsequently approved and implemented by appropriate authority shall, unless herein expressly modified or eliminated, remain in effect until such time as they are subsequently modified or eliminated through the Meet and Confer process and similarly approved by appropriate authority.

BE IT FURTHER RESOLVED that the Mayor of the City of Porterville is hereby authorized to execute those documents as are necessary to implement the provisions hereof.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of December, 2014.

\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John Lollis, City Clerk

By \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk



## HEALTHCARE BENEFIT AMENDMENTS

November 24, 2014

Effective January 1, 2015, or as soon thereafter as possible, the City of Porterville ("City") proposes to amend the Employees' Healthcare benefits as follows:

1. An orthodontic benefit shall be added to the City's dental plan. Said benefit shall be for children up to age 19 only, and will have a lifetime maximum benefit of \$1,000 per child.
2. Dental implants shall be added as a covered benefit to the City's dental plan. The plan's current maximum limits shall apply to said covered benefit.
3. Progressive and transitional lenses shall be added as a covered benefit to the City's vision plan. All current maximum limits shall apply to said benefit.
4. Deductible rates for medical coverage (not including dental and vision) will increase from \$150 to \$175 for individual; and from \$300 to \$350 for family.
5. Dependent rate tier structure for medical coverage, and contribution rates for medical, dental and vision coverage shall be amended as set forth in the attached Exhibit A.
6. Co-insurance rates for out-of-network providers shall be increased from 20% to 30%. In-network rates shall remain at 20%.
7. Generic prescriptions shall be mandatory, unless specifically requested otherwise by the treating physician.
8. Mail order for all maintenance medication shall be encouraged.
9. The City shall make available Flexible Spending Accounts ("FSA") including a Healthcare FSA and Dependent Care FSA.
10. The City's Fitness Incentive Program shall be amended to eliminate quarterly fitness incentive testing. Instead, Employees who participate in the voluntary program shall receive incentive pay for verifiable healthy lifestyle choices. Eligible activities shall include verifiable regular physical exercise, completion of a certified weight loss or nutrition program, and completion of a certified smoking cessation program. The Risk Manager shall have the authority to approve or deny the eligibility of any and all proposed activities. The proposed program is more specifically set out in attached Exhibit B.

Proposed Medical Contribution Rates and New Tier Structure  
All Bargaining Units  
MOU 2014 - 2015

11/24/2014

MEDICAL

CURRENT MONTHLY	PROPOSED MONTHLY	
2011-Present		
Employee Only	\$0 Employee Only	2% of base salary
Plus 1	\$150 Plus Spouse	\$170
Plus 2 or more	\$230 Plus Child/children	\$160
	Plus Spouse & Child/Children	\$250
2005 - 2011		
Employee Only	\$0	
Plus 1	\$150	
Plus 2 or more	\$230	
1995 - 2005		
Employee Only	\$0	
Plus 1	\$150	
Plus 2 or more	\$230	

DENTAL

CURRENT MONTHLY	PROPOSED MONTHLY	
1995 - Present		
Employee Only	\$0 Employee Only	\$0
Plus 1	\$18.66 Plus Spouse	\$21.00
Plus 2 or more	\$25.55 Plus Child/children	\$27.00
	Plus Spouse & Child/Children	\$30

VISION

CURRENT MONTHLY	PROPOSED MONTHLY	
1995 - Present		
Employee Only	\$0 Employee Only	\$0
Plus 1	\$8.18 Plus Spouse	\$11.00
Plus 2 or more	\$19.03 Plus Child/children	\$9.00
	Plus Spouse & Child/Children	\$20

EXHIBIT A



## REGULAR PHYSICAL EXERCISE

### Monthly Incentive Rates

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	"Good"	"Excellent"	"Superior"
Monthly Workouts	10-13 times	14-17 times	18 or more
Incentive Pay	\$30	\$40	\$50

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- 1 A maximum of one workout per day shall be eligible. Further, eligible workouts must last at least one hour in duration and should include cardio exercise.
- 2 To be eligible, workouts must be verifiable (i.e. sign in/out sheets at City fitness facilities witnessed/signed by HR staff or employee supervisor; or printout provided from professional third-party gym/fitness membership/classes.)
- 3 To be eligible, participants must submit their completed workout logs (forms to be provided by HR) to HR by the 10th day of each month for the prior month. Incentive pay shall be disbursed to participants on a quarterly basis. Forms submitted after the 10th day, or not containing the appropriate supervisor/HR sign-off or verified third-party gym/class printout shall not be eligible.
- 4 Employees who knowingly sign and/or submit inaccurate/fraudulent sign in/out sheets or workout logs shall be prohibited from participating in the Regular Physical Exercise program for one year from the date of discovery. The Risk Manager maintains the right to make such a determination.

## SMOKING CESSATION PROGRAM

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Incentive Rate	A one-time payment of up to \$200
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Participating employees shall be eligible for a one time incentive payment up to \$200 for completion of a certified smoking cessation class which shall be pre-approved by the Risk Manager. Proof of completion must be provided to receive payment.

## WEIGHT LOSS & NUTRITION PROGRAM

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Incentive Rate	Two payments of up to \$50 per Calendar Year
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Participating employees shall be eligible for up to two payments of \$50 each per year for completion of a certified weight loss or nutrition program, which shall be pre-approved by the Risk Manager. Proof of completion must be provided to receive payment.

*The Risk Manager shall have the authority to approve or deny the eligibility of any and all proposed programs.*

COUNCIL AGENDA: December 2, 2014

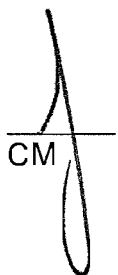
SUBJECT: SCHEDULING OF ADJOURNED CITY COUNCIL MEETING FOR GOAL SETTING AND TO ESTABLISH 2015-16 PRIORITIES

SOURCE: City Manager

COMMENT: At its meeting on September 16, 2014, the City Council gave direction to staff to schedule an adjourned meeting of the Council toward the end of January 2015 to conduct goal setting and establish priorities for the coming 2015-16 fiscal year. It was also the Council's direction that the approach for the goal setting session be project driven, with the Council identifying specific projects for particular attention and focus in the development of the 2015-16 fiscal year budget. It is recommended to schedule the adjourned meeting for the fourth Tuesday, January 27, 2015, beginning at 5:30 P.M. in City Hall Council Chambers. If the Council desires a less formal setting for the planning session, then the Regional Fire Training Facility Classroom is also available for that purpose.

RECOMMENDATION: That the City Council schedule an adjourned meeting for goal setting to establish priorities for Tuesday, January 27, 2015, beginning at 5:30 PM.

ATTACHMENT: None

  
CM

Item No. 13

CITY COUNCIL AGENDA: DECEMBER 2, 2014

PUBLIC HEARING

SUBJECT: MODIFICATION TO CONDITIONAL USE PERMIT 2014-011-C

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT – PLANNING DIVISION

COMMENT: At the meeting of October 21, 2014, the City Council approved a Conditional Use Permit for JJ's Market, located at 1187 West Henderson Avenue. During the public hearing, the applicant's agent requested that a condition prohibiting outdoor advertising of alcoholic beverages be removed from the resolution of approval. At the end of the public hearing, the City Council voted to approve the Conditional Use Permit as written, though directed staff to meet with the applicant about the signage restriction concerns. Following the City Council meeting, the applicant's agent requested that the condition be removed, which would have been supported under the previous zoning ordinance. At the meeting of November 18, 2014, the City Council directed staff to publish a public notice scheduling the Conditional Use Permit (Resolution 73-2014) for reconsideration at the meeting of December 2, 2014.

The resolution approved on October 21, 2014, included the following condition:

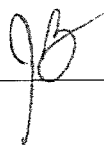
*No advertising of alcoholic beverages shall be placed on the exterior of the building nor seen from the public right of way (i.e. no window advertising or digital signage).*

The proposed condition is consistent with the majority of alcohol related Conditional Use Permits since the comprehensive amendment to the Development Ordinance in June 2010. Of fourteen Conditional Use Permits approved in that timeframe (including the applicant's permit), twelve included a condition that no outdoor advertising of alcohol is permitted. Of those twelve, four were on-sale with a bona-fide eating place, one was on-sale with a theater, and six were off-sale licenses. The two Conditional Use Permits that did not have this particular condition were for the Rinconcito Restaurant (expired from inactivity) and the Porta Villa Market.

Prior to June 2010, the language in the Zoning Ordinance (Ordinance 1198 as amended) allowed certain types of alcohol related businesses to operate without a Conditional Use Permit. The current Development Ordinance, in Section 301.02, requires a Conditional Use Permit for any use involving the sale of alcoholic beverages under an on-sale or off-sale license. With the requirement of the Conditional Use Permit, the detailed provisions outlined in the earlier ordinance were no longer necessary, as they could be implemented as conditions of approval on a project per project basis. One specific provision from the previous zoning ordinance was written as follows:

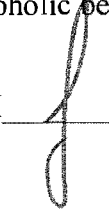
Any use involving the sale of alcoholic beverages under an on-sale license

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Appropriated/Funded N/A

CM



Item No. 14

shall be subject to obtaining approval of a conditional use permit except bona fide eating establishments (restaurants) that comply with all of the following... Where such a use is within six hundred (600) linear feet of the nearest property line of any sensitive use, the outdoor advertising of alcoholic beverages shall be prohibited. *[Excerpt does not include all provisions of Section 2100 B of Ordinance 1198 as amended.]*

The current Development Ordinance does not define any specific conditions of approval associated with alcohol sales, except where the proposed project meets the definition of a Liquor Store. As a result, staff coordinates between the different departments and proposes conditions for Council consideration in light of project details and past precedent.

As outlined in Section 305 of the Development Ordinance, signage placed on the exterior of buildings can be achieved, where not otherwise prohibited by a condition of approval, through approval of either a building permit or a temporary sign permit. Standards are defined regarding the size and materials of signage allowed per zone district. Section 305.06 prohibits banners or similar advertising display constructed of cloth, canvas, light fabric, or other light materials, except as allowed as a Temporary Sign. Window signs painted or otherwise adhered directly onto a window are exempt from the permit requirements, so long as they do not cover more than 50% of a window and are not placed on windows on the second story of a building.

In summary, many of the signs typically seen advertising alcohol on the outside of a building violate the Development Ordinance regardless of a condition of approval, either because such signs are not allowed without a temporary sign permit or the signs are hung from, not directly applied to, the window (for example an illuminated neon beer sign), and may result in more signage than what is allowed.

If the Council chooses to adopt a resolution modifying Conditional Use Permit 2014-011-C, staff requests that a condition be inserted clearly explaining limitations on signage as required by the Development Ordinance. If the Council finds that more specific conditions related to alcohol are needed to avoid inconsistent or arbitrary implementation of conditions on future Conditional Use Permits, staff will work on a text amendment to the Development Ordinance for consideration at a future meeting.

RECOMMENDATION: That the City Council:

1. Provide direction to staff regarding the requested modification to CUP 2014-011; and
2. Provide further direction regarding alcohol related standard conditions of approval as appropriate.

ATTACHMENTS: Staff report of October 21, 2014, including resolution as approved.

CITY COUNCIL AGENDA: OCTOBER 21, 2014

PUBLIC HEARING

SUBJECT: CONSIDERATION OF A CONDITIONAL USE PERMIT (PRC 2014-011-C) TO ALLOW THE UPGRADE TO A TYPE 21 GENERAL OFF-SALE LICENSE FOR ALCOHOL SALES LOCATED AT 1187 WEST HENDERSON AVENUE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The applicant is requesting approval of a Conditional Use Permit to upgrade the current Type 20 (beer and wine) license to a Type 21 (general) alcohol license in conjunction with reconfiguration of site improvements at JJ's Market, located at 1187 West Henderson Avenue. In addition to the upgrade of the alcohol beverage license, the applicant is proposing a complete demolition and reconstruction of the buildings on site, except the fuel pumps and canopy, which will remain in the current configuration.

Although ownership has changed through the years, the business has been in operation since 1987, and at that time obtained a Conditional Use Permit for approval to develop a self-service gasoline facility in conjunction with a convenience market and self-service car wash. According to records on file with the State of California Department of Alcohol Beverage Control (ABC), this business location has maintained a Type 20 Off-Sale Beer and Wine license since December 1987. At that time, the City of Porterville did not require that businesses engaged in the off-sale of alcoholic beverages obtain a Conditional Use Permit. As a result, JJ's Market has maintained legal non-conforming status relative to sale of alcoholic beverages for off-site consumption since it originally opened. With the requested upgrade in license type from Type 20 Beer and Wine to Type 21 General, a Conditional Use Permit is required. It is important to note that the applicant has a current, valid license with the ABC. As such, approval of the proposed project would not result in an increase of ABC licenses within the census tract.

The applicant, agent, and staff have worked together on conditions and site plan revisions to meet all applicable requirements of the Porterville Development Ordinance, which shall be implemented prior to issuance of a building permit. Conditions of approval have been incorporated to facilitate compliance with all applicable codes.

RECOMMENDATION: That City Council adopt the draft resolution approving the Conditional Use Permit (PRC 2014-011-C) subject to conditions of approval.

ATTACHMENT: Complete Staff Report

DD

9/13

Appropriated/Funded

N/A

CM

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Item No.

9

**ATTACHMENT  
ITEM NO. 1**

PUBLIC HEARING

SUBJECT: CONSIDERATION OF A CONDITIONAL USE PERMIT (PRC 2014-011-C) TO ALLOW THE UPGRADE TO A TYPE 21 GENERAL OFF-SALE LICENSE FOR ALCOHOL SALES LOCATED AT 1187 WEST HENDERSON AVENUE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

APPLICANT/AGENT:

Mike Dakhil  
1187 W Henderson Avenue  
Porterville, CA 93257

Hillman Building Designers  
34583 Hwy 190  
Springville, CA 93265

PROJECT DESCRIPTION:

The applicant is requesting approval of a Conditional Use Permit to upgrade the current Type 20 (beer and wine) license to a Type 21 (general) alcohol license in conjunction with reconfiguration of site improvements at JJ's Market, located at 1187 West Henderson Avenue. In addition to the upgrade of the alcohol beverage license, the applicant is proposing a complete demolition and reconstruction of the buildings on site, except the fuel pumps and canopy, which will remain in the current configuration.

Although ownership has changed through the years, the business has been in operation since 1987, and at that time obtained a Conditional Use Permit for approval to develop a self-service gasoline facility in conjunction with a convenience market and self-service car wash. According to records on file with the State of California Department of Alcohol Beverage Control (ABC), this business location has maintained a Type 20 Off-Sale Beer and Wine license since December 1987. At that time, the City of Porterville did not require that businesses engaged in the off-sale of alcoholic beverages obtain a Conditional Use Permit. As a result, JJ's Market has maintained legal non-conforming status relative to sale of alcoholic beverages for off-site consumption since it originally opened. With the requested upgrade in license type from Type 20 Beer and Wine to Type 21 General, a Conditional Use Permit is required. The draft resolution (Attachment 1) includes conditions of approval to ensure operation of the business complies with state and local regulations regarding sale of alcohol, as well as conditions that protect the public's safety and welfare. It is important to note that the applicant has a current, valid license with the ABC. As such, approval of the proposed project would not result in an increase of ABC licenses within the census tract (Attachment 2).

Additionally, as referenced above, the applicant is proposing a complete demolition and reconstruction of the buildings on the 24,500± square foot site (APN 251-120-003). The current development includes a 3,700± square foot market that is backed up to the northwest corner, a car wash area under a 2,000± square foot canopy in the southeast corner, and four self-service fuel pumps under a 1,350± square foot canopy near the northeast corner of the property. Drive approaches onto Henderson Avenue and Prospect Street would remain as they are constructed, and the fuel pumps, canopy, and appurtenances will not change; otherwise, the site will be almost entirely demolished and reconstructed as shown in Attachment 3.

The carwash and drying canopy will be demolished and will no longer be included in the business model. The new building will be located in the southeast corner of the property and include three tenant spaces. The largest space, at 2,960± square feet would serve as the new market; two other tenant spaces, 1089± square feet each, will provide opportunity for additional retail or services at the location. Tenants for the two smaller spaces have not yet been named, and any future occupation of those areas would require review by staff for use type and tenant improvements subject to the Development Ordinance and California Building Codes, respectively.

The applicant, agent, and staff have worked together on conditions and site plan revisions to meet all applicable requirements of the Porterville Development Ordinance, which shall be implemented prior to issuance of a building permit. Conditions of approval have been incorporated to facilitate compliance with all applicable codes.

GENERAL PLAN CLASSIFICATION:     Retail Centers

ZONING CLASSIFICATION:         CR (Retail Centers)

**SURROUNDING ZONING AND LAND USES:**

North: CR           (Retail Centers)  
West: CR           (Retail Centers)  
South: CR          (Retail Centers)  
East: PD           (Planned Development - Retail Centers)

**LEGAL NOTICE:**

Date Environmental Document Distributed	Date Notice Published in Porterville Recorder	Date Notice Mailed to Property Owners within 300 feet of property
Item deemed Categorically exempt. Notice of Exemption mailed upon Council decision.	October 11, 2014	October 10, 2014

**ENVIRONMENTAL REVIEW:**

Pursuant to Section 15302 Class 2 (Replacement or Reconstruction) the proposed project is categorically exempt from California Environmental Quality Act.

RECOMMENDATION:     That City Council adopt the draft resolution approving the Conditional Use Permit (PRC 2014-011-C) subject to conditions of approval.

ATTACHMENTS:

1. Draft Resolution containing findings in support of approval for Conditional Use Permit 2014-011-C for a Type 21 off-sale general license
2. Department of Alcoholic Beverage Control Licenses per Census Tract

3. Site Plan
4. Project Locator Map
5. General Plan Land Use Map
6. Zoning Map



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN  
SUPPORT OF APPROVAL OF CONDITIONAL USE PERMIT 2014-011-C  
TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES UNDER AN OFF-SALE TYPE 21  
GENERAL ALCOHOL LICENSE AT THE SOUTHEAST CORNER OF HENDERSON  
AVENUE AND PROSPECT STREET

WHEREAS: The applicant is requesting approval of Conditional Use Permit 2014-011-C to allow the sale of beer and wine under a Type 21 off-sale alcohol license at the southeast corner of Henderson Avenue and Prospect Street in the CR (Retail Centers) Zone; and

WHEREAS: The applicant's business has been in operation since 1987, at which time it received a resolution of approval (Resolution 28-87) for Conditional Use Permit 1-87 and Design Overlay Site Review 1-87 for development of a self-service gasoline facility in conjunction with a convenience market and self-service car wash. Conditions of approval at that time related to the proposed development, safety and environmental conditions related to the fuel dispensers, and food service facilities within the convenience market. Resolution 28-87, approving Conditional Use Permit 1-87 is not affected by the proposed Conditional Use Permit, aside from revised conditions associated with physical improvements on the site; and

WHEREAS: The business has been operational with a valid Alcohol Beverage Control Board license consistently since 1987, prior to the City's adoption of an ordinance requiring conditional use permits for off-sale alcohol licenses, and as such is a legal, non-conforming use. The proposed site improvements and upgrade from a Type 20 to a Type 21 license prompts a requirement to legalize the use by obtaining a conditional use permit; and

WHEREAS: The applicant has a current, valid license with the State of California Department of Alcohol Beverage Control (ABC). As such, approval of the proposed project would not result in an increase of ABC licenses within the census tract, nor will it result in an overconcentration of licenses within the census tract; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of October 21, 2014, conducted a public hearing to consider Conditional Use Permit 2014-011-C; and

WHEREAS: The City Council received testimony from all interested parties relative to said Conditional Use Permit; and

WHEREAS: Section 301.02 of the Porterville Development Ordinance requires Conditional Use Permit approval for any use involving the sale of alcoholic beverages under an on-sale or off-sale license; and

WHEREAS: The City Council made the following findings:

**ATTACHMENT  
ITEM NO. |**

1. Approval of the Conditional Use Permit will advance the goals and objectives of, and is consistent with, the policies of the General Plan and any other applicable plan that the City has adopted, as follows:

LU-G-1 Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the city.

LU-G-21 Attract and retain specialty retail and restaurant businesses that will enhance Porterville's unique character.

ED-G-7 Create an image for Porterville that will attract and retain economic activity.

2. The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conforms in all significant respects with the General Plan and with any other applicable plan adopted by the City Council.

The General Plan and Zoning Map designates the proposed project site as Retail Centers (CR). The proposed project promotes and implements the specific purposes of the Retail Centers Zone, including the following purposes as set forth in Section 203 of the Development Ordinance:

- To strengthen the city's economic base and provide employment opportunities for residents of the city.
- To maintain areas for regional shopping centers located at major circulation intersections.
- Ensure the provision of services and facilities needed to accommodate planned population densities.

WHEREAS: The proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity. Conditions of approval are included to ensure applicable development standards are met; and

WHEREAS: The subject site is located in Census Tract 36.02 which allows, according to the ABC, seven off-sale licenses. At present, seven off-sale licenses exist in this census tract, one of which is the subject business. Approval of this Conditional Use Permit will serve to legalize an existing non-conforming use, but will not result in an over concentration of off-sale licenses.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 2014-011-C subject to the following conditions:

1. No advertising of alcoholic beverages shall be placed on the exterior of the building nor seen from the public right of way (i.e. no window advertising or digital signage).

2. That the applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the Conditional Use Permit as provided in Section 601.12 of the Porterville Development Ordinance.
3. Compliance with all applicable development and access laws, both State and Federal, is required.
4. Physical modifications to the site shall comply with the site plans and designs submitted, as represented in Exhibit A. Any substantial modification of these plans shall be approved by the City Council. The development will be required to adhere to the represented building articulations shown, including (but not limited to) the general palette of colors, indentation in plane, stone façade columns, and contrasting color of awnings above doors and windows.
5. The developer/applicant shall keep and maintain the beer, wine, and distilled spirits in the areas identified on Exhibit B. Any expansion or relocation of same shall be approved by the City Council.
6. That the on-site consumption of alcoholic beverages shall be prohibited.
7. The Conditional Use Permit, approving off-site alcohol sales, will be subject to modification or revocation if the State of California imposes sanctions on the off-sale license.
8. The Conditional Use Permit shall become null and void if not undertaken and actively and continuously pursued within one (1) year. The Conditional Use Permit will expire when the use ceases to operate for one year or more.
9. The use shall be conducted in compliance with all applicable local, state and federal regulations.
10. Abandonment. Any service station shall in the case of abandonment or non-operation of the primary use be dismantled and the site cleared within twelve (12) months subsequent to the close of the last business day.
11. The existing fuel canopy must be updated to be architecturally compatible with the proposed main building structure.
12. Lighting shall be designed to be low-profile, indirect or diffused, create a pleasing appearance, and avoid adverse impacts on surrounding uses.

13. The development shall comply with the Development Ordinance; specific points were outlined through the Project Review Committee process. Additional detail will be provided through the building permit process.
14. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full parcel frontages (Henderson Avenue and Prospect Street), except where they exist and are in good condition in the opinion of the City Engineer (Ord. No. 1306). Existing frontage improvements were evaluated and determined that they were noncompliant. A minimum of four feet (4') of clear space in the sidewalk area must be provided around obstructions. An accessible path of travel across the driveway(s) serving the property must be provided by the removal and replacement of each driveway per the attached professional office/commercial standard driveway standard plan or by constructing an accessible path around each driveway. A pedestrian easement(s) may be required if right of way is limited. The developer/applicant shall have a registered Civil Engineer or Land Surveyor prepare and submit legal descriptions necessary to dedicate pedestrian easements to the City for public use, if applicable. The easement(s) shall be approved prior to the issuance of a building permit.
15. An accessible path of travel from the City sidewalk to the front entrance will be required. It is recommended that the path be directed towards Henderson Avenue.
16. The developer/applicant shall provide a site plan that illustrates truck-turning movements where applicable within the parking lot. The site plan shall be approved prior to issuance of a building permit application.
17. The Police Department recommends consideration of an interior and exterior video monitoring system which is capable of recording activity in and around the establishment. Such a system should be capable of immediate on-site replay/review.

PASSED, APPROVED AND ADOPTED this 21<sup>st</sup> day of October, 2014.

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

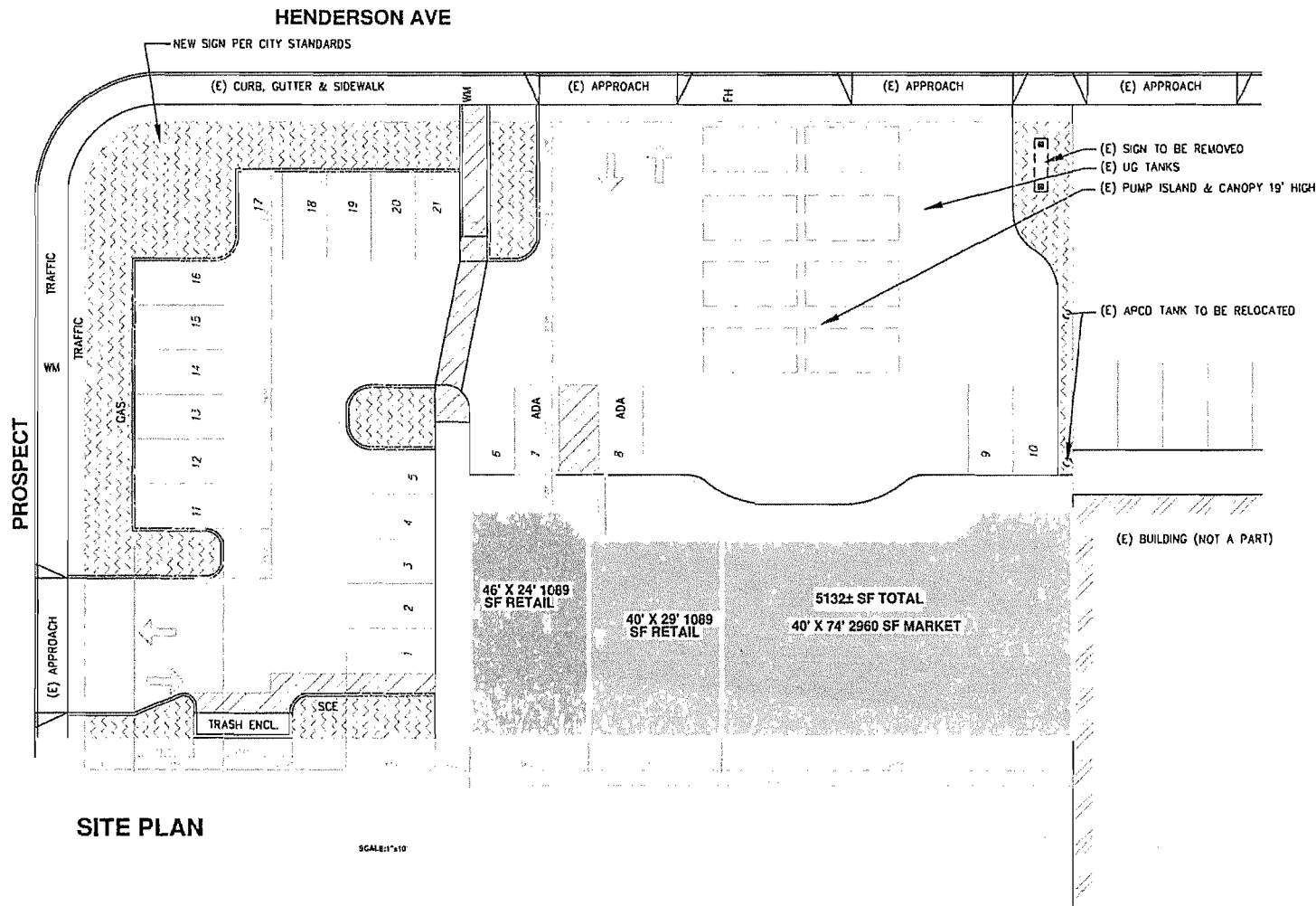
Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

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

Patrice Hildreth, Chief Deputy City Clerk



**SITE PLAN**

DATE	BY

**HILLMAN BUILDING DESIGNERS**  
SPECIALIZING IN CUSTOM DESIGNS  
SINCE 1970  
2100 S. Hwy. 138, Pittsburg, CA 95665  
Tel: 916/438-1111  
Fax: 916/438-1112  
Email: hillmanbuildingdesigners.com

PROPOSED NEW MINI MART AND RETAIL FOR:  
**JJ'S MINI MART**

DATE	03-26-14
SCALE	NONE
DRAWN	SHL
CHECK	(1019)
DATE	

**A-1**

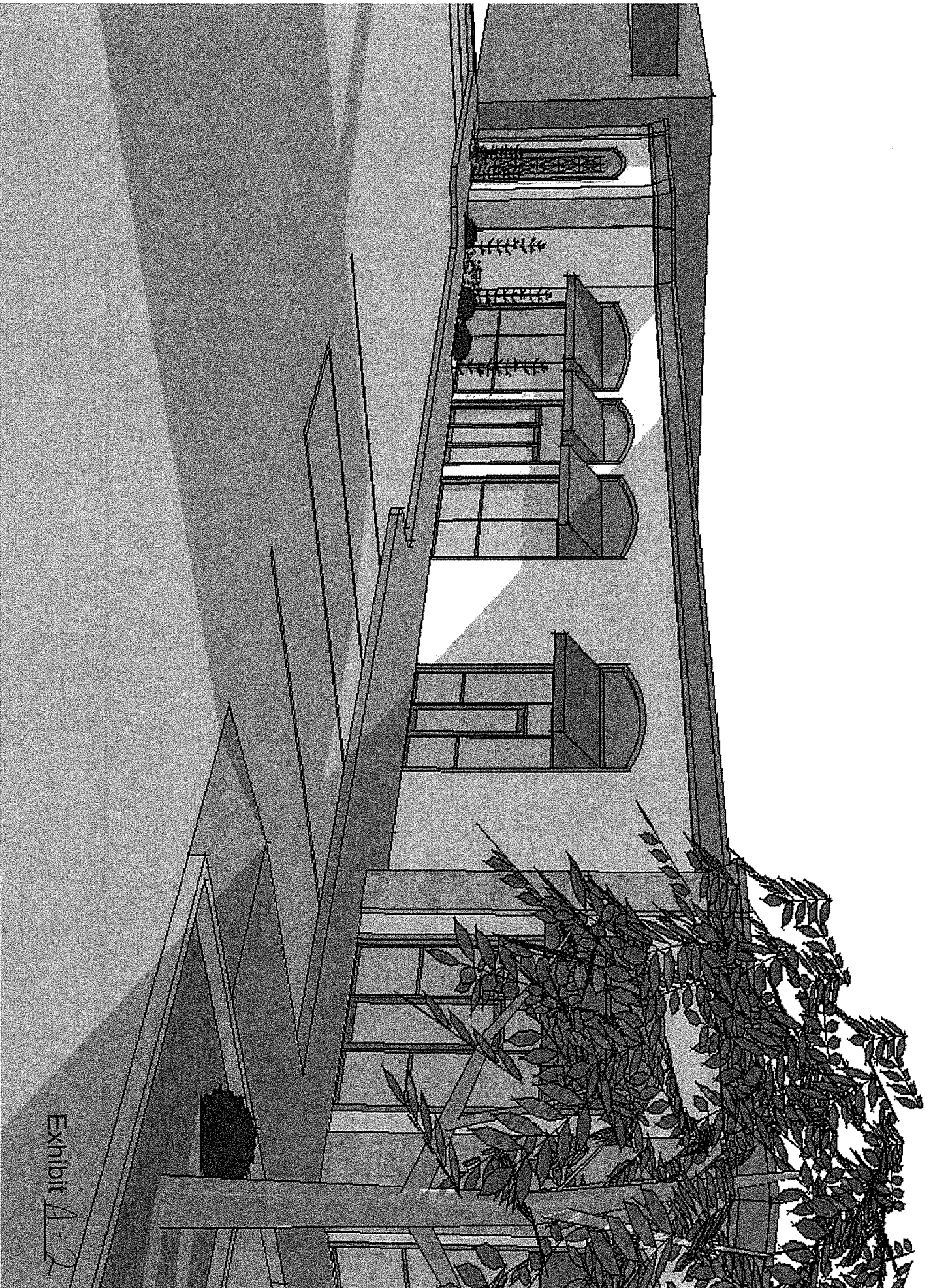


Exhibit A-2



RESOLUTION NO. 28-87

CONDITIONAL USE PERMIT 1-87  
"D" OVERLAY SITE REVIEW 1-87

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF THE  
APPROVAL OF A SELF-SERVICE GASOLINE FACILITY IN  
CONJUNCTION WITH A CONVENIENCE MARKET AND SELF-SERVICE  
CAR WASH, LOCATED ON THE SOUTHEAST CORNER OF PROSPECT  
~~STREET AND HENDERSON AVENUE~~

---

WHEREAS: The City Council at its regularly scheduled meeting of March 17, 1987 held a public hearing to consider approval of a conditional use permit and "D" overlay site review to allow a self-service gasoline facility in conjunction with a convenience market and self-service car wash in the C-2 (D) zone at the southeast corner of Prospect Street and Henderson avenue; and

WHEREAS: The City Council received testimony from interested parties relative to the subject conditional use permit, which was combined with the site review to provide for expeditious processing and consideration; and

WHEREAS: The City Council reviewed the proposed locations of the four (4) remote controlled, self-service gasoline pumps and three (3) underground storage tanks in relation to the proposed market and car wash and found the on-site parking, landscaping and development proposal to be adequate for the proposed use and in keeping with the requirements of the Design Review Overlay as it applies to such commercial developments; and

WHEREAS: The City Council considered the following findings in review of the subject project:

1. That the design and improvement of the proposed project is consistent with the General Plan.
2. That the site is physically suitable for the type and density of the development.



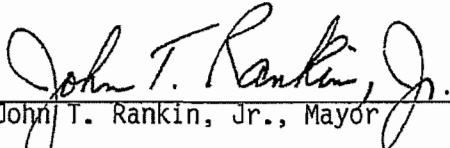
3. That the design of the project and proposed improvements are not likely to cause substantial environmental damage or public health problems.
4. That a Negative Declaration was approved for the project in accordance with the California Environmental Quality Act.
5. That the architectural theme, landscaping design, parking area and locations of structures of the proposed development will be compatible with the area surrounding the subject site.

~~NOW, THEREFORE, BE IT RESOLVED: That the Porterville City Council~~

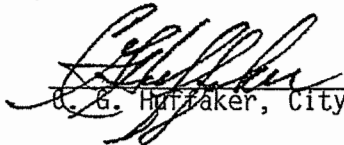
does hereby approve Conditional Use Permit 1-87 and "D" Overlay Site Review 1-87 for a self-service gasoline facility in conjunction with a convenience market and self-service car wash in the C-2 (D) zone, subject to the following conditions:

1. That development shall be in conformance with Sections 79.901 through 79.912 of the 1985 edition of the Uniform Fire Code.
2. That the applicant shall comply with all applicable air pollution control district requirements for vapor recovery, to include permits to construct and operate such equipment.
3. That two sets of plans shall be required when submitting for a building permit.
4. That all plans shall have approval by the Building Inspector, City Engineer and Fire Chief prior to issuance of the building permit.
5. That the air and water dispenser at the southerly property line shall be relocated to an area outside the required loading zone prior to approval of the building permit.
6. That development shall be in strict compliance with plans submitted (Exhibit "A") with the exception of Condition No. 5 herein, including the three (3) plans consisting of the exterior elevations, landscaping diagram and site plan.
7. That development of the subject site shall be in conformance with all applicable City requirements and codes, including but not limited to, the Standard Plans and Specifications, Zoning Ordinance, and Building Code.
8. That the landscaped areas shall be maintained in a neat and viable condition and shall be provided with an appropriate and efficient means of irrigation.

9. That all on-site lighting shall be directed away from adjoining properties and rights-of-way and shall be so designed and located as to preclude glare and visibility impacts on surrounding areas.
  10. That all applicable City fees shall be paid.
  11. That the food service area and related food service facilities shall comply with the requirements of the County Health Department and City Building Inspector.
- 
12. That the site shall be maintained in a neat and viable condition and that the operator(s) shall preclude to the extent practicable, the congregation or assemblage of nuisance causing individuals.
  13. That the developer shall make diligent efforts toward obtaining a mutually acceptable vehicular ingress/egress easement from the contiguous property to the east. Should said easement be obtained, the developer shall install a driveway cut from the subject site to said contiguous commercial property to the east allowing free vehicular movement between the proposed and existing commercial developments.

  
John T. Rankin, Jr., Mayor

ATTEST:

  
G. G. Haffaker, City Clerk

CUP: RES/1-87

STATE OF CALIFORNIA)  
(SS  
COUNTY OF TULARE )

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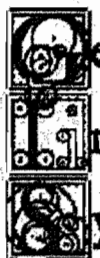
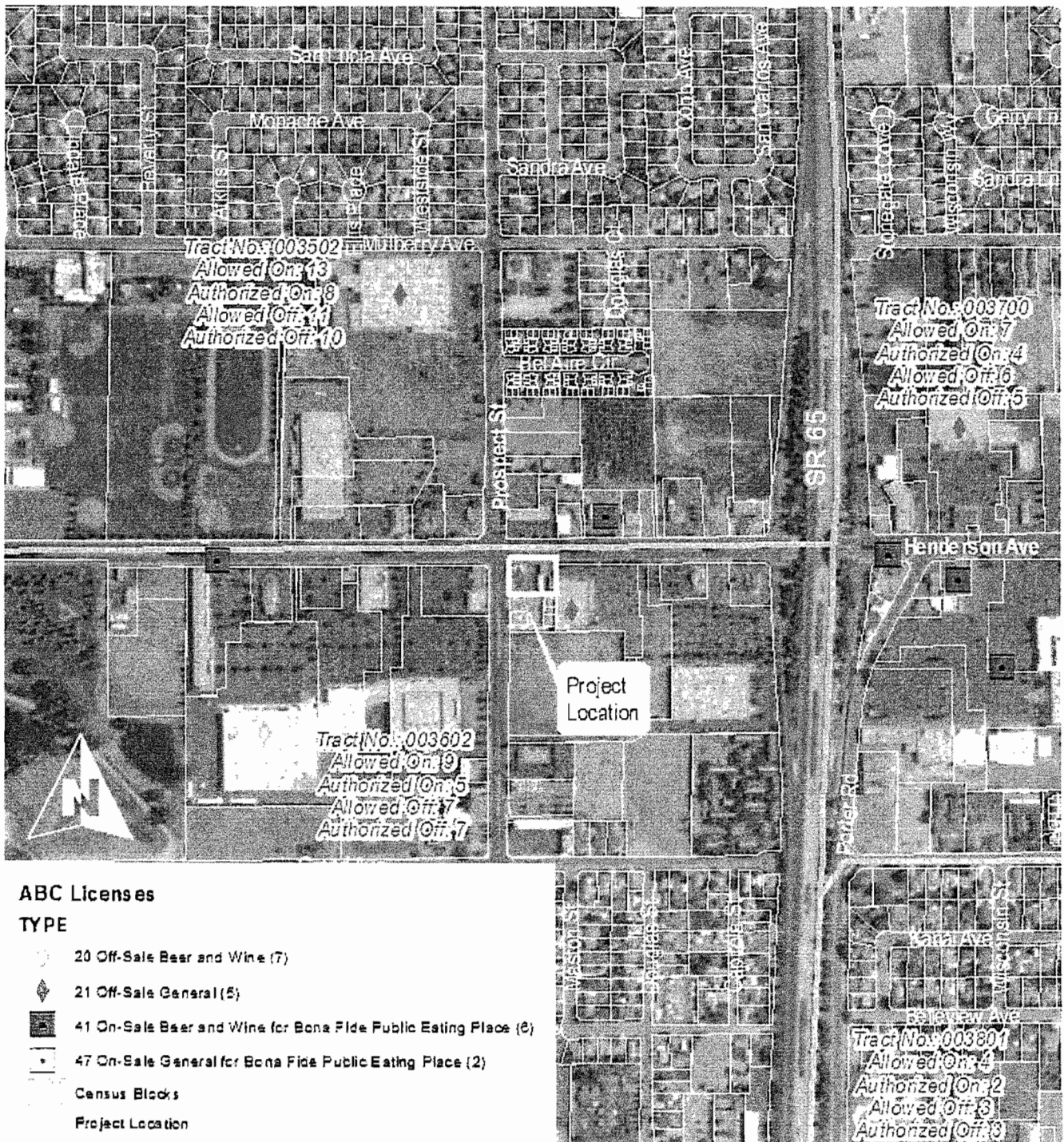
I, C. G. HUFFAKER, the duly appointed City Clerk of the City of Porterville, do hereby certify and declare that the foregoing is a full, true and correct copy of a resolution duly and regularly passed and adopted at a regular meeting of the Porterville City Council regularly called and held on March 17, 1987.

THAT said resolution was duly passed and adopted by the following vote:

COUNCILMEN	PRUITT	BONDS	LEAVITT	ENSSLIN	RANKIN
AYES	X	X	X	X	X
NOES					
ABSENT					
ABSTAIN					

C. G. HUFFAKER, City Clerk

Georgia Hawley  
Georgia Hawley, Deputy City Clerk



**Geographic  
Information  
Systems**

*A Division of the Community Development Department*

**PRC 2014-011  
JJ's Market Renovations &  
Conditional Use Permit for Alcohol Sales  
Census Tract Map showing ABC Licenses  
1" = 600 ft**

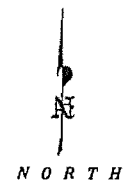
**ATTACHMENT  
ITEM NO. 2**

QUESTIONS	BY

**HAIN BUILDING DESIGN**  
SPECIALIZING IN CUSTOM DESIGNS  
SINCE 1970  
1458 Hwy. 150 Apple Valley, CA 92265  
Tel.: (924) 781-5115  
Telex: HAINBUD4-SINGAPORENET  
Cable: HAINBUD4-SINGAPORENET

DATE	03-26-14
NAME	NONE
DRAWN	MM
FILE	13012

100

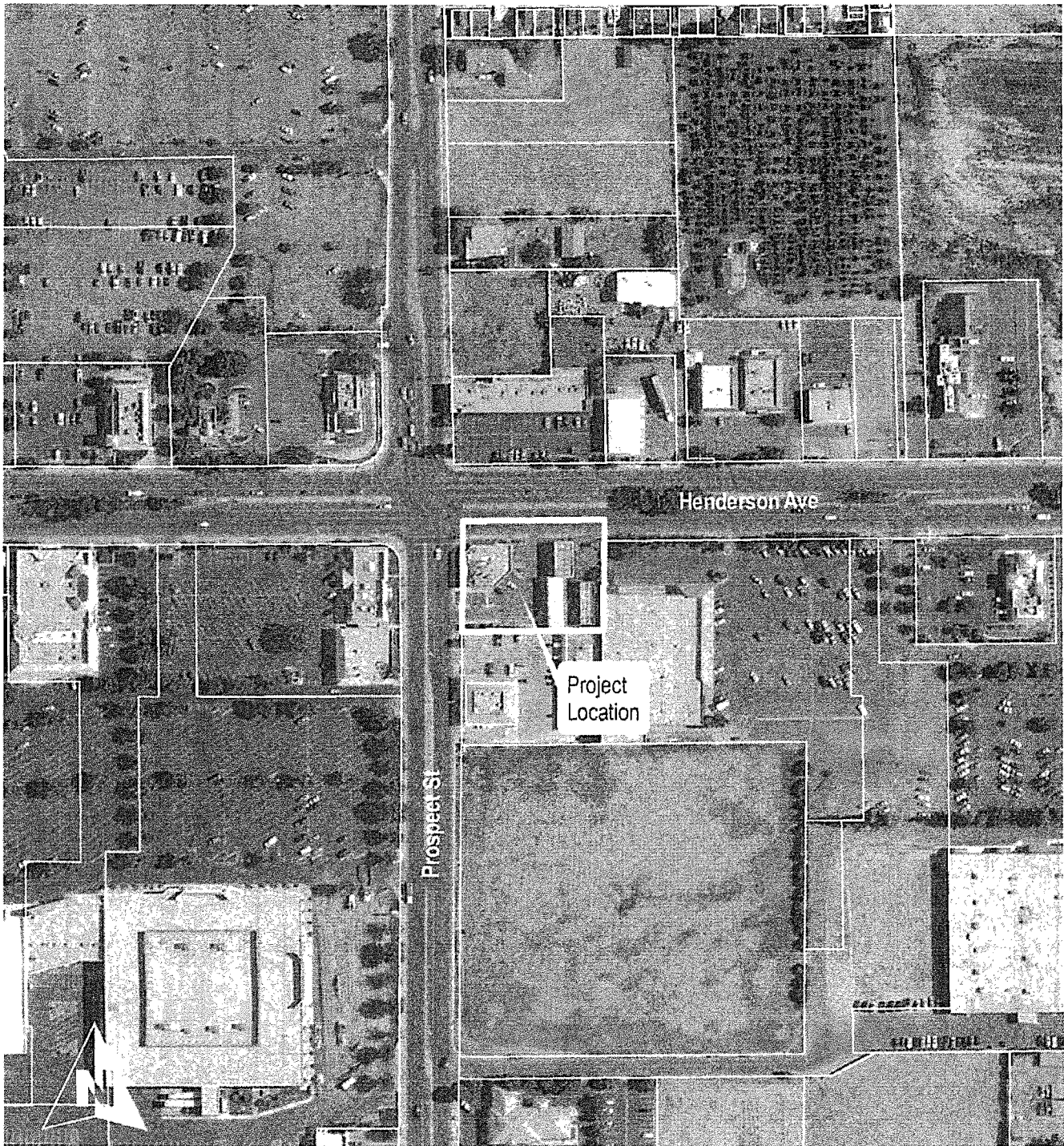


## SITE PLAN

SCALE: 1"=10'



P:\commdev\Planning\Projects\PRC\2014\2014-011 JJ Market @ 1187 W Henderson\GIS Data\locator\_map.mxd



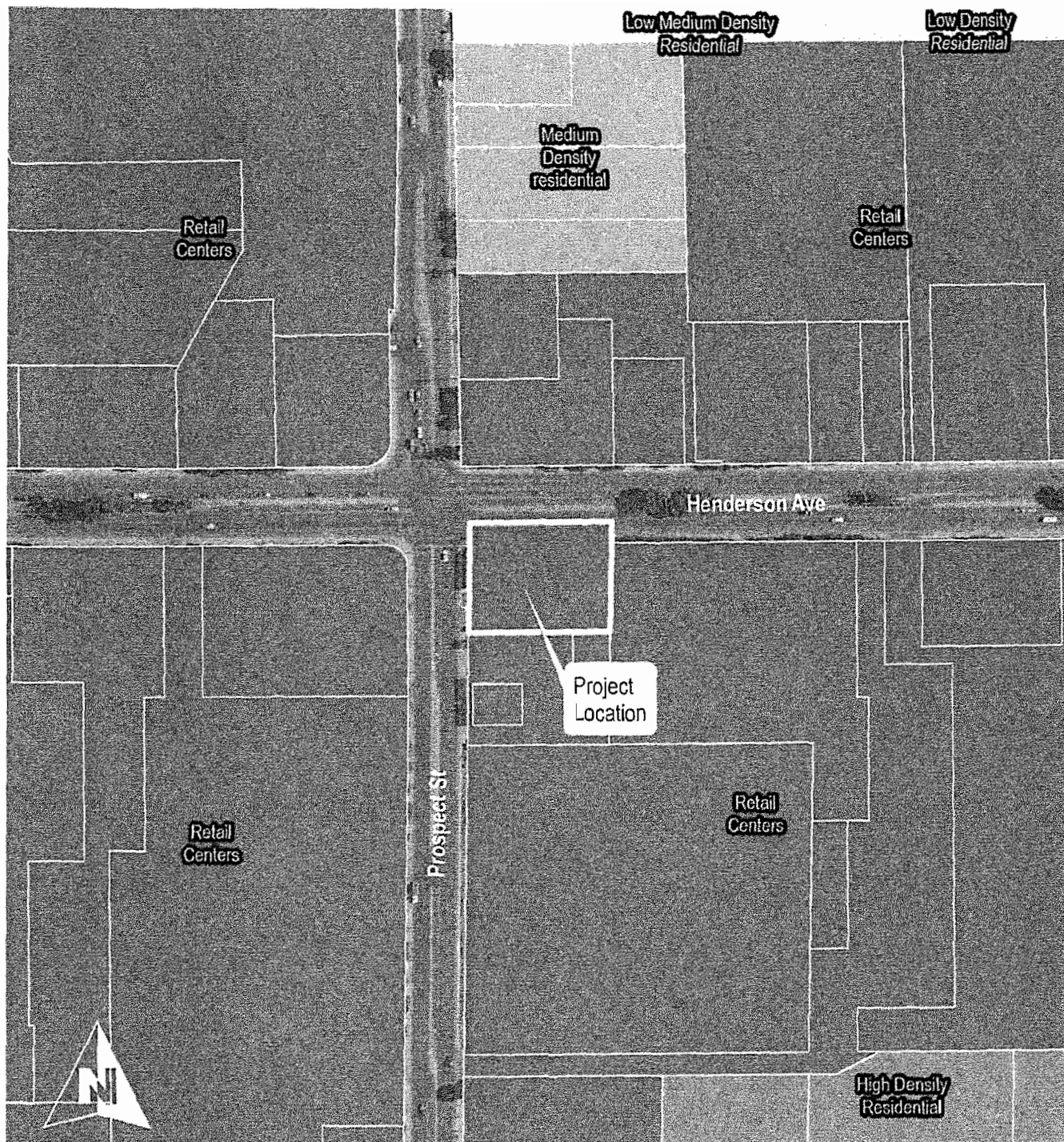
*A Division of the Community Development Department*

**Geographic  
Information  
& Systems**

**PRC 2014-011  
JJ's Market Renovations &  
Conditional Use Permit for Alcohol Sales  
Locator Map  
1" = 200 ft**

**ATTACHMENT  
ITEM NO. 4**

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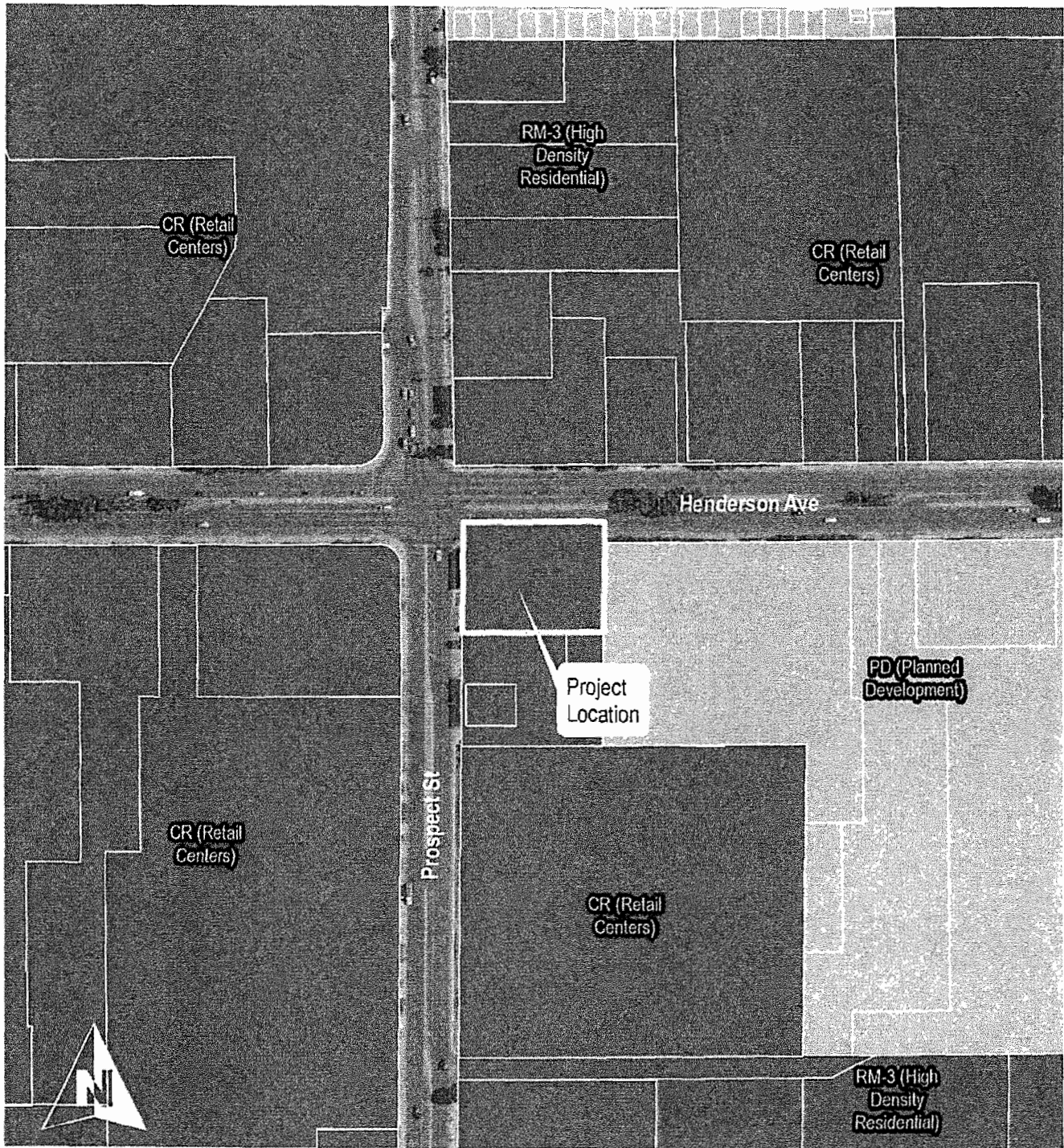


Geographic  
Information  
& Systems

A Division of the Community Development Department

PRC 2014-011  
JJ's Market Renovations &  
Conditional Use Permit for Alcohol Sales  
General Plan Land Use Map  
1" = 200 ft  
**ATTACHMENT  
ITEM NO. 5**





A Division of the Community Development Department  
Geographic Information Systems

PRC 2014-011  
JJ's Market Renovations &  
Conditional Use Permit for Alcohol Sales  
Zoning Map  
1" = 200 ft

ATTACHMENT  
ITEM NO. 6



CITY COUNCIL AGENDA: DECEMBER 2, 2014

PUBLIC HEARING

SUBJECT: REQUEST FOR A CONDITIONAL USE PERMIT (PRC 2014-019-C) TO ALLOW FOR THE SALE OF ALCOHOL UNDER A TYPE 47 ON-SALE GENERAL FOR BONA FIDE PUBLIC EATING PLACE FOR APPLEBEE'S RESTAURANT LOCATED AT 892 W. HENDERSON AVENUE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT- PLANNING DIVISION

COMMENT: On October 15, 2014, the applicant submitted an application to the Project Review Committee (PRC) to consider a Conditional Use Permit (PRC 2014-019-C) to allow for the sale of alcohol under a Type 47 On-Sale General for Bona Fide Public Eating Place license for Applebee's located at 892 W. Henderson Avenue within the Porterville Town Center. A Type 47 license would authorize the sale of beer, wine and distilled spirits for consumption on the licensed premises.

During the PRC meeting, the Police Department indicated that the location of Applebee's has sufficient exterior lighting to illuminate the parking lot and the entire site during business hours and maintaining this security lighting shall be a condition of approval. The PRC also acknowledged that the proposed location of the project and the conditions under which it will be operated or maintained would not be detrimental to the public health, safety, or welfare to properties or improvements in the vicinity.

Staff noticed a public hearing for the November 18, 2014, City Council meeting; however, it was noted that the public hearing notice incorrectly identified an application for a Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) license. In an abundance of caution staff requested the item be pulled, but to first take public comment. There were two members of the public who spoke regarding the item. One was opposed to the project and one was in favor. Staff renoticed the item for the December 2, 2014, City Council meeting for the appropriate Type 47 On-sale general for a bona fide eating place.

ANALYSIS: The California Department of Alcoholic Beverage Control (ABC) allows for a specific number of licenses per census tract, based on population. Whenever the ratio of on-sale licenses to population in a census tract exceeds the average ratio for the county, an "undue concentration" of licenses is determined to exist. The subject site is located within Census Tract 37.00; this tract contains 14 licenses for alcohol sales; seven (7) on-sale, six (6) off-sale and one (1) club licenses (Eagles Lodge). In Census Tract 37.00, four (4) on-sale and five (5) off-sale licenses are allowed without being deemed over-concentrated. Approval of this on-sale licenses would be the eighth (8<sup>th</sup>) on-sale licenses, five (5) above the allowable as determined by ABC. Due to the over concentration of on-sale licenses, a Letter of Public Convenience or Necessity will be required.

DD 

Appropriated/Funded N/A

CM 

Item No. 15

It is not anticipated that this use would have a negative impact on the surrounding properties. As a condition of approval, due to the close proximity of Trinity Lutheran Church and La Mision De Jesus, located at the northeast and southeast corner respectively of Henderson Avenue and Indiana Street (approximately 545 and 550 feet from property line to property line) alcohol advertising visible from the outside of the proposed building shall not be allowed. The applicant is conditioned to operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and to operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. Furthermore, at all times the facility shall be operated and maintained to comply with State Laws, the City of Porterville Development Ordinance, adopted Building Codes and all other applicable laws and ordinances.

The subject site is zoned PD (Planned Development), which requires consistency with the underlying General Plan designation. The project is indeed consistent with the General Plan land use designation for Commercial Mixed Use (CMX). The CMX designation is intended to provide for commercial, service, office and residential uses that meet local and regional demand. The proposed restaurant with alcohol sales would suit the purpose of the General Plan Land Use Designation. The restaurant is a permitted use in the CMX land use designation, and alcohol sales may be permitted in that land use with the requested Conditional Use Permit.

ENVIRONMENTAL REVIEW: On November 5, 2014, the Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality Act pursuant to Section 15061(b), (3) of the California Code of Regulation (CEQA Guidelines), under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

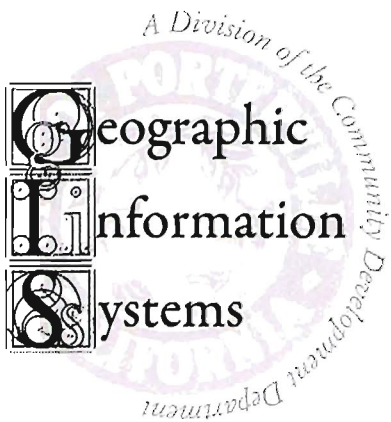
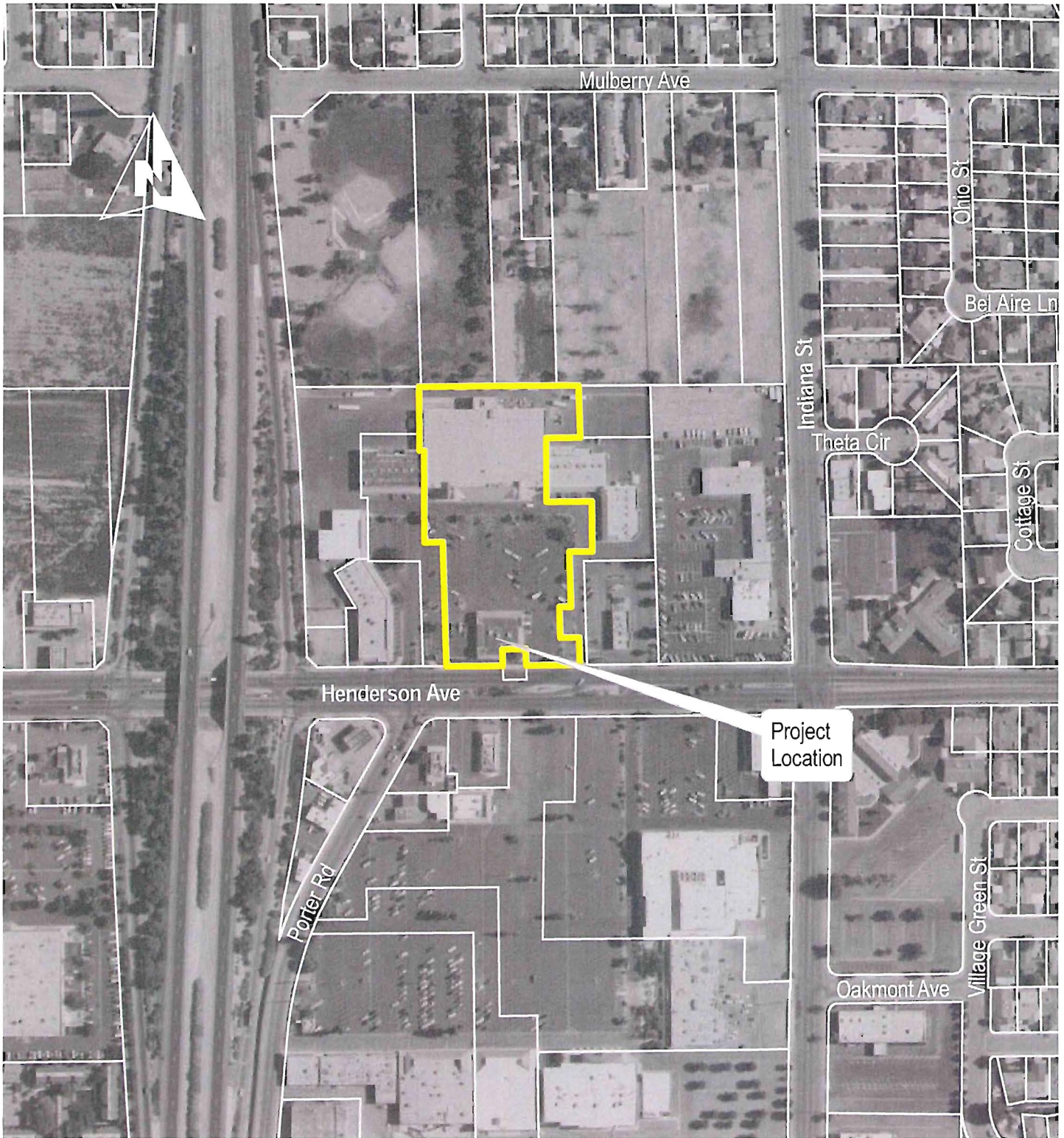
RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving Conditional Use Permit (PRC 2014-019-C) subject to conditions of approval; and
2. Authorize the mayor to sign the Letter of Public Convenience or Necessity.

ATTACHMENTS:

1. Locator Map
2. General Plan Land Use Designation
3. Floor Plan
4. Existing licenses in Census Tract 37.00
5. Draft Resolution
6. Letter of Public Convenience or Necessity

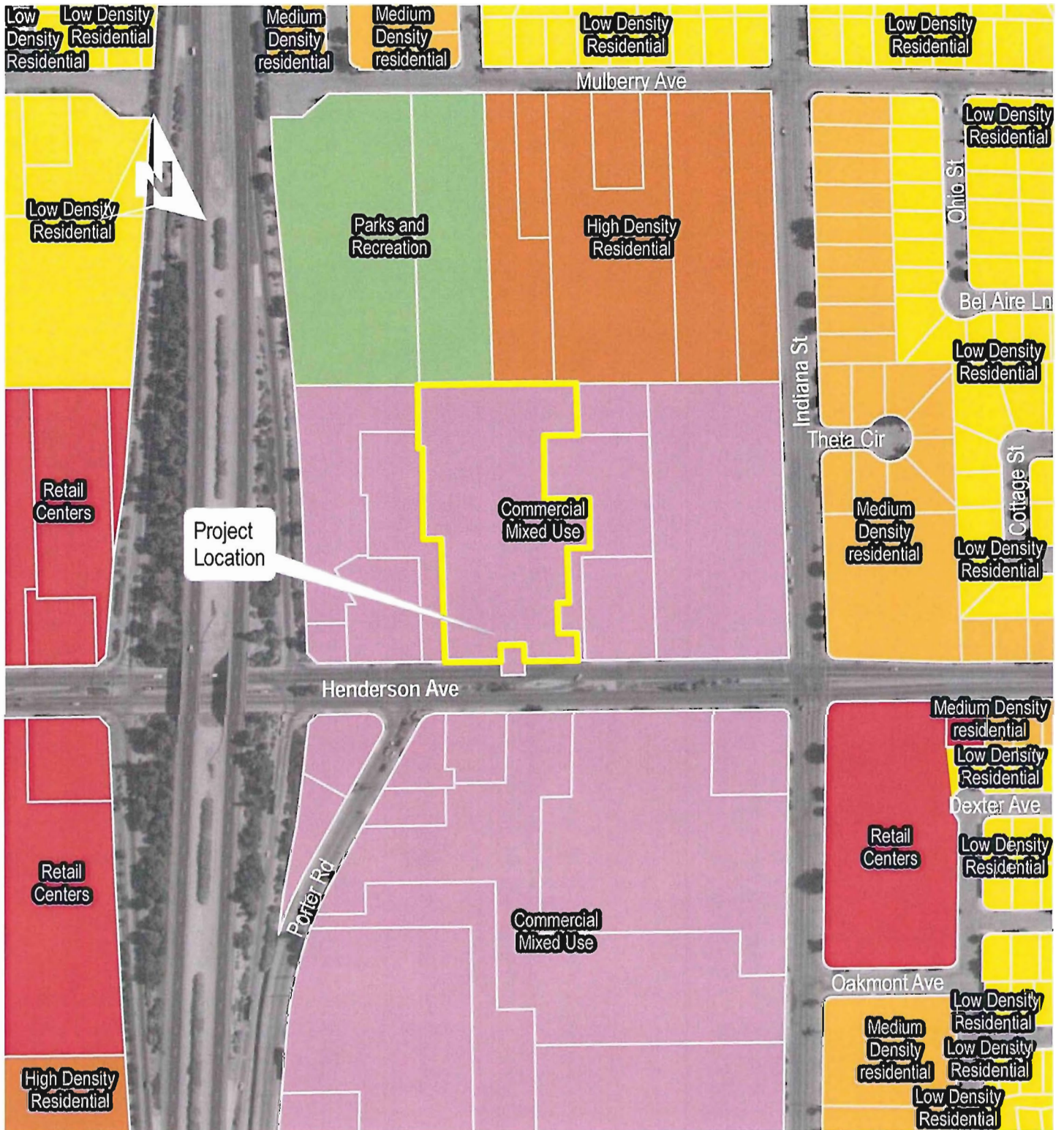




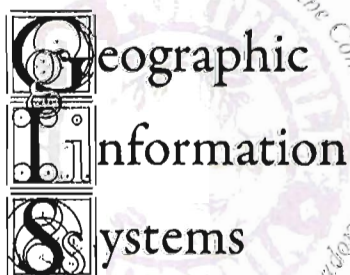
**ATTACHMENT  
ITEM NO. 1**

**PRC 2014-019  
Applebees @ 892 W Henderson  
Project Locator Map  
1" = 300 ft.**

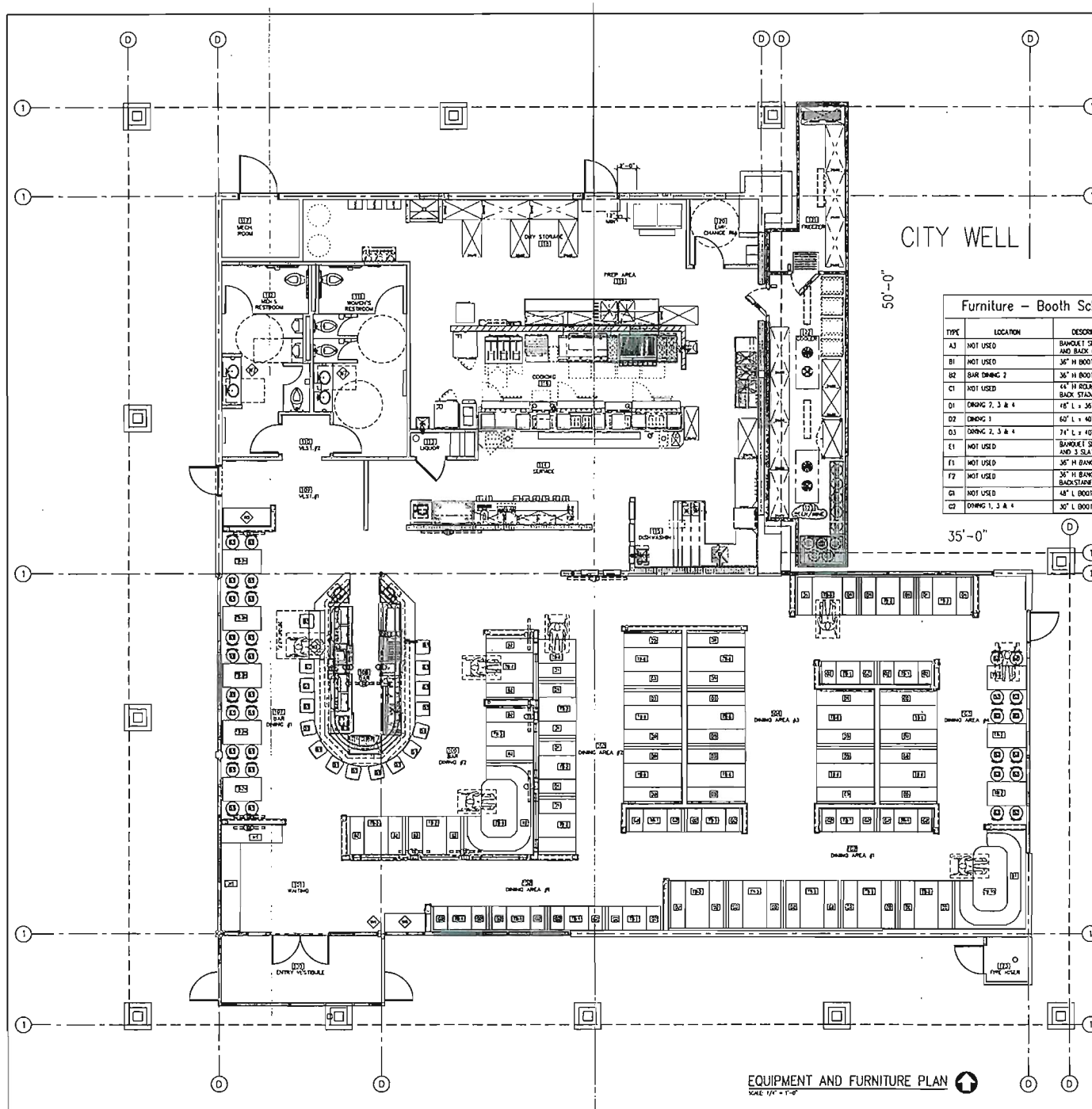




**ATTACHMENT  
ITEM NO. 2**



**PRC 2014-019  
Applebees @ 892 W Henderson  
General Plan Land Use Map  
1" = 300 ft.**



#### A1.4 GENERAL NOTES

1. OUTDOOR FURNITURE AND EQUIPMENT TO BE PLACED BY OWNER AND INSTALLED BY G.C.
2. WALLS FURNISHED AND INSTALLED BY OWNER'S VENDOR UNDER SEPARATE CONTRACT. G.C. TO COORDINATE INSTALLATION.
3. KITCHEN EQUIPMENT SHOWN FOR REFERENCE ONLY. REFER TO KITCHEN DRAWINGS.
4. ALL FRONT OF HOUSE FURNITURE, CASEWORK, EQUIPMENT AND FIXTURES TO BE INSTALLED BY G.C.
5. TABLE EDGE AT ALL WHEELCHAIR ACCESSIBLE LOCATIONS SHALL HAVE A 1" DIA. DISK DISPLAYING THE INTERNATIONAL SYMBOL OF ACCESSIBILITY.

### Casework Schedule

Casework Schedule		
TAG	TYPE	COMMENTS
④	BAR TOP	
④	ADA BAR TOP	
④	BLACK BAR CASEWORK	
④	MEDIA HOLDER	COORDINATE LOCATIONS WITH OWNER
④	WAIT STATION	
④	HOSTESS STAND	
④	RESTROOM LAVATORY COUNTERTOP	

### Furniture – Booth Schedule

Furniture – Booth Schedule				FRAME FINISH	SEAT UPHOLSTERY	BACK UPHOLSTERY	BASE
TYPE	LOCATION	DESCRIPTION					
A3	HOT USED	BANQUET SEATING WITH UPHOLSTERED SEAT AND BACK WITH INTEGRATED, RAISED PLATFORM	1	2	5	11	
B1	HOT USED	36" H BOOTH WITH REMOVABLE SEAT	1	3	6	12	
B2	BAR DINING 2	36" H BOOTH WITH REMOVABLE SEAT	1	2	5	12	
C1	HOT USED	44" H SQUARE BOOTH WITH BOOTH OUTSIDE BACK STAIRED TO MATCH PL-1	1	4	7	12	
D1	DINING 2, 3 & 4	48" L x 36" H BOOTH	1	4	7	13	
D2	DINING 1	60" L x 40" H BOOTH	1	4	7	13	
D3	DINING 2, 3 & 4	74" L x 48" H BOOTH	1	4	7	13	
E1	HOT USED	BANQUET SEATING WITH UPHOLSTERED SEAT AND 3 SLAT BACK	1	4	8	12	
F1	HOT USED	36" H BANQUET SEATING	1	3	7	11	
F2	HOT USED	36" H BANQUET SEATING WITHOUTSIDE BACK STAIRED TO MATCH PL-1	1	3	9	13	
G1	HOT USED	48" L BOOTH SEAT	1	3	9	13	
G2	DINING 1, 3 & 4	30" L BOOTH SEAT	1	4	10	13	

### Material Legend

1	STAIN TO MATCH PL-1	8	1x3 SLATS-STAIN TO MATCH PL-1
2	UNIFOLIA-APPLE'S CHOCOLATE	9	OF SIMSON APPIN2 GOLD METAL
3	HAUGATHYLA AP14053 BROWN	10	WAKRAM 46591-087 BLOOD
4	HAUGATHYLA AP14054 GOLD	11	BLACK CARPET WITH SATIN ALUMINUM CORNER GUARDS
5	SAN ROMO SSR-001 DUBOISON	12	TAPERED MAPLE LEGS WITH STAINLESS LAMINATE
6	OF SIMSON APPIN6 PARSLEY	13	MAPLE BASE
7	NASSIMI LAMINA SLOOOSY CARPET		

Furniture – Chair Schedule	
1	Chair
2	Chair
3	Chair
4	Chair
5	Chair
6	Chair
7	Chair
8	Chair
9	Chair
10	Chair
11	Chair
12	Chair
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98	Chair
99	Chair
100	Chair

TYPE MARK	DESCRIPTION	COUNT
N1	WAITING BENCH	2
HC-1	HIGH CHAIR	2
S-1	BAR STOOL	36
S-2	DINING ROOM CHAIR	12

### Television Legend

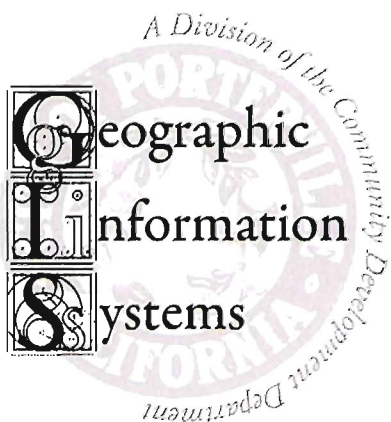
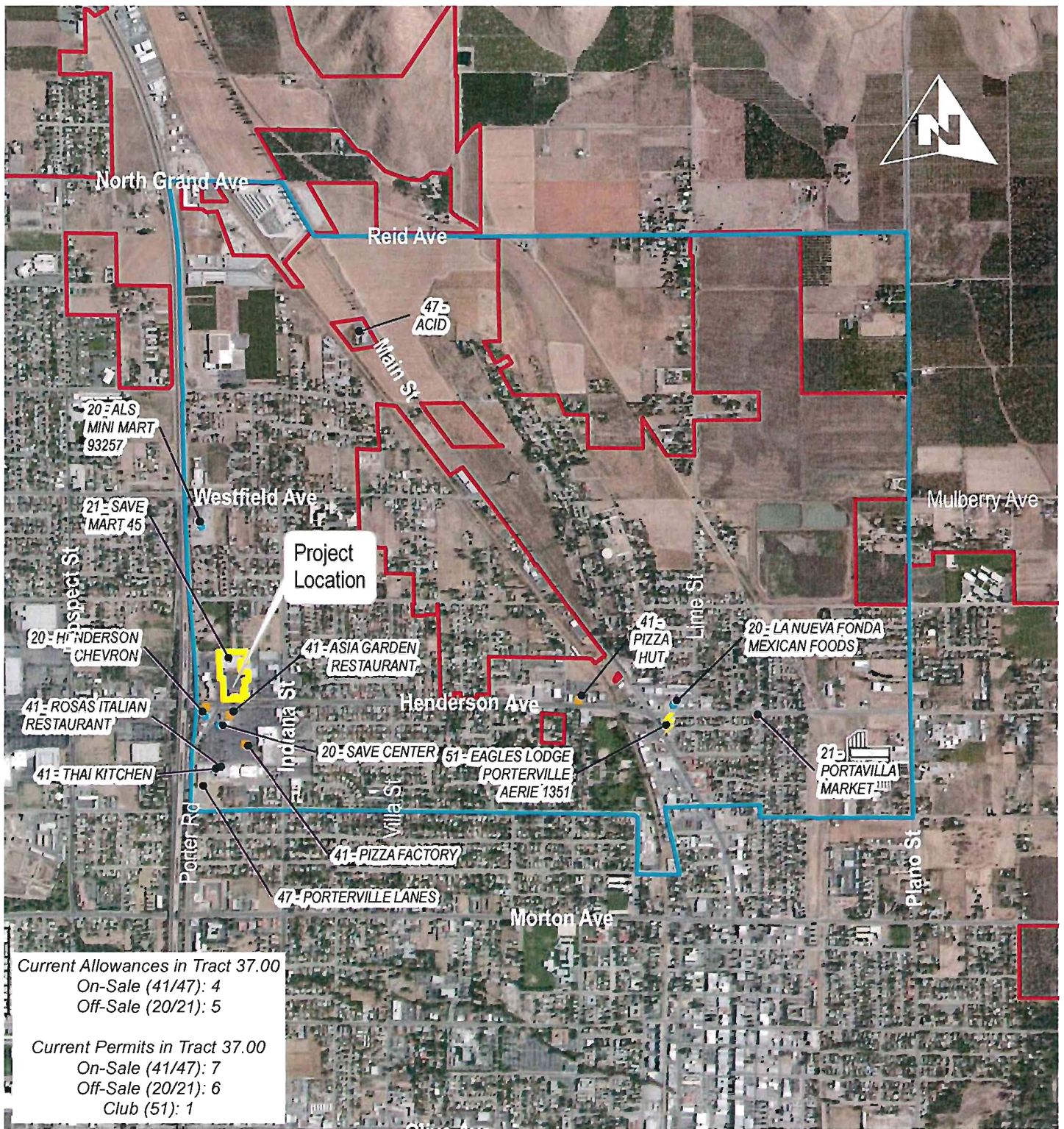
TAG	MANUFACTURE	MODEL	COMMENTS	QUANTITY
T1	SAWSUNG	UN55F6000F XZA	55" LED TV-Wall mounted	0
T2	SAWSUNG	UN39F50000F XZA	39" LED TV-Wall mounted	11
T3	SAWSUNG	UN75H6300AF XZA	75" LED TV-Wall mounted	2

## Furniture – Table Schedule

TYPE	LOCATION	DESCRIPTION	TABLE TOP MATERIAL
TB-1	DINING 1 & 3	30" x 30" TABLE	MAPLE BUCHER BLOCK
TB-2	BAR DINING 2, DINING 2 & 4	30" x 48" TABLE	MAPLE BUCHER BLOCK
TB-3A	BAR DINING 1	30" x 48" TABLE (HIGH)	MAPLE BUCHER BLOCK
TB-3	BAR DINING 2, DINING 1	30" x 60" TABLE	MAPLE BUCHER BLOCK
TB-5	ADA DINING 3	30" x 48" TABLE	MAPLE BUCHER BLOCK
TB-6	DINING 2 & 3	30" x 72" TABLE	MAPLE BUCHER BLOCK
TB-7	ADA BAR DINING 2	38" x 60" TABLE	MAPLE BUCHER BLOCK
TB-8	ADA DINING 2 & 4	30" x 48" TABLE	MAPLE BUCHER BLOCK
TB-9	BAR DINING 2	45" x 72" TABLE	MAPLE BUCHER BLOCK
TB-10	DINING 1	41" x 60" TABLE	MAPLE BUCHER BLOCK







PRC 2014-019  
Applebees @ 892 W Henderson  
Tract 37.00 ABC License Map  
1" = 300 ft.

ATTACHMENT  
ITEM NO. 4



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF CONDITIONAL USE  
PERMIT (PRC 2014-019-C) TO ALLOW FOR THE SALE OF ALCOHOL UNDER A TYPE  
47 ON-SALE GENERAL FOR BONA FIDE PUBLIC EATING PLACE FOR APPLEBEE'S  
RESTAURANT LOCATED AT 892 W. HENDERSON AVENUE

WHEREAS: On November 5, 2014, the Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality Act pursuant to Section 15061(b), (3) of the California Code of Regulation (CEQA Guidelines); and

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of December 2, 2014, conducted a public hearing to consider Conditional Use Permit (PRC 2014-019-C) to allow for the sale of alcohol under a Type 47 On-Sale General for Bona Fide Public Eating Place license for Applebee's Restaurant located at 892 W. Henderson Avenue; and

WHEREAS: The City Council of the City of Porterville authorized the mayor to sign the Letter of Public Convenience or Necessity because of the regional nature of the shopping center within which the restaurant is located; and

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. That the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted.

The CMX designation is intended to provide for commercial, service, office and residential uses that meet local and regional demand. The proposed restaurant with alcohol sales would suit the purpose of the land use designation. The restaurant is a permitted use in the CMX land use, and alcohol sales may be permitted with a Conditional Use Permit.

2. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity.

Conditions of approval are included herein to ensure adequate development standards are met. The project is located within an existing building in a regional shopping center that has been well maintained since its original development. Further, all land owners within the city of Porterville are held to performance standards identified in Chapter 306 of the Development Ordinance. Specifically, Section 306.03 of the Ordinance states, "Land or buildings shall not be used or

occupied in a manner creating any dangerous, injurious, or noxious fire, explosive, or other hazard; noise, vibration, smoke, dust, odor, or form of air pollution; heat, cold, dampness, electrical or other disturbance; glare, refuse, or wastes; or other substances, conditions, or elements which would substantially adversely affect the surrounding area.”

3. This project is Categorically Exempt pursuant to CEQA Guidelines §15061(b), (3) - General Rule: the approval of the alcohol sales creates no physical change to the environment.
4. The California Department of Alcoholic Beverage Control (ABC) allows for a specific number of licenses per census tract, based on population. Whenever the ratio of on-sale licenses to population in a census tract exceeds the average ratio for the county, an “undue concentration” of licenses is determined to exist. The subject site is located within Census Tract 37.00; this tract contains 14 licenses for alcohol sales; seven (7) on-sale, six (6) off-sale and one (1) club licenses (Eagles Lodge). In Census Tract 37.00, four (4) on-sale and five (5) off-sale licenses are allowed without being deemed over-concentrated. Approval of this on-sale licenses would be the eighth (8<sup>th</sup>) on-sale licenses, five (5) above the allowable as determined by ABC. Due to the over concentration of on-sale licenses, a Letter of Public Convenience or Necessity will be required.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit (PRC 2014-019-C) subject to the following conditions:

1. The developer/applicant shall keep the beer and wine in a secure place with access only available to the employees, shown herein as the walk-in refrigeration and separate bar area in Exhibit “A.” Any future changes in operation which substantially alter the condition or nature of the subject business will require approval by the City Council if such modification involves expansion, relocation, or change in accessibility to the conditioned uses.
2. The facility shall be operated and maintained to comply with applicable State and Federal laws, and the City of Porterville Development Ordinance at all times.
3. The applicant shall maintain the security lighting on the exterior of the building and in the parking lot in a manner to allow reasonable surveillance of the area to the satisfaction of the Police Department and Zoning Administrator.
4. The applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit as provided in Section 601.10 of the Porterville Development Ordinance.



5. The elements of the conditional use permit approving on-site alcohol sales will be subject to modification or revocation if the State of California imposes sanctions on the on-sale license.
6. The entire site shall be permanently maintained free of accumulated dirt and litter and in an otherwise neat and attractive manner.
7. No alcohol advertising shall be displayed and/or viewed from the outside of the proposed building.
8. The consumption of alcoholic beverages shall be prohibited off-site or outside of the building.
9. Upon approval of the conditional use permit, any future violations of regulations of the codes relating to the sales or consumption of alcohol, and/or excessive service calls by the Police Department resulting from the sales of alcohol will result in revocation of the Conditional Use Permit.
10. Unless an extension of time is granted by the City Council, the conditional use permit shall expire two (2) years after the date of approval if the on-sale Type 47 Alcohol License for General Bona Fide Eating Place is not active or actively pursued. The alcohol license permits sale of beer and wine in conjunction with the serving of meals.
11. The hours of operation during which alcoholic beverages may be sold and served under the on-sale license shall be limited to only during business hours.
12. That a Letter of Public Convenience or Necessity shall be required.

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of December, 2014.

\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

By \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk





December 3, 2014

California Department of Alcoholic Beverage Control  
Fresno District Office  
3640 East Ashlan Ave  
Fresno, CA 93726  
ATTN: Christine Weldon

RE: Applebee's – 892 W. Henderson Avenue, Porterville, CA

Dear Ms. Weldon:

The City Council of the City of Porterville has elected to approve submittal of this letter regarding the public convenience or necessity to be served through issuance of an on-sale Type 47 (on-sale general for bona fide public eating place) license for Applebee's located at 892 W. Henderson Avenue. The shopping center within which the proposed restaurant will be located is a regional center, and has significant economic draw beyond the boundaries of the census tract.

Approval of this letter was based on the following:

1. Per Section 23958.4 of the "Business and Professions Code," the subject site is located within Census Tract 37.00 which allows four (4) on-sale licenses. At the present time seven (7) on-sale licenses currently exist in this tract. Due to the over concentrated of on-sale licenses a Letter of Public Convenience or Necessity was required.
2. On December 2, 2014, the City Council conditionally approved Conditional Use Permit (PRC 2014-019-C), review attached resolution, to allow the on-sale of beer and wine located at 892 W. Henderson Avenue. As a condition of approval, a Letter of Public Convenience or Necessity was required to be approved by the City Council.
3. In consideration of the above, the City Council determined that public convenience or necessity would be served by the issuance of an on-sale beer and wine license.

ATTACHMENT  
ITEM NO. 6

Applebee's  
December 3, 2014

Further issuance of an on-sale license allowing beer and wine sales represents a viable economic asset to the community which will contribute tax revenues to the local economy. The subject site is consistent with the General Plan Land Use Designation for Commercial Mixed-Use (CMX). The CMX designation is intended to provide for commercial, service, office and residential uses that meet local and regional demand. The proposed restaurant with alcohol sales would suit the purpose of the General Plan Land Use Designation. The restaurant is a permitted use in the CMX land use designation, and alcohol sales may be permitted in that land use with the requested Conditional Use Permit.

For these reasons, the City Council of the City of Porterville supports issuance of a Type 47 license which would allow the sale of beer, wine and distilled spirits for an Applebee's Restaurant located in the Porterville Town Center at 892 W. Henderson Avenue.

Sincerely,

Milt Stowe, Mayor

Attachment: Resolution

CITY COUNCIL AGENDA: DECEMBER 2, 2014

PUBLIC HEARING

SUBJECT: GENERAL PLAN AMENDMENT AND ZONE CHANGE FROM CN (NEIGHBORHOOD COMMERCIAL) AND RM-2 (MEDIUM DENSITY RESIDENTIAL) TO CR (RETAIL CENTER)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION


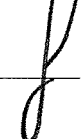
COMMENT: On October 1, 2014, the applicant submitted to the Project Review Committee an application requesting a General Plan Amendment and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Center). The proposed project is located at the southwest corner of Henderson Avenue and Newcomb Street on four parcels (APNs 245-070-087, 245-070-036, 245-070-047 and 245-070-083) totaling approximately 1.3 acres. The project site is currently vacant with the exception of an existing house located at the southern end of the project site (APN 245-070-036) that will be removed for future development from said parcel. The site is located along two major arterials, Henderson Avenue and Newcomb Street, and is in an urban area that provides a mix of land uses.

The project applicant intends to construct an approximate 2,418 square foot drive-through restaurant in the near future located on the northern two parcels at the southwest corner of Henderson Avenue and Newcomb Street (245-070-083 and 245-070-047). Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance.

RECOMMENDATION: That the City Council:

1. Conduct a Public Hearing to receive input regarding the proposed General Plan Amendment and Zone Change;
2. Adopt the draft resolution approving a Mitigated Negative Declaration for PRC 2014-026-GZ;
3. Adopt the draft resolution approving General Plan Amendment for PRC 2014-026-GZ;
4. Approve the draft ordinance adopting Zone Change for PRC 2014-026-GZ contingent upon approval of General Plan Amendment; and
5. Waive further reading of the draft ordinance, approving the Zone Change and order it to print.

ATTACHMENT: Complete Staff Report

DD  Appropriated/Funded N/A CM  Item No. 16

CITY COUNCIL AGENDA: DECEMBER 2, 2014

PUBLIC HEARING

SUBJECT: GENERAL PLAN AMENDMENT AND ZONE CHANGE FROM CN (NEIGHBORHOOD COMMERCIAL) AND RM-2 (MEDIUM DENSITY RESIDENTIAL) TO CR (RETAIL CENTER)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

APPLICANT/AGENT:

Thomas O'Sullivan  
1279 W. Henderson Avenue #340  
Porterville, CA 93257

Jim Winton  
150 W. Morton Avenue  
Porterville, CA 93257

PROJECT LOCATION: Located at the southwest corner of Henderson Avenue and Newcomb Street

PROJECT DESCRIPTION: The applicant is requesting approval for a General Plan Amendment and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Center). The proposed project is located at the southwest corner of Henderson Avenue and Newcomb Street on four parcels (APNs 245-070-087, 245-070-036, 245-070-047 and 245-070-083) totaling approximately 1.3 acres. The project site is currently vacant with the exception of an existing house located at the southern end of the project site (APN 245-070-036) that will be removed prior to future development of the site. The site is located along two major arterials, Henderson Avenue and Newcomb Street, and is in an urban area that provides a mix of land uses. Monache High School is located northeast of the site and an 80 unit multi-family apartment complex is planned immediately south of the project site (Newcomb Court). Veterans Park is east of the project site, across Newcomb Street, and an existing church (First Southern Baptist Church) is located immediately west of the project site.

The project applicant intends to construct an approximately 2,418 square foot drive-through restaurant in the near future located on the northern two parcels at the southwest corner of Henderson Avenue and Newcomb Street (245-070-083 and 245-070-047). Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance. The applicant proposes to construct the commercial development in two phases. The initial phase will include the 2,418 square foot drive-through restaurant, road frontage improvements along Henderson Avenue and Newcomb Street, median improvements in Newcomb Street and parking lot improvements to accommodate the restaurant. The initial phase is proposed to be constructed in early 2015. The second phase of commercial establishments will be completed as economic conditions dictate.

HISTORY: The proposed project site has been vacant and undeveloped for well over 30 years with the exception of an existing house located at the southern end of the project site (APN 245-070-

036) that was built in 1940. Over the last several years, the surrounding area has experienced both residential and commercial growth with the recently approved Pacific Rim Commercial Mixed Use Project to the west and Newcomb Court Apartments (an affordable housing project) to the south of the project area.

**GENERAL PLAN CLASSIFICATION:** The subject site is designated on the General Plan land use diagram as High Density Residential on the northern three parcels (APNs 245-070-036, 245-070-047 and 245-070-083) and Medium Density Residential on the southern parcel (APN 245-070-087).

**PROPOSED GENERAL PLAN CLASSIFICATION:** Retail Centers

**CURRENT ZONING:** The subject site is zoned CN (Neighborhood Commercial) on the northern three parcels (APNs 245-070-036, 245-070-047 and 245-070-083) and Medium Density Residential on the southern parcel (APN 245-070-087).

**PROPOSED ZONING:** CR (Retail Centers)

**SURROUNDING ZONING AND LAND USES:**

North: RS-2	Low Density Residential (Single family Residence)
West: RM-3	High Density Residential (Religious Facility)
South: RM-2	Medium Density Residential (Vacant Lot)
East: PK	Parks and Recreation (Veteran's Park)

**LEGAL NOTICE:**

Mitigated Negative Declaration: 30 day public review period

Date Environmental Document Distributed	Date Notice Published in Porterville Recorder	Date Notice Mailed to Property Owners within 300 feet of property
October 30, 2014	October 31, 2014	October 30, 2014

**ENVIRONMENTAL DETERMINATION:** On October 30, 2014, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate to review potential environmental impacts associated with a General Plan Amendment and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers). The Initial Study has been transmitted to interested agencies, groups and individuals for review and comment. The review period ran for thirty (30) days from October 31, 2014, to December 1, 2014. As of the date of this report, no comments were received.

**STAFF ANALYSIS:** Based on review of application materials and submitted conceptual plans, the proposed project serves to fulfill the goals and policies of the General Plan as adopted. The amendments of the land use designations on the subject parcels from High Density Residential and

Medium Density Residential to Retail Centers and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) complies with the Retail Centers Land Use definition.

The General Plan Amendment and Zone Change will not create adverse environmental impacts on biological resources or adjacent neighborhoods when mitigation measures are implemented and standards of the Development Ordinance and General Plan are applied to the subsequent development project. Future development of the project area would require additional review by the Project Review Committee and would be subject to the City's development standards and the General Plan Land Use Implementation Policies, including but not limited to General Plan Land Use Implementation Policy LU-I-21 (prohibits new strip commercial development).

RECOMMENDATIONS: That the City Council:

1. Conduct a Public Hearing to receive input regarding the proposed General Plan Amendment and Zone Change;
2. Adopt the draft resolution approving a Mitigated Negative Declaration for PRC 2014-026-GZ;
3. Adopt the draft resolution approving General Plan Amendment for PRC 2014-026-GZ;
4. Approve the draft ordinance adopting Zone Change for PRC 2014-026-GZ contingent upon approval of General Plan Amendment; and
5. Waive further reading of the draft ordinance, approving the Zone Change and order it to print.

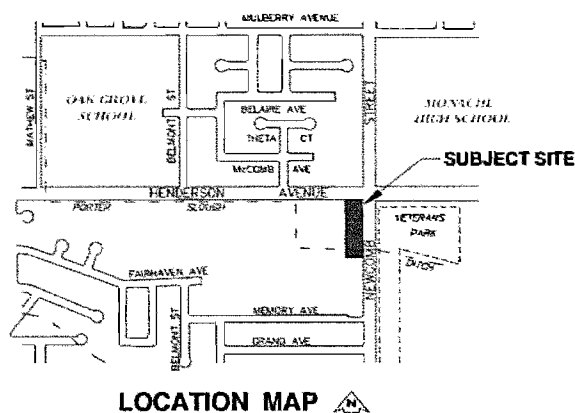
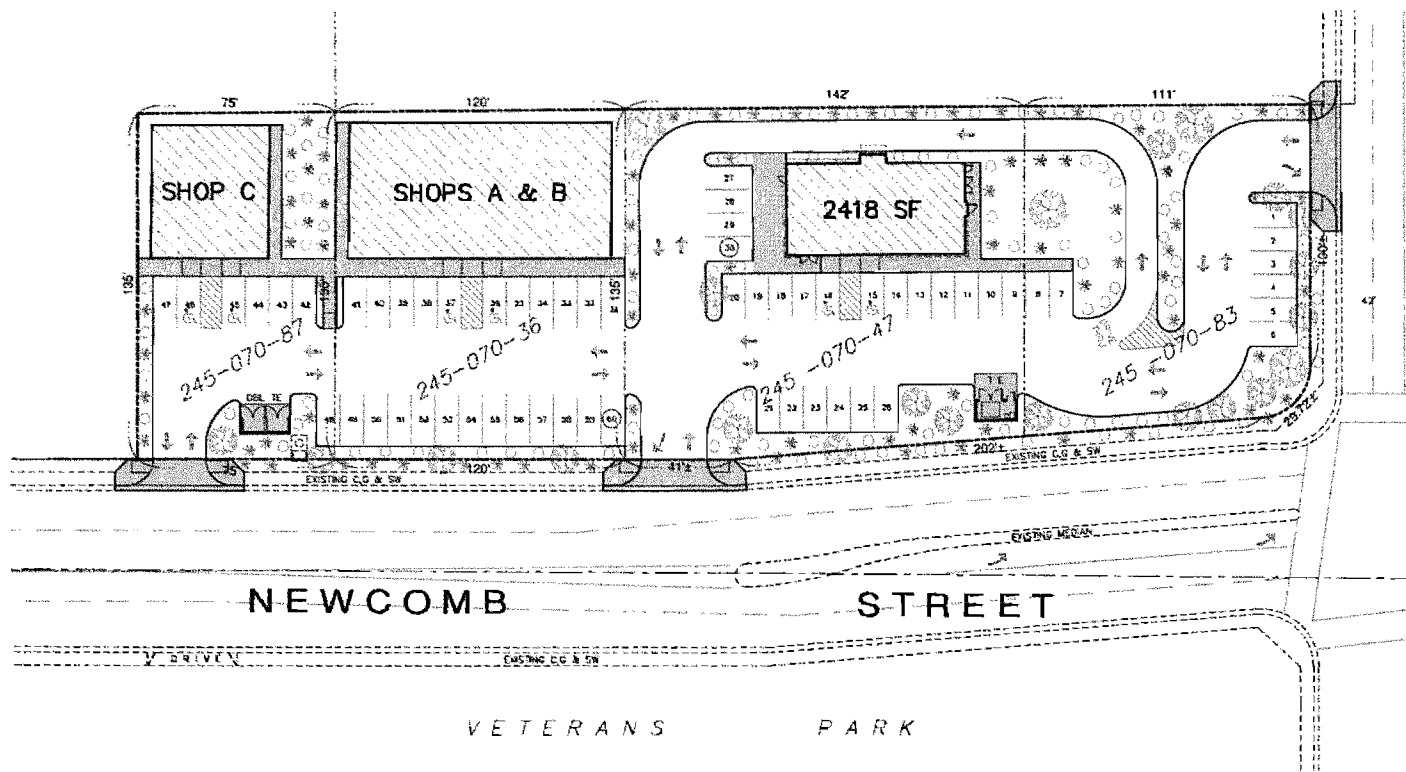
ATTACHMENTS:

1. Conceptual Site Development Plan
2. Mitigated Negative Declaration
3. Draft Resolution to adopt the Mitigated Negative Declaration
4. Draft Resolution to adopt General Plan Amendment for PRC 2014-026-GZ
5. Draft Ordinance to approve Zone Change for PRC 2014-026-GZ





HENDERSON AVE



<b>CONCEPTUAL SITE DEVELOPMENT PLAN</b> FOR: <b>Oz Services</b> APNs: 245-070-87, 36, 47 & 83		DRAWN BY:	LRH
		DATE:	9-29-2014
		REVISED:	
		SCALE:	1" = 30'
BY:	JAMES WINTON & ASSOCIATES 150 WEST MORTON AVENUE PORTERVILLE, CALIFORNIA 93257	2011	SHEET 1 OF 1



# MITIGATED NEGATIVE DECLARATION

## Newcomb Commercial Development

October 2014

PREPARED FOR:



City of Porterville  
291 N. Main Street  
Porterville, CA 93257

PREPARED BY:



Crawford & Bowen Planning, Inc.  
113 N. Church Street, Suite 302  
Visalia, CA 93291

Initial Study/Mitigated Negative Declaration  
**Newcomb Commercial Development**

Prepared for:



City of Porterville  
291 North Main Street  
Porterville, California 93257  
(559) 782-7460  
Contact: Julie Phillips, AICP

Prepared by:



Crawford & Bowen Planning, Inc.  
113 N. Church Street, Suite 302  
Visalia, CA 93291  
(559) 840-4414  
Contact: Travis Crawford, AICP

October 2014



Project Reference No. 013-1403

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# Chapter 1

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## INTRODUCTION

# INTRODUCTION

## 1.1 Project Summary

This document is the Initial Study/Mitigated Negative Declaration on the potential environmental effects of the City of Porterville's (City) Newcomb Commercial Development (Project). The Project Applicant intends to construct and operate a 2,418 square foot drive-thru restaurant in the near term located on two parcels (245-070-083 & 47) at the southwest corner of Henderson Avenue and Newcomb Street. Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance. The project will require a General Plan Amendment and Zone Change to change the land use designations from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers).

The proposed Project is more fully described in Chapter Two – Project Description.

The City of Porterville will act as the Lead Agency for this project pursuant to the *California Environmental Quality Act (CEQA)* and the *CEQA Guidelines*.

## 1.2 Document Format

This IS/MND contains five chapters, and appendices. Section 1, Introduction, provides an overview of the project and the CEQA environmental documentation process. Chapter 2, Project Description, provides a detailed description of project objectives and components. Chapter 3, Initial Study Checklist, presents the CEQA checklist and environmental analysis for all impact areas, mandatory findings of significance, and feasible mitigation measures. If the proposed project does not have the potential to significantly impact a given issue area, the relevant section provides a brief discussion of the reasons why no impacts are expected. If the project could have a potentially significant impact on a resource, the issue area discussion provides a description of potential impacts, and appropriate mitigation measures and/or permit requirements that would reduce those impacts to a less than significant level. Chapter 4, Mitigation Monitoring and Reporting Program, provides the proposed mitigation measures, completion timeline, and person/agency responsible for implementation and Chapter 5, List of Preparers, provides a list of key personnel involved in the preparation of the IS/MND.

Environmental impacts are separated into the following categories:

**Potentially Significant Impact.** This category is applicable if there is substantial evidence that an effect may be significant, and no feasible mitigation measures can be identified to reduce

impacts to a less than significant level. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.

**Less Than Significant After Mitigation Incorporated.** This category applies where the incorporation of mitigation measures would reduce an effect from a “Potentially Significant Impact” to a “Less Than Significant Impact.” The lead agency must describe the mitigation measure(s), and briefly explain how they would reduce the effect to a less than significant level (mitigation measures from earlier analyses may be cross-referenced).

**Less Than Significant Impact.** This category is identified when the project would result in impacts below the threshold of significance, and no mitigation measures are required.

**No Impact.** This category applies when a project would not create an impact in the specific environmental issue area. “No Impact” answers do not require a detailed explanation if they are adequately supported by the information sources cited by the lead agency, which show that the impact does not apply to the specific project (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis.)

Regardless of the type of CEQA document that must be prepared, the basic purpose of the CEQA process as set forth in the CEQA Guidelines Section 15002(a) is to:

- (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.
- (2) Identify ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

According to Section 15070(b), a Mitigated Negative Declaration is appropriate if it is determined that:

- (1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for

public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

- (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

The Initial Study contained in Section Three of this document has determined that with mitigation measures and features incorporated into the project design and operation, the environmental impacts are less than significant and therefore a Mitigated Negative Declaration will be adopted.



## Chapter 2

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# PROJECT DESCRIPTION

# Project Description

## 2.1 Project Background

The Project Applicant intends to construct and operate a 2,418 square foot drive-thru restaurant in the near term located on two parcels (245-070-083 & 47) at the southwest corner of Henderson Avenue and Newcomb Street. Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance (for Retail Centers). The project will require a General Plan Amendment and Zone Change to change the land use designations from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers).

## 2.2 Objectives

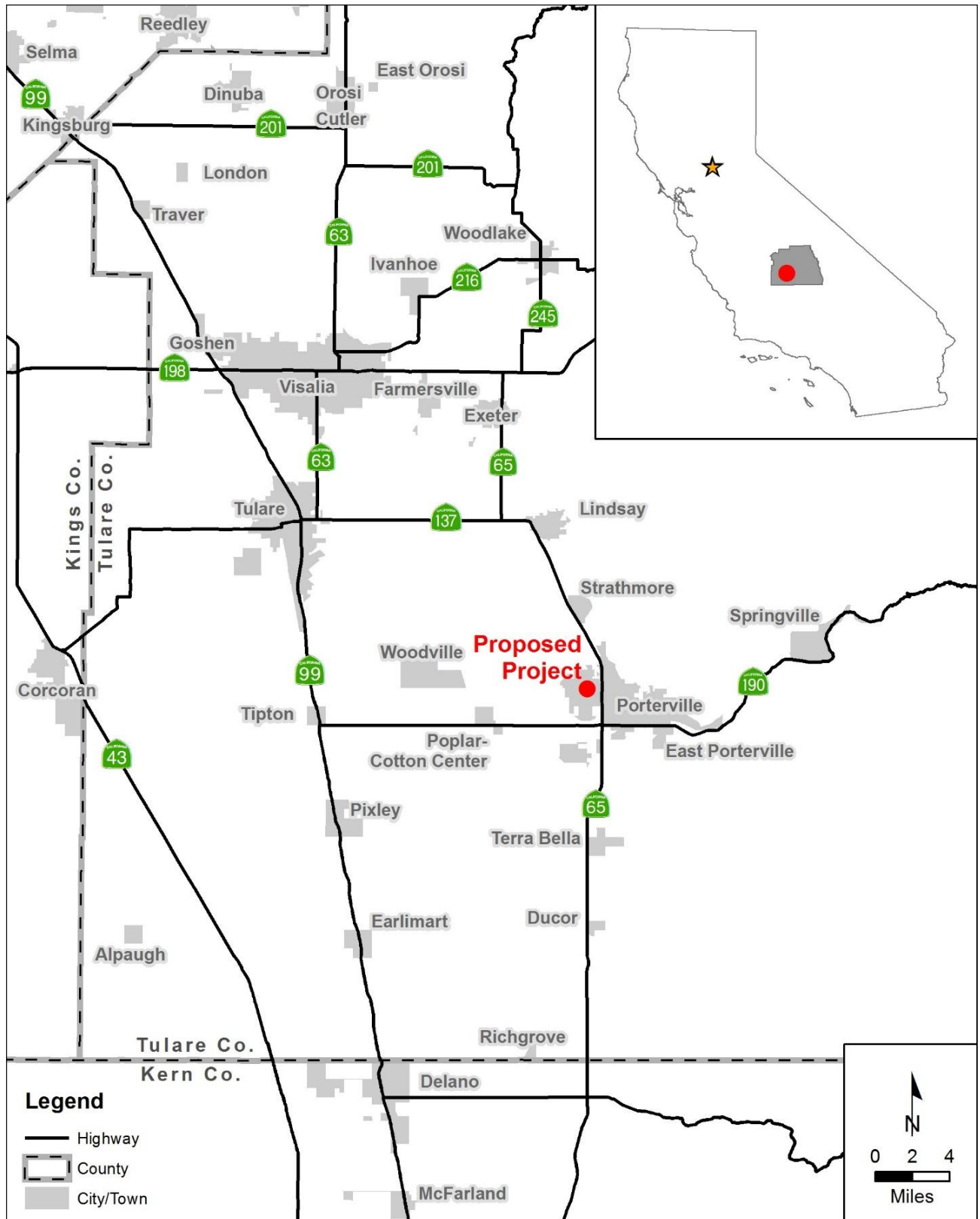
The following are the primary goals of the City of Porterville's Newcomb Commercial Development Project (Project):

- To create an economically sustainable commercial retail complex that will provide business and job opportunities within the City of Porterville.
- Ensure the provision of services and facilities needed to accommodate planned population densities in the project area.
- Ensure compliance with the City of Porterville General Plan Land Use Implementation Policy LU-I-21 (prohibits new strip commercial developments).

## 2.3 Location

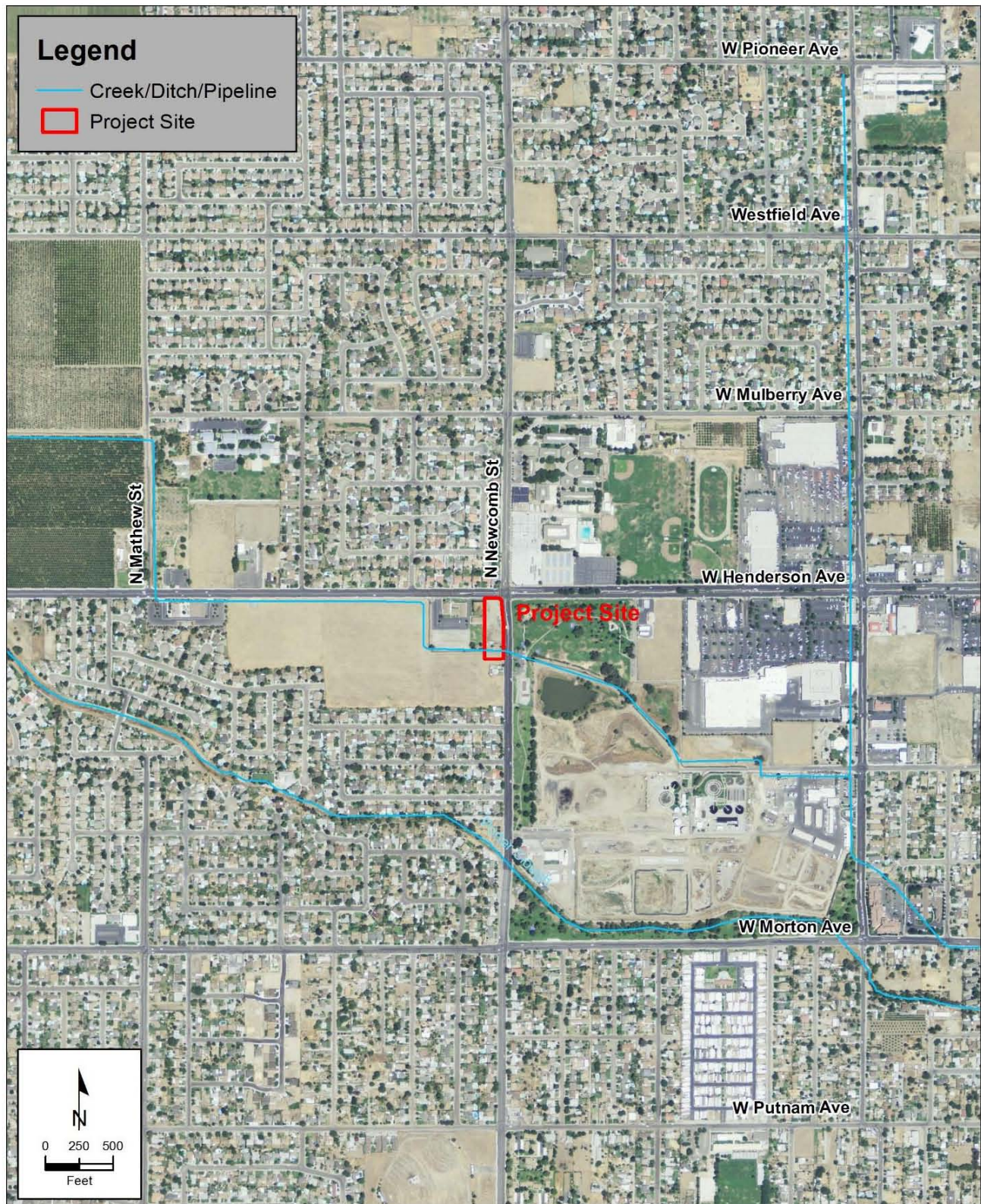
The proposed Project is located on four parcels (APNs 245-07- 87, 36, 47, and 83) totaling approximately 1.3 acres at the southwest corner of Henderson Avenue and Newcomb Street in the City of Porterville. The site is approximately 0.75 miles west of SR65. See Figures 1 and 2– Regional Map and Vicinity Map, respectively. The fast food restaurant will be located on the two northern-most parcels.

**Figure 1**  
**Regional Map**





**Figure 2**  
**Location Map**



## 2.4 Setting and Surrounding Land Use

The Project site is located in the northwestern part of the City of Porterville and is currently a vacant lot, with the exception of an existing house located at the southern end of the Project site that will be removed as part of the Project. See Figure 3 – Aerial Map. The site is located in an urban area that provides a mix of land uses. Monache High School is located northeast of the site and multi-family apartments are planned immediately south of the site. Veterans Park is east of the site (across Newcomb Street) and an existing church facility is located immediately west of the site. A large multi-family complex is proposed to be constructed further west of site, along Henderson Avenue.

The site is currently zoned CN (Neighborhood Commercial) and RM-2 (Medium Density Residential). Land use and zoning surrounding the site are identified as follows:

### Existing Land Use and Zoning

Location	Existing Land Use	Current Zoning Classification	General Plan Designation
<b>North</b>	Henderson Ave. and single family residential	Low Density Residential (RS-2)	Low Density Residential
<b>South</b>	Single family home; proposed multi-family project	Medium Density Residential (RM-2)	Medium Density Residential
<b>West</b>	Church facilities	High Density Residential (RM-3)	High Density Residential
<b>East</b>	Newcomb Street and Veterans Park	Parks and Public Recreation Facility (PK)	Parks and Recreation



**Figure 3**  
**Aerial Map**



## 2.5 Project Description

The Project Applicant intends to construct and operate a 2,418 square foot drive-thru restaurant in the near term located on two parcels (245-070-083 & 47) at the southwest corner of Henderson Avenue and Newcomb Street (see Figure 4 – Site Plan). Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance. The Project includes the following components:

- Construction and operation of a 2,418 square foot drive-through fast-food restaurant (near term).
- Installation of road frontage improvements along the site perimeter along Henderson Avenue and Newcomb Street.
- Installation of median improvements in Newcomb Street to allow for a north-bound (Newcomb) left-turn pocket to provide access to the project site.
- Construction of a parking lot, including the required ADA compliant spaces and three driveways for ingress/egress.
- Construction of a block wall along the western boundary of the site.
- Entitlement of future commercial uses that will comply with the City's General Plan and Development Ordinance (Retail Centers).

The Project will be constructed in phases. The initial phase will include the 2,418 square foot fast food restaurant, road frontage improvements along Henderson Avenue and Newcomb Street, median improvements in Newcomb Street and parking lot improvements to accommodate the fast-food restaurant. This initial phase is proposed to be constructed in early 2015 and will take approximately 4 months to complete. The remaining portions of the future commercial establishments/parking lot on the southern portion of the site will be completed as economic conditions dictate.

Although the type of future commercial use has not yet been determined, permitted uses (according to Table 203.02 of the City's Development Code) include retail establishments, automotive facilities, financial institutions, restaurants, and hotels. The future development will also be subject to the City's maximum Floor Area Ratio of 0.35 for Retail Centers. This equates to a maximum buildout of less than 10,000 square feet of floor space for the remaining portion of the Project site.

Existing City services (water, sewer and stormwater) are located in both Henderson Avenue and Newcomb Street. The Applicant will be required to tie into these existing facilities.

The project will require a General Plan Amendment and Zone Change to change the land use designations from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers).





## 2.6 Other Required Approvals

The proposed Project would include, but not be limited to, the following regulatory requirements:

- The adoption of a Mitigated Negative Declaration by the City of Porterville
- Approval of a General Plan Amendment by the City of Porterville
- Approval of a Zone Change by the City of Porterville
- Approval of a Stormwater Pollution Prevention Plan by the Central Valley Regional Water Quality Control Board
- Dust Control Plan Approval letter from the San Joaquin Valley Air Pollution Control District
- Compliance with other federal, state and local requirements.

## Chapter 3

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# IMPACT ANALYSIS

# Initial Study Checklist

## 3.1 Environmental Checklist Form

**Project title:**

City of Porterville Newcomb Development Project

**Lead agency name and address:**

City of Porterville  
291 North Main Street  
Porterville, CA 93257

**Contact person and phone number:**

Julie Phillips, AICP, Community Dev. Manager  
City of Porterville  
(559) 782-7460

**Project location:**

The proposed Project is located on four parcels (APNs 245-07- 87, 36, 47, and 83) totaling approximately 1.3 acres at the southwest corner of Henderson Avenue and Newcomb Street in the City of Porterville. The site is approximately 0.75 miles west of SR65.

**Project sponsor's name/address:**

City of Porterville  
291 North Main Street  
Porterville, CA 93257

**General plan designation:**

Medium Density Residential and High Density Residential

**Zoning:**

CN (Neighborhood Commercial) and RM-2 (Medium Density Residential)

**Description of project:**

The Project Applicant intends to construct and operate a 2,418 square foot drive-through restaurant in the near term located on two parcels (245-070-083 & 47) at the southwest corner of Henderson Avenue and Newcomb Street. The project will

require a General Plan Amendment and Zone Change to change the land use designations from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers). Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance. See Section Two – Project Description.

**Surrounding land uses/setting:**

The Project site is located in the northwestern part of the City of Porterville and is currently a vacant lot, with the exception of an existing house located at the southern end of the Project site that will be removed as part of the Project. The site is located in an urban area that provides a mix of land uses. Monache High School is located northeast of the site and multi-family apartments are planned immediately south of the site. Veterans Park is east of the site (across Newcomb Street) and an existing church is located immediately west of the site.

**Other public agencies whose approval or consultation is required (e.g., permits, financing approval, participation agreements):**

- State of California Native American Heritage Commission
- California State Clearinghouse, within the Office of Permit Assistance
- San Joaquin Valley Air Pollution Control District
- Central Valley Regional Water Quality Control Board

### 3.2 Environmental Factors Potentially Affected

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a “Potentially Significant Impact” as indicated by the checklist on the following pages.

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Aesthetics                  | <input type="checkbox"/> Agriculture Resources<br>and Forest Resources | <input type="checkbox"/> Air Quality                              |
| <input type="checkbox"/> Biological Resources        | <input type="checkbox"/> Cultural Resources                            | <input type="checkbox"/> Geology /Soils                           |
| <input type="checkbox"/> Greenhouse Gas<br>Emissions | <input type="checkbox"/> Hazards & Hazardous<br>Materials              | <input type="checkbox"/> Hydrology / Water<br>Quality             |
| <input type="checkbox"/> Land Use / Planning         | <input type="checkbox"/> Mineral Resources                             | <input type="checkbox"/> Noise                                    |
| <input type="checkbox"/> Transportation/Traffic      | <input type="checkbox"/> Utilities / Service<br>Systems                | <input type="checkbox"/> Mandatory<br>Findings of<br>Significance |

### 3.3 Determination

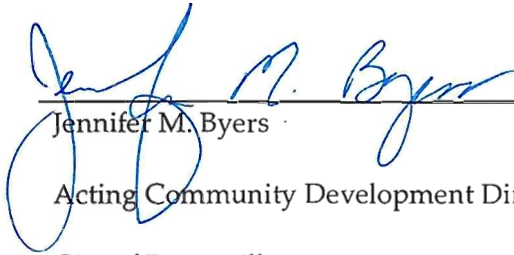
On the basis of this initial evaluation:

- ☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a “potentially significant impact” or

“potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.



I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.



Jennifer M. Byers

Acting Community Development Director

City of Porterville

10/30/14

Date

## I. AESTHETICS

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## SETTING

### Environmental Setting

The proposed Project site is located on the San Joaquin Valley floor in the northwest portion of the City of Porterville, California. The proposed Project site is bounded by Henderson Avenue on the north, Newcomb Street on the east, a proposed multi-family development on the south, and an existing church facility to the west. Veterans Park is east of the site, across Newcomb Street and Monache High School is located at the northeast corner of the adjacent intersection. The aesthetic features of the existing visual environment in the proposed Project area are relatively uniform (single family residential, church, proposed multi-family), with the exception of Veterans Park. There are no scenic resources or scenic vistas in the area. State Routes (SR) in the proposed Project vicinity include 99, 65, 190, 137.

### Regulatory Setting

#### *Federal*

Aesthetic resources are protected by several federal regulations, none of which are relevant to the proposed Project because it will not be located on lands administered by a federal agency, and the proposed Project applicant is not requesting federal funding or a federal permit.



## *State*

### **Nighttime Sky – Title 24 Outdoor Lighting Standards**

The Energy Commission adopted changes to Title 24, Parts 1 and 6, Building Energy Efficiency Standards (Standards), on April 23, 2008. These new Standards became effective on January 1, 2010. Requirements for outdoor lighting remained consistent with past Standards and the requirements vary according to which “Lighting Zone” the equipment is in. The Standards contain lighting power allowances for newly installed equipment and specific alterations that are dependent on which Lighting Zone the Project is located in. Existing outdoor lighting systems are not required to meet these lighting power allowances. However, alterations that increase the connected load, or replace more than 50% of the existing luminaires, for each outdoor lighting application that is regulated by the Standards, must meet the lighting power allowances for newly installed equipment.

An important part of the Standards is to base the lighting power that is allowed on how bright the surrounding conditions are. The eyes adapt to darker surrounding conditions, and less light is needed to properly see; when the surrounding conditions get brighter, more light is needed to see. The least power is allowed in Lighting Zone 1 and increasingly more power is allowed in Lighting Zones 2, 3, and 4.

The Energy Commission defines the boundaries of Lighting Zones based on U.S. Census Bureau boundaries for urban and rural areas as well as the legal boundaries of wilderness and park areas. By default, government designated parks, recreation areas and wildlife preserves are Lighting Zone 1; rural areas are Lighting Zone 2; and urban areas are Lighting Zone 3. Lighting Zone 4 is a special use district that may be adopted by a local government.

### **California Scenic Highway Program**

The Scenic Highway Program allows county and city governments to apply to the California Department of Transportation (Caltrans) to establish a scenic corridor protection program which was created by the Legislature in 1963. Its purpose is to protect and enhance the natural scenic beauty of California highways and adjacent corridors, through special conservation treatment. The state laws governing the Scenic Highway Program are found in the Streets and Highways Code, Sections 260 through 263. While not Designated State Scenic Highways, two Eligible State Scenic Highways occur in Tulare County, SR 198 and SR 190.

*Local***Porterville General Plan Policies**

- LU-G-4: Promote sustainability in the design and development of public and private development projects.
- LU-I-18: Protect existing residential neighborhoods from the encroachment of incompatible activities and land uses, and environmental hazards.
- LU-I-25: Establish buffering requirements and performance standards intended to minimize harmful effects of excessive noise, light, glare, and other adverse environmental impacts.

**RESPONSES**a. Have a substantial adverse effect on a scenic vista?

**Less than Significant Impact.** Site construction will include a fast food drive-through restaurant, retail shops, and associated improvements such as a parking lot, site landscaping, and driveways. The structures will be single story in height and will conform to design standards set forth by the City's General Plan and Zoning Ordinance. In addition, the Project will construct a six foot high block wall along the western perimeter of the site to separate the Project from the existing church facility. The proposed Project site is located in an area that is substantially surround by urban uses and will not result in a use that is visually incompatible with the surrounding area.

The City of Porterville General Plan does not identify any scenic vistas within the Project area. A scenic vista is generally considered a view of an area that has remarkable scenery or a resource that is indigenous to the area. The Project is located in an area of minimal topographic relief, and views of the site are easily obscured by buildings, other structures and trees. Neither the Project area nor any surrounding land use contains features typically associated with scenic vistas (e.g., ridgelines, peaks, overlooks). The only aesthetic feature in the area is Veterans Park, however construction of the proposed Project will not impede any views to or from the Park.

Construction activities will occur over a three to four month period and will be visible from the adjacent roadsides; however, the construction activities will be temporary in nature and will not affect a scenic vista. The impact will be *less than significant*.

**Mitigation Measures:** None are required.

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

**Less than Significant Impact.** There are no state designated scenic highways within the immediate proximity to the Project site. California Department of Transportation Scenic Highway Mapping System identifies SR 190 east of SR 65 as an Eligible State Scenic Highway. This is the closest highway, located approximately 2.2 miles southeast of the Project site; however, the Project site is both physically and visually separated from SR 190 by intervening land uses. In addition, no scenic highways or roadways are listed within the Project area in the City of Porterville's General Plan or Tulare County's General Plan. Based on the National Register of Historic Places (NRHP) and the City's General Plan, no historic buildings exist on the Project site. The proposed Project would not damage any trees, rock outcroppings or historic buildings within a State scenic highway corridor. Any impacts would be considered *less than significant*.

**Mitigation Measures:** None are required.

c. Substantially degrade the existing visual character or quality of the site and its surroundings?

**Less than Significant Impact.** Site construction will include a fast food drive-through restaurant, retail shops, and associated improvements such as a parking lot, site landscaping, and driveways. The structures will be single story in height and will conform to design standards set forth by the City's General Plan and Zoning Ordinance. In addition, the Project will construct a six foot high block wall along the western perimeter of the site to separate the Project from the existing church facility. The proposed Project site is located in an area that is substantially surround by urban uses and will not result in a use that is visually incompatible with the surrounding area. The only aesthetic feature in the area is Veterans Park (east of the site), however construction of the proposed Project will not impede any views to or from the Park.

**View from south of site looking north**



**View from north end of site looking south**

The site is visible from Veterans Park and from vehicles traveling along Henderson Avenue and Newcomb Street. However, the proposed Project site is planned for urban use and will be similar in visual character to the existing area, as similar urban uses are found in the area and throughout both rural and urban parts of the Central Valley. As such, the proposed Project will not substantially degrade the existing visual character or quality of the area or its surroundings.

The impact will be *less than significant*.

**Mitigation Measures:** None are required.

d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

**Less Than Significant Impact.** Nighttime lighting is necessary to provide and maintain safe, secure, and attractive environments; however, these lights have the potential to produce spillover light and glare and waste energy, and if designed incorrectly, could be considered unattractive. Light that falls beyond the intended area is referred to as “light trespass.” Types of light trespass include spillover light and glare. Minimizing all these forms of obtrusive light is an important environmental consideration. A less obtrusive and well-designed energy efficient fixture would face downward, emit the correct intensity of light for the use, and incorporate energy timers.

Spillover light is light emitted by a lighting installation that falls outside the boundaries of the property on which the installation is sited. Spillover light can adversely affect light-sensitive uses, such as residential neighborhoods at nighttime. Because light dissipates as it travels from the source, the intensity of a light fixture is often increased at the source to compensate for the dissipated light. This can further increase the amount of light that illuminates adjacent uses. Spillover light can be minimized by using only the level of light necessary, and by using cutoff type fixtures or shielded light fixtures, or a combination of fixture types.

Glare results when a light source directly in the field of vision is brighter than the eye can comfortably accept. Squinting or turning away from a light source is an indication of glare. The presence of a bright light in an otherwise dark setting may be distracting or annoying, referred to as discomfort glare, or it may diminish the ability to see other objects in the darkened environment, referred to as disability glare. Glare can be reduced by design features that block direct line of sight to the light source and that direct light downward, with little or no light emitted at high (near horizontal) angles, since this light would travel long distances. Cutoff-type light fixtures minimize glare because they emit relatively low-intensity light at these angles.

Currently the sources of light in the project area are from street lights, the vehicles traveling along Henderson Avenue and Newcomb Street, and security lighting at the church facility to the east. The Project would include nighttime lighting for building and parking lot security, as well as potentially illuminated signage for the drive through restaurant. Such lighting would be subject to the requirements of the Porterville Development Ordinance 300.07, which ensures that outdoor lighting does not produce obtrusive glare onto the public right-of-way or adjoining properties. Lighting fixtures for security would be designed with “cutoff” type fixtures or shielded light fixtures, or a combination of fixture types to cast light downward, thereby providing lighting at the ground level for safety while reducing glare to adjacent properties. Accordingly, the Project would not create substantial new sources of light or glare. Potential impacts are *less than significant*.

**Mitigation Measures:** None are required.

## II. AGRICULTURE AND FOREST RESOURCES

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



## SETTING

### Environmental Setting

The Project site is located in an area of the City considered urban, built up land by the State Farmland Mapping and Monitoring Program. No *Prime Farmland*, *Unique Farmland*, or *Farmland of Statewide Importance* or land under the Williamson Act contracts occurs in the Project area.

### Regulatory Setting

#### *Federal*

Federal regulations for agriculture and forest resources are not relevant to the proposed Project because it is not a federal undertaking (the Project site is not located on lands administered by a federal agency, and the Project applicant is not requesting federal funding or a federal permit).

#### *State*

State regulations for agriculture and forest resources are not relevant to the proposed Project because no agricultural resources exist on the site.

#### *Local*

### **Porterville General Plan Policies**

Porterville General Plan Policies for agriculture and forest resources are not relevant to the proposed Project because no agricultural resources exist on the site and no agricultural or forest resources will be impacted by the Project.

## RESPONSES

a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

**No Impact.** The Project site is located in an area of the City considered urban, built up land by the State Farmland Mapping and Monitoring Program. No *Prime Farmland*, *Unique Farmland*, or *Farmland of Statewide Importance* or land under the Williamson Act contracts occurs in the Project area. Therefore, no land conversion from Farmland would occur for the Project. Surrounding land uses include residential, commercial, and recreational uses; as such, the proposed Project does not have the potential to result in the conversion of Farmland to non-agricultural uses or forestland uses to non-forestland. There is *no impact*.

**Mitigation Measures:** None are required.

b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?

**No Impact.** The Project site is not zoned for agriculture nor is the site covered by a Williamson Act contract; No impacts would occur. The Project is not zoned for forestland and does not propose any zone changes related to forest or timberland. There is *no impact*.

**Mitigation Measures:** None are required.

c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?

**No Impact.** The Project is not zoned for forestland and does not propose any zone changes related to forest or timberland. There is *no impact*.

**Mitigation Measures:** None are required.

d. Result in the loss of forest land or conversion of forest land to non-forest use?

**No Impact.** No conversion of forestland, as defined under Public Resource Code or General Code, as referenced above, would occur as a result of the Project. There is *no impact*.

**Mitigation Measures:** None are required.

e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

**No Impact.** No land conversion from Farmland would occur for the Project. Surrounding land uses include residential, commercial, and recreational uses; as such, the proposed Project does not have the potential to result in the conversion of Farmland to non-agricultural uses or forestland uses to non-forestland. There is *no impact*.

**Mitigation Measures:** None are required.



### III. AIR QUALITY

#### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### SETTING

#### Environmental Setting

The climate of the San Joaquin Valley is characterized by long, hot summers and stagnant, foggy, winters. Precipitation is low and temperature inversions are common. These characteristics are conducive to the formation and retention of air pollutants and are in part influenced by the surrounding mountains which intercept precipitation and act as a barrier to the passage of cold air and air pollutants.

The proposed Project lies within the San Joaquin Valley Air Basin, which is managed by the San Joaquin Valley Air Pollution Control District (SJVAPCD or Air District). National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS) have been established for the following criteria pollutants: carbon monoxide (CO), ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide

(NO<sub>2</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and lead (Pb). The CAAQS also set standards for sulfates, hydrogen sulfide, and visibility.

Air quality plans or attainment plans are used to bring the applicable air basin into attainment with all state and federal ambient air quality standards designed to protect the health and safety of residents within that air basin. Areas are classified under the Federal Clean Air Act as either “attainment”, “non-attainment”, or “extreme non-attainment” areas for each criteria pollutant based on whether the NAAQS have been achieved or not. Attainment relative to the State standards is determined by the California Air Resources Board (CARB). The San Joaquin Valley is designated as a State and Federal extreme non-attainment area for O<sub>3</sub>, a State and Federal non-attainment area for PM<sub>2.5</sub>, a State non-attainment area for PM<sub>10</sub>, and Federal and State attainment area for CO, SO<sub>2</sub>, NO<sub>2</sub>, and Pb.

### **Regulatory Setting**

#### *Federal*

#### **Clean Air Act**

The federal Clean Air Act of 1970 (as amended in 1990) required the U.S. Environmental Protection Agency (EPA) to develop standards for pollutants considered harmful to public health or the environment. Two types of National Ambient Air Quality Standards (NAAQS) were established. Primary standards protect public health, while secondary standards protect public welfare, by including protection against decreased visibility, and damage to animals, crops, landscaping and vegetation, or buildings. NAAQS have been established for six “criteria” pollutants: carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), ozone (O<sub>3</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and lead (Pb).

#### *State*

#### **California Air Resources Board**

The California Air Resources Board (CARB) is the state agency responsible for implementing the federal and state Clean Air Acts. CARB has established California Ambient Air Quality Standards (CAAQS), which include all criteria pollutants established by the NAAQS, but with additional regulations for Visibility Reducing Particles, sulfates, hydrogen Sulfide (H<sub>2</sub>S), and vinyl chloride.

The proposed Project is located within the San Joaquin Valley Air Basin, which includes San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and parts of Kern counties and is managed by the SJVAPCD.

Air basins are classified as attainment, nonattainment, or unclassified. Attainment is achieved when monitored ambient air quality data is in compliance with the standards for a specified pollutant. Non-compliance with an established standard will result in a nonattainment designation and an unclassified designation indicates insufficient data is available to determine compliance for that pollutant.

Standards and attainment status for listed pollutants in the Air District can be found in Table 1. Note that both state and federal standards are presented.

**Table 1**  
**Standards and Attainment Status for Listed Pollutants in the Air District**

	<b>Federal Standard</b>	<b>California Standard</b>
Ozone	0.075 ppm (8-hr avg)	0.07 ppm (8-hr avg) 0.09 ppm (1-hr avg)
Carbon Monoxide	9.0 ppm (8-hr avg) 35.0 ppm (1-hr avg)	9.0 ppm (8-hr avg) 20.0 ppm (1-hr avg)
Nitrogen Dioxide	0.053 ppm (annual avg)	0.30 ppm (annual avg) 0.18 ppm (1-hr avg)
Sulfur Dioxide	0.03 ppm (annual avg) 0.14 ppm (24-hr avg) 0.5 ppm (3-hr avg)	0.04 ppm (24-hr avg) 0.25 ppm (1-hr avg)
Lead	1.5 µg/m <sup>3</sup> (calendar quarter) 0.15 µg/m <sup>3</sup> (rolling 3-month avg)	1.5 µg/m <sup>3</sup> (30-day avg)
Particulate Matter (PM <sub>10</sub> )	150 µg/m <sup>3</sup> (24-hr avg)	20 µg/m <sup>3</sup> (annual avg) 50 µg/m <sup>3</sup> (24-hr avg)
Particulate Matter (PM <sub>2.5</sub> )	15 µg/m <sup>3</sup> (annual avg)	35 µg/m <sup>3</sup> (24-hr avg) 12 µg/m <sup>3</sup> (annual avg)

µg/m<sup>3</sup> = micrograms per cubic meter

Additional State regulations include:

**CARB Portable Equipment Registration Program** – This program was designed to allow owners and operators of portable engines and other common construction or farming equipment to register their equipment under a statewide program so they may operate it statewide without the need to obtain a permit from the local air district.

**U.S. EPA/CARB Off-Road Mobile Sources Emission Reduction Program** – The California Clean Air Act (CCAA) requires CARB to achieve a maximum degree of emissions reductions from off-road mobile sources to attain State Ambient Air Quality Standards (SAAQS); off-road mobile sources include most construction equipment. Tier 1 standards for large compression-ignition engines used in off-road mobile sources went into effect in California in 1996. These standards, along with ongoing rulemaking, address emissions of nitrogen oxides (NOX) and toxic particulate matter from diesel engines. CARB is currently

developing a control measure to reduce diesel PM and NOX emissions from existing off-road diesel equipment throughout the state.

California Global Warming Solutions Act – Established in 2006, Assembly Bill 32 (AB 32) requires that California’s GHG emissions be reduced to 1990 levels by the year 2020. This will be implemented through a statewide cap on GHG emissions, which will be phased in beginning in 2012. AB 32 requires CARB to develop regulations and a mandatory reporting system to monitor global warming emissions levels.

In addition, the proposed Project is being evaluated pursuant to CEQA.

### *Local*

#### **San Joaquin Valley Air Pollution Control District**

The San Joaquin Valley Air Pollution Control District (SJVAPCD) is the local agency charged with preparing, adopting, and implementing mobile, stationary, and area air emission control measures and standards. The SJVAPCD has several rules and regulations that may apply to the Project:

Rule 3135 (Dust Control Plan Fees) – This rule requires the project applicant to submit a fee in addition to a Dust Control Plan. The purpose of this rule is to recover the SJVAPCD’s cost for reviewing these plans and conducting compliance inspections.

Rules 4101 (Visible Emissions) and 4102 (Nuisance) – These rules apply to any source of air contaminants and prohibits the visible emissions of air contaminants or any activity which creates a public nuisance.

Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations) – This rule applies to use of asphalt for paving new roadways or restoring existing roadways disturbed by project activities.

Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions) – This regulation, a series of eight regulations, is designed to reduce PM<sub>10</sub> emissions by reducing fugitive dust. Regulation VIII requires implementation of control measures to ensure that visible dust emissions are substantially reduced. The control measures are summarized in Table 2.

**Table 2**  
**San Joaquin Valley Air Pollution Control District**  
**Regulation VIII Control Measures for Construction Related Emissions of PM<sub>10</sub>**

<b>The following are required to be implemented at all construction sites:</b>
All disturbed areas, including storage piles, which are not actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizers/suppressants, covered with a tarp or other similar cover, or vegetative
All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions during construction using water or chemical stabilizer
All land clearing, grubbing, scraping, excavation, land leveling, grading cut and fill, and demolition activities during construction shall be effectively controlled of fugitive dust emissions utilizing application of water or pre-soaking.
When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from top of container shall be maintained.
All operations shall limit, or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of
Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
Within urban areas, trackout shall be immediately removed when it extends 50 or more feet from the site at the end of each workday.
Any site with 150 or more vehicle trips per day shall prevent carryout and trackout.

### Porterville General Plan Policies

- OSC-G-9: Improve and protect Porterville’s air quality by making air quality a priority in land use and transportation planning and in development review.
- OSC-I-59: Require preparation of a Health Risk Assessment for any development subject to the Air Toxics “Hot Spots” Act.
- OSC-I-61: Coordinate air quality planning efforts with other local, regional and State agencies.
- OSC-I-63: Notify local and regional jurisdictions of proposed projects that may affect regional air quality.
- OSC-G-10: Reduce and conserve energy use in existing and new commercial, industrial, and public structures.

## RESPONSES

### a. Conflict with or obstruct implementation of the applicable air quality plan?

**Less than Significant Impact.** The San Joaquin Valley Air Basin (SJVAB) is designated nonattainment of state and federal health based air quality standards for ozone and PM<sub>2.5</sub>. The SJVAB is designated nonattainment of state PM<sub>10</sub>. To meet Federal Clean Air Act (CAA) requirements, the SJVAPCD has multiple air quality attainment plan (AQAP) documents, including:

- Extreme Ozone Attainment Demonstration Plan (EOADP) for attainment of the 1-hour ozone standard (2004);
- 2007 Ozone Plan for attainment of the 8-hour ozone standard;
- 2007 PM<sub>10</sub> Maintenance Plan and Request for Redesignation; and
- 2008 PM<sub>2.5</sub> Plan.

Because of the region's non-attainment status for ozone, PM<sub>2.5</sub>, and PM<sub>10</sub>, if the project-generated emissions of either of the ozone precursor pollutants (ROG or NO<sub>x</sub>), PM<sub>10</sub>, or PM<sub>2.5</sub> were to exceed the SJVAPCD's significance thresholds, then the project uses would be considered to conflict with the attainment plans. In addition, if the project uses were to result in a change in land use and corresponding increases in vehicle miles traveled, they may result in an increase in vehicle miles traveled that is unaccounted for in regional emissions inventories contained in regional air quality control plans.

As discussed in Impact c), below, predicted construction and operational emissions would not exceed the SJVAPCD's significance thresholds for ROG, NO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. As a result, the Project uses would not conflict with emissions inventories contained in regional air quality attainment plans, and would not result in a significant contribution to the region's air quality non-attainment status. Additionally, the Project would comply with all applicable rules and regulations. Therefore, this impact is *less than significant*.

**Mitigation Measures:** None are required.

### b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?

**Less than Significant Impact.** Because ozone is a regional pollutant (SJVAPCD 2002), the pollutants of concern for localized impacts are CO and fugitive PM<sub>10</sub> dust from construction. Ozone and PM<sub>10</sub> exhaust impacts are addressed under Impact c), below. The proposed Project would not result in localized CO

hotspots or PM<sub>10</sub> impacts, as discussed below. Therefore, the proposed Project would not violate an air quality standard or contribute to a violation of an air quality standard in the Project area.

### **Localized PM<sub>10</sub>**

Localized PM<sub>10</sub> would be generated by proposed Project construction activities, which would include earth-disturbing activities. The SJVAPCD indicates that all control measures in Regulation VIII are required for all construction sites by regulation. The SJVAPCD's Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI) (SJVAPCD 2002) lists additional measures that may be required of very large projects or projects close to sensitive receptors. If all appropriate "enhanced control measures" in the GAMAQI are not implemented for very large projects or those close to sensitive receptors, then construction impacts would be considered significant (unless the Lead Agency provides a satisfactory detailed explanation as to why a specific measure is unnecessary). The GAMAQI also lists additional control measures (Optional Measures) that may be implemented if further emission reductions are deemed necessary by the Lead Agency. The SJVAPCD's Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions) has been updated and expanded since the GAMAQI guidance was written in 2002. Regulation VIII now includes the "enhanced control measures" contained in the GAMAQI.

The proposed Project would comply with the SJVAPCD's Regulation VIII dust control requirements during any proposed construction (including Rules 8011, 8031, 8041, and 8071). Compliance with this regulation would reduce the potential for significant localized PM<sub>10</sub> impacts to *less than significant* levels.

### **CO Hotspot**

Localized high levels of CO are associated with traffic congestion and idling or slow-moving vehicles. The SJVAPCD provides screening criteria to determine when to quantify local CO concentrations based on impacts to the level of service (LOS) of roadways in the Project vicinity.

As further discussed in the Transportation/Traffic checklist evaluation, the Project would not generate, or substantially contribute to, additional traffic that would reduce the level of service on local roadways. Therefore, the Project would not significantly contribute to an exceedance that would exceed state or federal CO standards. Impacts are considered *less than significant*.

**Mitigation Measures:** None are required.

- c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

**Less than Significant Impact.** The nonattainment pollutants for the SJVAPCD are ozone, PM<sub>10</sub> and PM<sub>2.5</sub>. Therefore, the pollutants of concern for this impact are ozone precursors, regional PM<sub>10</sub>, and PM<sub>2.5</sub>. Ozone is a regional pollutant formed by chemical reaction in the atmosphere, and the Project's incremental increase in ozone precursor generation is used to determine the potential air quality impacts, as set forth in the GAMAQI.

The SJVAPCD does not have a threshold for regional PM<sub>10</sub> or PM<sub>2.5</sub>. This document proposes a PM<sub>10</sub> threshold using the same basis as the ozone precursor thresholds. Since the GAMAQI was published, the SJVAPCD has been recommending use of a PM<sub>10</sub> threshold of 15 tons per year. However, a similar basis of threshold is not available for PM<sub>2.5</sub> emissions. Because the SJVAB is in nonattainment for PM<sub>2.5</sub>, the threshold for PM<sub>2.5</sub> for this Project will be nine tons per year. The justification for this number is that PM<sub>2.5</sub> is in nonattainment and should have a more stringent threshold than PM<sub>10</sub> to provide a worst-case assessment. The annual standard for PM<sub>10</sub> is 20 µg/m<sup>3</sup> and the annual standard for PM<sub>2.5</sub> is 12 µg/m<sup>3</sup>. Therefore, the ratio of PM<sub>10</sub> to PM<sub>2.5</sub> results in a threshold for PM<sub>2.5</sub> of nine tons per year.

The annual significance thresholds to be used for the Project for construction and operational emissions are as follows:

- 10 tons per year ROG;
- 10 tons per year NO<sub>x</sub>;
- 15 tons per year PM<sub>10</sub>; and
- 9 tons per year PM<sub>2.5</sub>.

The estimated annual operational emissions are shown below. The California Emissions Estimator (CalEEMod), Version 2013.2.2, was used to estimate construction and operational (vehicle trips) emissions resulting from the proposed Project, including the 2,418 square feet of drive-thru restaurant and up to 10,000 square feet of other commercial space. The modeling results are provided in Table 3 and the CalEEMod output files are provided in Appendix A.



**Table 3**  
**Proposed Project Construction and Operation Emissions**

	VOC (ROG) (tons/year)	NO <sub>x</sub> (tons/year)	PM <sub>10</sub> (tons/year)	CO <sub>2</sub> (tons/year)
<b>Total Project Construction Emissions</b>	0.18	0.85	0.06	68.96
<b>Total Project Operation and Area</b>	1.65	2.87	0.73	1055.64
<b>Total Project Emissions</b>	1.83	3.72	0.79	1124.6
<b>Threshold of Significance</b>	10	10	15	--

Any impacts would be considered *less than significant*.

**Mitigation Measures:** None are required.

d. Expose sensitive receptors to substantial pollutant concentrations?

**Less than Significant Impact.** The proposed Project would not expose sensitive receptors to substantial concentrations of localized PM<sub>10</sub>, carbon monoxide, diesel particulate matter, or hazardous pollutants, naturally occurring asbestos, or valley fever, as discussed below.

**Localized PM<sub>10</sub>**

As shown in Response III-b, above, the Project would not generate a significant impact for construction-generated, localized PM<sub>10</sub>. Therefore, the Project would not expose sensitive receptors to unhealthy levels of PM<sub>10</sub>.

**PM Hotspot**

A PM<sub>2.5</sub> and PM<sub>10</sub> Hotspot Analysis is not required for the Project because it is not a Project of Air Quality Concern (POAQC).

**Carbon Monoxide Hotspot**

As shown in Impact b), above, the Project would not generate a CO hotspot. In addition, the existing background concentrations of CO are low and any CO emissions would disperse rapidly. The nearest SJVAPCD monitoring station located approximately 45 miles south of the Project site (Bakersfield-Golden State Highway) shows the highest 1-hour and 8-hour CO concentrations for the past three years as 2.08 ppm and 1.46 ppm, respectively. The 1-hour and 8-hour CO standard are 20 ppm and 9 ppm, respectively. Therefore, the Project would not expose sensitive receptors to unhealthy levels of CO.

## Naturally Occurring Asbestos

The Department of Conservation, Division of Mines and Geology published a guide entitled *A General Location Guide for Ultramafic Rocks in California - Areas More Likely to Contain Naturally Occurring Asbestos*, for generally identifying areas that are likely to contain naturally occurring asbestos. The guide includes a map of areas where formations containing naturally occurring asbestos in California are likely to occur. Foothill areas within Tulare County are identified as areas with ultramafic rocks. The City of Porterville's General Plan, Chapter Seven: Public Health and Safety provides a more detailed map, Figure 7-2 that shows some foothill locations adjacent to the City as areas with ultramafic rocks. Those areas are not located near the Project site. For this reason, the Project is not anticipated to expose workers or nearby receptors to naturally occurring asbestos. Any impacts to this analysis area would be considered *less than significant*.

### e. Create objectionable odors affecting a substantial number of people?

**Less than Significant Impact.** If the proposed project were to result in a sensitive odor receptor being located in the vicinity of an undesirable odor generator, the impact would be considered significant. The SJVAPCD regulates odor sources through its nuisance rule, Rule 4102, but has no quantitative standards for odors. The SJVAPCD presents a list of project screening trigger levels for potential odor sources in its GAMAQI, which is displayed in Table 4. If the project were to result in sensitive receptors being located closer to an odor generator in the list in Table 4 than the recommended distances, a more detailed analysis including a review of SJVAPCD odor complaint records is recommended.

**Table 4**  
**Screening Levels for Potential**  
**Odor Sources**

<b>Odor Generator</b>	<b>Distance (Miles)</b>
Wastewater Treatment Facilities	2
Sanitary Landfill	1
Transfer Station	1
Composting Facility	1
Petroleum Refinery	2
Asphalt Batch Plant	1
Chemical Manufacturing	1
Fiberglass Manufacturing	1
Painting/Coating Operations (e.g., auto body shop)	1
Food Processing Facility	1
Feed Lot/Dairy	1
Rendering Plant	1

Source: San Joaquin Valley Air Pollution Control District, 2002

Significant odor problems are defined as:

- More than one confirmed complaint per year averaged over a three year period; or
- Three unconfirmed complaints per year averaged over a three-year period.

The proposed Project would allow for the development of commercial uses within the Project area. These land uses are not considered sources of objectionable odors. Therefore, objectionable odors are not expected to be a significant concern during either proposed Project construction related or operational emissions. As such, any impacts would be considered *less than significant*.

**Mitigation Measures:** None are required.

## IV. BIOLOGICAL RESOURCES

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? ☐ ☐ ☒ ☐
- f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? ☐ ☐ ☒ ☐

## SETTING

### Environmental Setting

The proposed Project site is located in a portion of the central San Joaquin Valley that has, for decades, experienced intensive agricultural and urban disturbances. Current agricultural endeavors in the region include dairies, groves, and row crops.

Like most of California, the Central San Joaquin Valley experiences a Mediterranean climate. Warm dry summers are followed by cool moist winters. Summer temperatures usually exceed 90 degrees Fahrenheit, and the relative humidity is generally very low. Winter temperatures rarely raise much above 70 degrees Fahrenheit, with daytime highs often below 60 degrees Fahrenheit. Annual precipitation within the proposed Project site is about 10 inches, almost 85% of which falls between the months of October and March. Nearly all precipitation falls in the form of rain and storm-water readily infiltrates the soils of the surrounding the sites.

Native plant and animal species once abundant in the region have become locally extirpated or have experienced large reductions in their populations due to conversion of upland, riparian, and aquatic habitats to agricultural and urban uses. Remaining native habitats are particularly valuable to native wildlife species including special status species that still persist in the region.

The site consists of a vacant field that has no existing vegetation or trees. Surrounding lands consist of streets, a proposed multi-family residential project, a church, and other urban uses such as a city park and high school. Towards the southern end of the Project site is a ditch that has been piped underground. The Project will not impact the pipeline.

No aquatic or wetland features occur on the propose Project site; therefore, jurisdictional waters are considered absent from the site.

## **Regulatory Setting**

### *Federal*

#### **Endangered Species Act**

The Federal Endangered Species Act (FESA) protects plants and wildlife that are listed as endangered or threatened by the USFWS and National Oceanic and Atmospheric Administration (NOAA) Fisheries. Section 9 of the FESA prohibits the taking of listed wildlife, where taking is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in such conduct” (50 CFR 17.3). For plants, this statute governs removing, possessing, maliciously damaging, or destroying any listed plant on federal land and removing, cutting, digging-up, damaging, or destroying any listed plant on non-federal land in knowing violation of state law (16USC1538). Pursuant to Section 7 of the FESA, federal agencies are required to consult with the USFWS if their actions, including permit approvals or funding, could adversely affect a listed plant or wildlife species or its critical habitat. Through consultation and the issuance of a biological opinion, the USFWS may issue an incidental take statement allowing take of the species that is incidental to another authorized activity, provided the action will not jeopardize the continued existence of the species. Section 10 of the FESA provides for issuance of incidental take permits to private parties, provided a Habitat Conservation Plan (HCP) is developed.

#### **Migratory Bird Treaty Act**

The MBTA implements international treaties devised to protect migratory birds and any of their parts, eggs, and nests from activities such as hunting, pursuing, capturing, killing, selling, and shipping, unless expressly authorized in the regulations or by permit. As authorized by the MBTA, the USFWS issues permits to qualified applicants for the following types of activities: falconry, raptor propagation, scientific collecting, special purposes (rehabilitation, education, migratory game bird propagation, and salvage), take of depredating birds, taxidermy, and waterfowl sale and disposal. The regulations governing migratory bird permits are in 50 CFR part 13 General Permit Procedures and 50 CFR part 21 Migratory Bird Permits. The State of California has incorporated the protection of birds of prey in Sections 3800, 3513, and 3503.5 of the CDFG Code.

#### **Federal Clean Water Act**

The federal Clean Water Act’s (CWA’s) purpose is to “restore and maintain the chemical, physical, and biological integrity of the nation’s waters.” Section 404 of the CWA prohibits the discharge of dredged or fill material into waters of the United States without a permit from the U.S. Army Corps of Engineers (ACOE). The definition of waters of the United States includes rivers, streams, estuaries, the territorial seas, ponds, lakes, and wetlands. Wetlands are defined as those areas “that are inundated or saturated

by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3 7b).” The USEPA also has authority over wetlands and may override an ACOE permit. Substantial impacts to wetlands may require an individual permit. Projects that only minimally affect wetlands may meet the conditions of one of the existing Nationwide Permits. A Water Quality Certification or Waiver pursuant to Section 401 of the CWA is required for Section 404 permit actions; this certification or waiver is issued by the RWQCB.

### *State*

#### **California Endangered Species Act**

The California Endangered Species Act (CESA) generally parallels the main provisions of the FESA, but unlike its federal counterpart, the CESA applies the take prohibitions to species proposed for listing (called candidates by the state). Section 2080 of the CDFG Code prohibits the taking, possession, purchase, sale, and import or export of endangered, threatened, or candidate species, unless otherwise authorized by permit or in the regulations. Take is defined in Section 86 of the CDFG Code as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” The CESA allows for take incidental to otherwise lawful development projects. State lead agencies are required to consult with the CDFG to ensure that any action they undertake is not likely to jeopardize the continued existence of any endangered, threatened, or candidate species or result in destruction or adverse modification of essential habitat. The CDFG administers the act and authorizes take through Section 2081 agreements (except for designated fully protected species).

#### **Fully Protected Species**

The State of California first began to designate species as fully protected prior to the creation of the CESA and FESA. Lists of fully protected species were initially developed to provide protection to those animals that were rare or faced possible extinction, and included fish, amphibians, reptiles, birds, and mammals. Most fully protected species have since been listed as threatened or endangered pursuant to the CESA and/or FESA. The regulations that implement the Fully Protected Species Statute (CDFG Code Section 4700) provide that fully protected species may not be taken or possessed at any time. Furthermore, the CDFG prohibits any state agency from issuing incidental take permits for fully protected species, except for necessary scientific research.

#### **Native Plant Protection Act**

Regarding listed rare and endangered plant species, the CESA defers to the California Native Plant Protection Act (NPPA) of 1977 (CDFG Code Sections 1900 to 1913), which prohibits importing of rare

and endangered plants into California, and the taking and selling of rare and endangered plants. The CESA includes an additional listing category for threatened plants that are not protected pursuant to NPPA. In this case, plants listed as rare or endangered pursuant to the NPPA are not protected pursuant to CESA, but can be protected pursuant to the CEQA. In addition, plants that are not state listed, but that meet the standards for listing, are also protected pursuant to CEQA (Guidelines, Section 15380). In practice, this is generally interpreted to mean that all species on lists 1B and 2 of the CNPS Inventory potentially qualify for protection pursuant to CEQA, and some species on lists 3 and 4 of the CNPS Inventory may qualify for protection pursuant to CEQA. List 3 includes plants for which more information is needed on taxonomy or distribution. Some of these are rare and endangered enough to qualify for protection pursuant to CEQA. List 4 includes plants of limited distribution that may qualify for protection if their abundance and distribution characteristics are found to meet the standards for listing.

### **California Lake and Streambed Alteration Agreement**

Sections 1600 through 1616 of the CDFG Code require that a Lake and Streambed Alteration Program Notification Package be submitted to the CDFG for “any activity that may substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake.” The CDFG reviews the proposed actions and, if necessary, submits to the applicant a proposal for measures to protect affected fish and wildlife resources. The final proposal on which the CDFG and the applicant agree is the Lake and Streambed Alteration Agreement. Often, projects that require a Lake and Streambed Alteration Agreement also require a permit from the ACOE pursuant to Section 404 of the CWA. In these instances, the conditions of the Section 404 permit and the Lake and Streambed Alteration Agreement may overlap.

In addition, the proposed Project is being evaluated pursuant to CEQA.

#### *Local*

### **Porterville General Plan Policies**

- OSC-G-7: Protect habitat for special status species, designated under State and federal law.

## **RESPONSES**

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?



**Less than Significant Impact with Mitigation.** A desktop review of literature resources was conducted to determine if the Project area is located within the range of sensitive biological resources such as state and/or federally-listed threatened and/or endangered species. A list of special-status species that could potentially occur in the Project area and a 9-quadrant search of the Project area was compiled (see Appendix B) by accessing the California Natural Diversity Database (CNDDDB) (2014), the California Native Plant Society (CNPS) (2014) online inventory and the United States Fish and Wildlife Service (USFWS) online database (accessed October 2014) for the USGS 7.5-minute quadrangle of Porterville in which the Project area is located as well as the eight surrounding quadrants of Fountain Springs, Ducor, Sausalito School, Frazier Valley, Success Dam, Lindsay, Cairn's Corner, and Woodville.

The site has been routinely cleared and is surrounded by intense urban uses and provides very little habitat for animal species and no habitat for plant species; however, to the east of the Project site is Veteran's Park where several large trees exist. Several bird species in the Project area are protected under the Migratory Bird Treaty Act. Migratory birds can typically be seen foraging in fallow fields and grassland habitats and they nest in dense vegetation. However, because of the highly disturbed nature of the Park, and lack of dense vegetation and lack of fallow fields, it is not anticipated that the Park trees provide suitable habitat for Migratory Birds.

#### **View of Veterans Park from the Project Site**



Several occurrences of the State threatened Swainson's hawk (*Buteo swainsoni*) have been documented in Tulare County. Swainson's hawk have been found to nest in isolated trees or small groves of eucalyptus, valley oak, Fremont's cottonwood, Goodding's black willow, and deodar cedar and several of these tree species are in the immediate Project vicinity. Nest trees typically stand in (or adjacent to) open agricultural land, along riparian corridors or irrigation channels, or at the edge of a tailwater pond. Foraging habitat surrounding the nest trees is chiefly alfalfa or other row crops but also includes expanses of grassland and scrub habitat<sup>1</sup>. Swainson's hawks prefer open habitats, including mixed and short grass grasslands with scattered trees or shrubs for perching; dry grasslands; irrigated meadows; and edges between two habitat types. Potential impacts to these protected bird species will be avoided with implementation of Mitigation Measures BIO-1 through BIO-3. As such, impacts to sensitive species will be *less than significant with mitigation incorporation*.

### **Mitigation Measures:**

**BIO-1** To protect raptors and migratory song birds and to assist in avoiding take of avian species as required by Fish and Game Code Section 3503, 3503.5, and 3513, Project related activities will occur during the non-breeding season (September 16<sup>th</sup> through December 31<sup>st</sup>).

**BIO-2** If Project related activities will occur during the breeding season (Jan 1 through Sept 15), the Applicant shall have a qualified biologist conduct nest surveys for nesting Swainson's hawks within ½ mile buffer around the Project site before starting any Project related activities following the survey methodology developed by the Swainson's hawk Technical Advisory Committee<sup>2</sup>. In the event that Swainson's hawk is detected, California Department of Fish & Wildlife (CDFW) shall be consulted by the Applicant or the Applicant's consultant to discuss project implementation and take avoidance. If take cannot be avoided the Applicant shall obtain an Incidental Take Permit from CDWF for project related incidental take of Swainson's hawk.

If other nesting raptors and migratory songbirds are identified, the following minimum no disturbance buffers shall be required:

- 250 feet around active passerine (perching birds and songbirds) nests

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<sup>1</sup> Hansen, R.B. 2005. Biological Evaluation of Potential Impacts to Special Status Species (Endangered, Threatened, Candidate Species and Species of Special Concern) and Natural Habitat Areas on Tulare County Tract No. 767, an approximately 14.71 acre preliminary subdivision on the north side of Avenue 320, ¼ mile east of State Highway 63 just north of the City of Visalia, Tulare County, California.

<sup>2</sup> Swainson's Hawk Technical Advisory Committee. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. May 31, 2000. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990>. Accessed October, 2014.

- 500 feet around active raptor nests

These buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined and CDFW has agreed in writing that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

**BIO-3** Vertical tubes such as chain link fencing poles can result in the entrapment and death of a variety of bird species. All vertical tubes such as chain link fencing poles shall be immediately capped at the time that they are installed to prevent avian fatalities.

- b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

**Less than Significant Impact.** There are no waterways or vegetation on the subject site and the area consists of an actively maintained vacant field along with paved and gravel areas. There is no riparian habitat or other sensitive natural community on site or adjacent to the Project. As such, any impacts would be *less than significant*.

**Mitigation Measures:** None are required.

- c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

**Less than Significant Impact.** No wetlands occur in or near the Project site. Impacts would be *less than significant*.

**Mitigation Measures:** None are required.

- d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

**Less than Significant Impact.** There are no waterways or vegetation on the subject site and the area consists of an actively maintained vacant field. The proposed Project site is located in an urban area and

there are no waterways or migratory wildlife corridors on site or in the Project vicinity. Any impacts to native species movement would be *less than significant*.

**Mitigation Measures:** None are required.

- e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

**Less than Significant Impact.** The City of Porterville's General Plan includes various policies for the protection of biological resources. The proposed Project would not conflict with any of the adopted policies and any impacts would be considered *less than significant*.

**Mitigation Measures:** None are required.

- f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

**Less than Significant Impact.** Several conservation and recovery plans apply to land in the City, including the Recovery Plan for Upland Species of the San Joaquin Valley and the Valley Elderberry Longhorn Beetle Habitat Conservation Plan. A review of Figure 6-4 (Special Status Species and Sensitive Vegetation) in the City of Porterville's General Plan indicates the Project site is not within an area set aside for the conservation of habitat or sensitive plant or animal species pursuant to such plans. The nearest such areas are the Valley Elderberry Longhorn Beetle Conservation Area located southeast of the Project site along the Tule River within the Yaudanchi Ecological Reserve. As such, any impacts would be *less than significant*.

**Mitigation Measures:** None are required.

## V. CULTURAL RESOURCES

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## SETTING

### Environmental Setting

Archaeological resources are places where human activity has measurably altered the earth or left deposits of physical remains. Archaeological resources may be either prehistoric (before the introduction of writing in a particular area) or historic (after the introduction of writing). The majority of such places in this region are associated with either Native American or Euroamerican occupation of the area. The most frequently encountered prehistoric and early historic Native American archaeological sites are village settlements with residential areas and sometimes cemeteries; temporary camps where food and raw materials were collected; smaller, briefly occupied sites where tools were manufactured or repaired; and special-use areas like caves, rock shelters, and sites of rock art. Historic archaeological sites may include foundations or features such as privies, corrals, and trash dumps.

The City of Porterville and Tulare County was inhabited by indigenous California Native American groups consisting of the Southern Valley Yokuts, Foothill Yokuts, Monache, and Tubatulabal. Most information regarding these groups is based on Spanish government and Franciscan mission records of the 18th and 19th centuries, and in studies conducted during the 1900s to 1930s by American and British

ethnographers. The ethnographic setting presented below is derived from the early works, compiled by W. J. Wallace, Robert F.G. Spier, and Charles R. Smith, with statistical information provided by the California Native American Heritage Commission.

Of the four main groups inhabiting the Tulare County area, the Southern Valley Yokuts occupied the largest territory, which is defined roughly by the crest of the Diablo Range on the west and the foothills of the Sierra Nevada on the east, and from the Kings River on the north, to the Tehachapi Mountains on the south. The Foothill Yokuts inhabited the western slopes of the Sierra Nevada, between the Fresno River and Kern River, with settlements generally occurring between the 2,000 to 4,000-foot elevations. The Tubatulabal inhabited the Sierra Nevada Mountains, at the higher elevations, near Mt. Whitney in the east, extending westward along the drainages of the Kern River, and the Kern River-South Fork. The Monache were comprised of six small groups that lived in the Sierras east of the Foothill Yokuts, in locations ranging between 3,000 to 7,000 foot elevations.

The proposed Project site has been highly disturbed for many years due to active clearing and weed maintenance. A records search was conducted at the Southern San Joaquin Valley Information Center (SSJVIC), California Historical Resources Information System (See Appendix C) in October 2014. According to the SSJVIC records, there has been one previous cultural resource study conducted within the project area and three additional studies conducted within the ½ mile radius of the Project site.

### **Regulatory Setting**

#### *Federal*

Cultural resources are protected by several federal regulations, none of which are relevant to this proposed Project because it will not be located on lands administered by a federal agency and the Project applicant is not requesting federal funding.

#### *State*

The proposed Project is subject to CEQA which requires public or private projects financed or approved by public agencies to assess their effects on historical resources. CEQA uses the term “historical resources” to include buildings, sites, structures, objects or districts, each of which may have historical, prehistoric, architectural, archaeological, cultural, or scientific importance. CEQA states that if implementation of a project results in significant effects on historical resources, then alternative plans or mitigation measures must be considered; however, only significant historical resources need to be addressed (CCR 15064.5, 15126.4). For the purposes of this CEQA document, a significant impact would occur if project implementation:

- Causes a substantial change in the significance of a historical resource

- Causes a substantial adverse change in the significance of an archaeological resource
- Disturbs any human remains, including those interred outside of formal cemeteries

Therefore, before impacts and mitigation measures can be identified, the significance of historical resources must be determined. CEQA guidelines define three ways that a property may qualify as a historical resource for the purposes of CEQA review:

- If the resource is listed in or determined eligible for listing in the California Register of Historical Resources (CRHR)
- If the resource is included in a local register of historical resources, as defined in Section 5020.1(k) of the PRC or identified as significant in an historical resource survey meeting the requirements of Section 5024.1(g) of the PRC unless the preponderance of evidence demonstrates that it is not historically or culturally significant
- The lead agency determines the resource to be significant as supported by substantial evidence in light of the whole record (CCR, Title 14, Division 6, Chapter 3, Section 15064.5(a))

Each of these ways of qualifying as a historical resource for the purpose of CEQA is related to the eligibility criteria for inclusion in the CRHR (PRC 5020.1(k), 5024.1, 5024.1(g)).

A historical resource may be eligible for inclusion in the CRHR if it:

- Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage
  - Is associated with the lives of persons important in our past
  - Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values
  - Has yielded, or may be likely to yield, information important in prehistory or history
- Properties that are listed in or eligible for listing in the National Register of Historic Places are considered eligible for listing in the CRHR, and thus are significant historical resources for the purpose of CEQA (PRC Section 5024.1(d)(1)).

### **Public Resources Code §5097.5**

California Public Resources Code §5097.5 prohibits excavation or removal of any "vertebrate paleontological site...or any other archaeological, paleontological or historical feature, situated on public



lands, except with express permission of the public agency having jurisdiction over such lands.” Public lands are defined to include lands owned by or under the jurisdiction of the state or any city, county, district, authority or public corporation, or any agency thereof. Section 5097.5 states that any unauthorized disturbance or removal of archaeological, historical, or paleontological materials or sites located on public lands is a misdemeanor.

### **Senate Bill 18**

SB 18 requires cities and counties to contact, and consult with California Native American tribes prior to amending or adopting any general plan or specific plan, or designating land as open space.

### **Human Remains**

Section 7050.5 of the California Health and Safety Code states that in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the remains are discovered has determined whether or not the remains are subject to the coroner’s authority. If the human remains are of Native American origin, the coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper and dignified treatment of the remains and associated grave artifacts.

### **Paleontological Resources**

Paleontological resources are the fossilized remains of plants and animals and associated deposits. The Society of Vertebrate Paleontology has identified vertebrate fossils, their taphonomic and associated environmental indicators, and fossiliferous deposits as significant nonrenewable paleontological resources. Botanical and invertebrate fossils and assemblages may also be considered significant resources.

CEQA requires that a determination be made as to whether a project would directly or indirectly destroy a unique paleontological resource or site or unique geological feature (CEQA Appendix G(v)(c)). If an impact is significant, CEQA requires feasible measures to minimize the impact (CCR Title 14(3) §15126.4 (a)(1)). California Public Resources Code §5097.5 (see above) also applies to paleontological resources.



*Local***Porterville General Plan Policies**

- OSC-G-11: Identify and protect archaeological, paleontological, and historic resources.
- OSC-I-72: Develop an agreement with Native American representatives for consultation in the cases where new development may result in disturbance to Native American sites.
- OSC-I-73: Require that new development analyze and avoid any potential impacts to archaeological, paleontological, and historic resources by:
  - Requiring a records review for development proposed in areas that are considered archaeologically sensitive, including hillsides and near the Tule River;
  - Studying the potential effects of development and construction (as required by CEQA);
  - Developing, where appropriate, mitigation measures to minimize potential impacts; and Implementing appropriate measures to avoid the identified impacts.

**RESPONSES**a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?

**Less than Significant Impact with Mitigation.** The records search conducted at the SSJVIC (Appendix C) indicated that there are no recorded cultural resources within the Project area or within the ½ mile radius and it is unknown if any exist. There are no recorded cultural resources within the Project area or within ½ mile that are listed in the National Register of Historic Places, the California Register of Historical Resources, the California Points of Historical Interest, California Inventory of Historic Resources, or the California State Historic Landmarks.

In addition, since the project will require a General Plan Amendment, the Project is subject to the provisions of Senate Bill 18 which requires consultation with California Native American Tribes. The City initiated the consultation process on October 23, 2014. The City does not anticipate any formal reply from a Tribe, however, a mitigation measure will be added that requires any consultation to be completed prior to construction of the Project.

Subsurface construction activities associated with the proposed Project could potentially damage or destroy previously undiscovered historic resources. This is considered a potentially significant impact; however, implementation of Mitigation Measure CUL1 will ensure that significant impacts remain *less than significant with mitigation incorporation*.

**CUL-1** The following measures shall be implemented:

- The City shall require that the provisions of Senate Bill 18, which requires consultation with California Native American Tribes, be completed prior to initiation of construction or ground-disturbing activities associated with the Project.
- Before initiation of construction or ground-disturbing activities associated with the Project, the City shall require all construction personnel to be alerted to the possibility of buried cultural resources, including historic, archeological and paleontological resources;
- The general contractor and its supervisory staff shall be responsible for monitoring the construction Project for disturbance of cultural resources; and
- If a potentially significant historical, archaeological, or paleontological resource, such as structural features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains or trash deposits are encountered during subsurface construction activities (i.e., trenching, grading), all construction activities within a 100-foot radius of the identified potential resource shall cease until a qualified archaeologist evaluates the item for its significance and records the item on the appropriate State Department of Parks and Recreation (DPR) forms. The archaeologist shall determine whether the item requires further study. If, after the qualified archaeologist conducts appropriate technical analyses, the item is determined to be significant under California Environmental Quality Act, the archaeologist shall recommend feasible mitigation measures, which may include avoidance, preservation in place or other appropriate measure, as outlined in Public Resources Code section 21083.2. The City of Porterville shall implement said measures.

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

**Less than Significant Impact with Mitigation.** The possibility exists that subsurface construction activities may encounter undiscovered archaeological resources. This would be a potentially significant impact. Implementation of Mitigation Measure CUL-1 would require inadvertently discovery practices

to be implemented should previously undiscovered archeological resources be located. As such, impacts to undiscovered archeological resources would be *less than significant with mitigation incorporation*.

c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

**Less than Significant Impact with Mitigation.** There are no unique geological features or known fossil-bearing sediments in the vicinity of the proposed Project site. However, there remains the possibility for previously unknown, buried paleontological resources or unique geological sites to be uncovered during subsurface construction activities. Therefore, this would be a potentially significant impact. Mitigation is proposed requiring standard inadvertent discovery procedures to be implemented to reduce this impact to a level of *less than significant with mitigation incorporation*.

**CUL-2** The City of Porterville will incorporate into the construction contract(s) a provision that in the event a fossil or fossil formations are discovered during any subsurface construction activities for the proposed Project (i.e., trenching, grading), all excavations within 100 feet of the find shall be temporarily halted until the find is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The paleontologist shall notify the appropriate representative at the City of Porterville, who shall coordinate with the paleontologist as to any necessary investigation of the find. If the find is determined to be significant under CEQA, the City shall implement those measures, which may include avoidance, preservation in place, or other appropriate measures, as outlined in Public Resources Code section 21083.2.

d. Disturb any human remains, including those interred outside of formal cemeteries?

**Less than Significant Impact.** Although unlikely given the highly disturbed nature of the site and the records search did not indicate the presence of such resources, subsurface construction activities associated with the proposed Project could potentially disturb previously undiscovered human burial sites. Accordingly, this is a potentially significant impact. The California Health and Safety Code Section 7050.5 states that if human remains are discovered on-site, no further disturbance shall occur until the County Coroner has made a determination of origin and disposition. If the Coroner determines that the remains are not subject to his or her authority and if the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the NAHC. The NAHC shall identify the person or persons it believes to be the “most likely descendant” (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work, for means

of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resource Code Section 5097.98.

Although considered unlikely subsurface construction activities could cause a potentially significant impact to previously undiscovered human burial sites, however compliance with regulations would reduce this impact to *less than significant*.

**Mitigation Measures:** None are required.

## VI. GEOLOGY AND SOILS

### Would the project:

a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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ii. Strong seismic ground shaking?

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iii. Seismic-related ground failure, including liquefaction?

☐☐☒☐

iv. Landslides?

☐☐☒☐

b. Result in substantial soil erosion or the loss of topsoil?

☐☐☒☐

c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

☐☐☐☒

d. Be located on expansive soil, as defined in Table 18-1-B of the most recently

☐☐☒☐

adopted Uniform Building Code  
creating substantial risks to life or  
property?

- e. Have soils incapable of adequately  
supporting the use of septic tanks or  
alternative waste water disposal systems  
where sewers are not available for the  
disposal of waste water?

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## SETTING

### Environmental Setting

The City of Porterville is situated along the western slope of a northwest-trending belt of rocks comprising the Sierra Nevada and within the southern portion of the Cascade Range. The Sierra Nevada geomorphic province is primarily composed of cretaceous granitic plutons and remnants of Paleozoic and Mesozoic metavolcanic and metasedimentary rocks, and Cenozoic volcan and sedimentary rocks. The majority of Porterville has elevations ranging from 400 to 800 feet. However, the eastern portion of the City is in the Sierra Nevada foothills where elevations reach almost 1,800 feet above sea level.

### **Faulting and Seismicity**

There are no known active earthquake faults in the City of Porterville. The proposed Project site is not located within an Alquist-Priolo Earthquake Fault Zone and no known faults cut through the local soil at the site. There are several faults located within a 70 mile radius of the proposed Project site. An unnamed fault is approximately seven miles south, Poso Creek Fault is 30 miles southwest, White Wolf Fault Zone is 60 miles south, San Andreas and Cholame-Carrizo Fault sections are approximately 69 miles southwest of the proposed Project site. These faults are small and have exhibited activity in the last 1.6 million years, but not in the last 200 years. It is possible, but unlikely, that previously unknown faults could become active in the area. No Alquist-Priolo Earthquake Fault Zones are in or near Porterville. Porterville is located in a Seismic Zone 3 of the 1994 Uniform Building Code (UBC). This zone is expected to experience moderate effects from earthquake ground shaking. This seismic zone is expected to experience moderate effects from earthquake ground shaking activity.

## Soils

According to the City's General Plan EIR, much of the Project area has soils with moderate to high erosion potential. Generally, areas most susceptible to soil erosion are hilly or have slopes greater than 15 percent. Lower flatlands, such as the subject site, are usually less likely to erode than those located on slopes.

### **Regulatory Setting**

#### *Federal*

Federal regulations for geology and soils are not relevant to the proposed Project because it is not a federal undertaking (the Project site is not located on lands administered by a federal agency, and the Project applicant is not requesting federal funding or a federal permit).

#### *State*

### **Uniform Building Code**

The California Code of Regulations (CCR) Title 24 is assigned to the California Building Standards Commission, which, by law, is responsible for coordinating all building standards. The California Building Code incorporates by reference the Uniform Building Code with necessary California amendments. The Uniform Building Code is a widely adopted model building code in the United States published by the International Conference of Building Officials. About one-third of the text within the California Building Code has been tailored for California earthquake conditions.

In addition, the proposed Project is being evaluated pursuant to CEQA.

#### *Local*

### **Porterville General Plan Policies**

- OSC-G-5: Preserve soil resources to minimize damage to people, property, and the environment resulting from potential hazards.
- OSC-G-6: Protect significant mineral resources.
- OSC-I-21: Adopt soil conservation regulations to reduce erosion caused by overgrazing, plowing, mining, new roadways and paths, construction, and off-road vehicles.
- OSC-I-23: Require adequate grading and replanting to minimize erosion and prevent slippage of manmade slopes.
- PHS-G-4: Protect soils, surface water, and groundwater from contamination from hazardous materials.

- PHS-I-17: Require remediation and cleanup of sites contaminated with hazardous substances.

## RESPONSES

a-i. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

**No Impact.** The proposed Project site is not located within a currently designated Alquist-Priolo Earthquake Fault Zone. Since no known surface expression of active faults is believed to cross the site, fault rupture through the site is not anticipated. *No impacts* would occur.

**Mitigation Measures:** None are required.

a-ii. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking?

**Less than Significant Impact.** The City of Porterville's 2030 General Plan identified the City as being within the Uniform Building Code Seismic Zone 3. The California Geological Survey maintains a web-based computer model that estimates probabilistic seismic ground motions for any location with California. The computer model estimates the "Design Basis Earthquake" ground motion, which is defined as the peak ground acceleration with a 10-percent chance of exceedance in 50 years (475-year return period). For an alluvium soil type, the Project site's estimated peak ground acceleration is approximately 0.22g.

Project related building construction will conform to the latest standards for seismic design as adopted by the Uniform Building Code. Therefore, the impact is *less than significant*.

**Mitigation Measures:** None are required.

a-iii. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction?



**Less than Significant Impact.** See Response a-ii. According to the City of Porterville General Plan, Public Health and Safety Element the Project site is in the Seismic -3 zone, the site has a moderate to high risk of damaging ground motion; however the Project's Valley location has a low risk of liquefaction. No Subsidence prone soils or oil or gas production is involved with the proposed Project. Therefore, the impact is *less than significant*.

**Mitigation Measures:** None are required.

a-iv. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides?

**Less than Significant Impact.** The City of Porterville's 2030 General Plan, Figure 7-1 (Geological and Soil Hazards) indicates that the proposed Project site is located on relatively flat topography and is not located adjacent to any steep slopes or areas that would otherwise be subject to landslides. Therefore, the impact is *less than significant*.

**Mitigation Measures:** None are required.

b. Result in substantial soil erosion or the loss of topsoil?

**Less than Significant Impact.** The City of Porterville sits on top of the alluvial fans of the Tule River and its distributaries. The bedrock is present at relatively shallow depths beneath the eastern end of Porterville. The soil in the proposed Project area is characterized as moderately deep, well-drained, sandy loam underlain by hardpan. The Project site has a generally flat topography, is in an established urban area and does not include any Project features that would result in soil erosion or loss of topsoil. Therefore, the impact is *less than significant*.

**Mitigation Measures:** None are required.

c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

**No Impact.** The City of Porterville sits on top of the alluvial fans of the Tule River and its distributaries. The bedrock is present at relatively shallow depths beneath the eastern end of Porterville. The soil in the

proposed Project area is characterized as moderately deep, well-drained, sandy loam underlain by hardpan. See also Response a-ii. There is *no impact*.

**Mitigation Measures:** None are required.

d. Be located on expansive soil, as defined in Table 18-1-B of the most recently adopted Uniform Building Code creating substantial risks to life or property?

**Less than Significant Impact.** See Responses c and a-ii. The impact is *less than significant*.

**Mitigation Measures:** None are required.

e. Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

**No Impact.** The project will tie into the City's existing wastewater system and will not require installation of a septic tank or alternate wastewater disposal system. There is *no impact*.

**Mitigation Measures:** None are required.

## VII. GREENHOUSE GAS EMISSIONS

### Would the project:

a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

☐☐☒☐

## SETTING

### Environmental Setting

Various gases in the earth's atmosphere play an important role in moderating the earth's surface temperature. Solar radiation enters earth's atmosphere from space and a portion of the radiation is absorbed by the earth's surface. The earth emits this radiation back toward space, but the properties of the radiation change from high-frequency solar radiation to lower-frequency infrared radiation. GHGs are transparent to solar radiation, but are effective in absorbing infrared radiation. Consequently, radiation that would otherwise escape back into space is retained, resulting in a warming of the earth's atmosphere. This phenomenon is known as the greenhouse effect. Scientific research to date indicates that some of the observed climate change is a result of increased GHG emissions associated with human activity. Among the GHGs contributing to the greenhouse effect are water vapor, carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), ozone, Nitrous Oxide (NO<sub>x</sub>), and chlorofluorocarbons. Human-caused emissions of these GHGs in excess of natural ambient concentrations are considered responsible for enhancing the greenhouse effect. GHG emissions contributing to global climate change are attributable, in large part, to human activities associated with the industrial/manufacturing, utility, transportation, residential, and agricultural sectors. In California, the transportation sector is the largest emitter of GHGs, followed by electricity generation. Global climate change is, indeed, a global issue. GHGs are global pollutants, unlike criteria pollutants and TACs (which are pollutants of regional and/or local concern). Global climate change, if it occurs, could potentially affect water resources in California. Rising temperatures could be anticipated to result in sea-level rise (as polar ice caps melt) and possibly change the timing and amount of precipitation, which could alter water quality. According to some, climate change could result in more extreme weather patterns; both heavier precipitation that could lead to flooding, as well as more

extended drought periods. There is uncertainty regarding the timing, magnitude, and nature of the potential changes to water resources as a result of climate change; however, several trends are evident.

Snowpack and snowmelt may also be affected by climate change. Much of California's precipitation falls as snow in the Sierra Nevada and southern Cascades, and snowpack represents approximately 35 percent of the state's useable annual water supply. The snowmelt typically occurs from April through July; it provides natural water flow to streams and reservoirs after the annual rainy season has ended. As air temperatures increase due to climate change, the water stored in California's snowpack could be affected by increasing temperatures resulting in: (1) decreased snowfall, and (2) earlier snowmelt.

### **Regulatory Setting**

#### *Federal*

The USEPA Mandatory Reporting Rule (40 CFR Part 98), which became effective December 29, 2009, requires that all facilities that emit more than 25,000 metric tons CO<sub>2</sub>-equivalent per year beginning in 2010, report their emissions on an annual basis. On May 13, 2010, the USEPA issued a final rule that established an approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The final rule set thresholds for GHG emissions that define when permits under the New Source Review Prevention of Significant Deterioration and title V Operating Permit programs are required for new and existing industrial facilities.

In addition, the Supreme Court decision in *Massachusetts v. EPA* (Supreme Court Case 05-1120) found that the USEPA has the authority to list GHGs as pollutants and to regulate emissions of GHGs under the CAA. On April 17, 2009, the USEPA found that CO<sub>2</sub>, CH<sub>4</sub>, NO<sub>x</sub>, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride may contribute to air pollution and may endanger public health and welfare. This finding may result in the USEPA regulating GHG emissions; however, to date the USEPA has not proposed regulations based on this finding.

#### *State*

California is taking action to reduce GHG emissions. In June 2005, Governor Schwarzenegger signed Executive Order S-3-05 to address climate change and GHG emissions in California. This order sets the following goals for statewide GHG emissions:

- Reduce to 2000 levels by 2010
- Reduce to 1990 levels by 2020
- Reduce to 80 percent below 1990 levels by 2050

In 2006, California passed AB 32, the California Global Warming Solutions Act of 2006 (Act). The Act requires ARB to design and implement emission limits, regulations, and other feasible cost-effective measures to reduce statewide GHG emissions to 1990 levels by 2020. Senate Bill 97 was signed into law in August 2007. The Senate Bill required the Office of Planning and Research (OPR) to prepare, develop, and transmit to the Resource Agency guidelines for the feasible mitigation of GHG emissions or the effects of GHG emissions by July 1, 2009. On April 13, 2009, the OPR submitted to the Secretary for Natural Resources its recommended amendments to the State CEQA Guidelines for addressing GHG emissions. On July 3, 2009, the Natural Resources Agency commenced the Administrative Procedure Act rulemaking process for certifying and adopting the amendments. Following a 55-day public comment period and 2 public hearings, and in response to comments, the Natural Resources Agency proposed revisions to the text of the proposed Guidelines amendments. The Natural Resources Agency transmitted the adopted amendments and the entire rulemaking file to the Office of Administrative Law on December 31, 2009. On February 16, 2010, the Office of Administrative Law approved the amendments, and filed them with the Secretary of State for inclusion in the CCR. The Amendments became effective on March 18, 2010.

The AB 32 Scoping Plan contains the main strategies California will use to reduce GHG emissions that cause climate change. The scoping plan has a range of GHG reduction actions which include direct regulations, alternative compliance mechanisms, monetary and non-monetary incentives, voluntary actions, market-based mechanisms such as a cap-and-trade system, and an AB 32 cost of implementation fee regulation to fund the program. The first regulation adopted by the ARB pursuant to AB 32 was the regulation requiring mandatory reporting of GHG emissions. The regulation requires large industrial sources emitting more than 25,000 metric tons of CO<sub>2</sub> per year to report and verify their GHG emissions from combustion of both fossil fuels and biomass-derived fuels. The California Cap and Trade program is being developed and the ARB must adopt regulations by January 1, 2011. Finally, Governor Schwarzenegger directed the ARB, pursuant to Executive Order S-21-09, to adopt a regulation by July 31, 2010, requiring the state's load serving entities to meet a 33 percent renewable energy target by 2020.

In addition, the proposed Project is being evaluated pursuant to CEQA.

### *Local*

#### **Porterville General Plan Policies**

- OSC-G-9: Improve and protect Porterville's air quality by making air quality a priority in land use and transportation planning and in development review.
- OSC-I-59: Require preparation of a Health Risk Assessment for any development subject to the Air Toxics "Hot Spots" Act.

- OSC-I-60: Require preparation of a Health Risk Assessment for any development subject to the Air Toxics “Hot Spots” Act.
- OSC-I-61: Coordinate air quality planning efforts with other local, regional and State agencies.
- OSC-I-63: Notify local and regional jurisdictions of proposed projects that may affect regional air quality.

## RESPONSES

### a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

**Less than Significant Impact.** The U.S. Environmental Protection Agency published a rule for the mandatory reporting of greenhouse gases from sources that in general emit 25,000 metric tons or more of carbon dioxide (CO<sub>2</sub>) per year. As shown in Table 3, Overall Construction, Unmitigated Construction, of Appendix A, the Project is estimated to produce 1,055.64 tons per year of CO<sub>2</sub> (combined construction and operational totals). This represents approximately three percent of the reporting threshold.

Additionally, emissions from construction are temporary in nature. The SJVAPCD has implemented a guidance policy for development projects within their jurisdiction. This policy, “Guidance for Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA,” approved by the Board on December 17, 2009, does not address temporary GHG emissions from construction, nor does this policy establish numeric thresholds for ongoing GHG emissions. AB 32 requires that emissions within the State be reduced to 1990 levels by the year 2020. These construction emissions are minimal and would mainly occur prior to 2020; therefore, construction-generated GHGs are *less than significant*.

**Mitigation Measures:** None are required.

### b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

**Less than Significant Impact.** The City of Porterville does not have an adopted Climate Action Plan. Therefore, the plan adopted for the purpose of reducing the emissions of GHGs applicable to the proposed project is ARB’s approved Scoping Plan, which will be used to determine significance for this criterion. As discussed previously, AB 32 requires that emissions within the State be reduced to 1990 levels by the year 2020. The project would generate temporary construction emissions prior to the year 2020; therefore, impacts would be *less than significant*.

**Mitigation Measures:** None are required.

## VIII. HAZARDS AND HAZARDOUS MATERIALS

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project result in	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

a safety hazard for people residing or working in the project area?

- g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? ☐ ☐ ☒ ☐
- h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands ☐ ☐ ☐ ☒

## SETTING

### Environmental Setting

The proposed Project site is located in the northwest portion of the City adjacent to residential and commercial land uses. The site is currently a vacant lot actively maintained for weed control.

The nearest residences are approximately 100 feet to the north of the Project site. The Project site is approximately 3.0 miles northeast of the Porterville Municipal Airport. Fresno-Yosemite International Airport is the closest regional airport to the proposed Project site, approximately 60 miles northwest.

The Teapot Dome Landfill plant is approximately 4.8 miles southwest of the proposed Project site, while the Porterville Wastewater Treatment Plant is located immediately south and east of the site, across Newcomb Street. The site is approximately 100 feet from the fenceline of the nearest school (Monache High School), it should be noted that the nearest point is a parking lot for the high school.

### Regulatory Setting

#### *Federal*

The primary federal agencies with responsibility for hazardous materials management include the EPA, U.S. Department of Labor Occupational Safety and Health Administration (OSHA), and the U.S. Department of Transportation (DOT). The Environmental Protection Agency (EPA) was created to protect human health and to safeguard the natural environment – air, water and land – and works closely with other federal agencies, and state and local governments to develop and enforce regulations under



existing environmental laws. Where national standards are not met, EPA can issue sanctions and take other steps to assist the states in reaching the desired levels of environmental quality. EPA also works with industries and all levels of government in a wide variety of voluntary pollution prevention programs and energy conservation efforts.

### *State*

The California Department of Industrial Relations, Division of Occupational Safety and Health is the administering agency designed to protect worker health and general facility safety. The California Department of Forestry and Fire Protection has designated the area that includes the, proposed Project site as a Local Responsibility Area, defined as an area where the local fire jurisdiction is responsible for emergency fire response.

In addition, the proposed Project is being evaluated pursuant to CEQA.

### *Local*

#### **City of Porterville Fire Department**

The City of Porterville Fire Department, Fire Prevention Division provides limited oversight of hazardous materials. The Fire Department is responsible for conducting inspections for code compliance and fire-safe practices, permitting of certain hazardous materials, and for investigation of fire and hazardous materials incidents. The Fire Department regulates explosive and hazardous materials under the Uniform Fire Code, and permits the handling, storage and use of any explosive or other hazardous material.

#### **Tulare County Environmental Health Division**

The Tulare County Environmental Health Division (TCEHD) is the Certified Unified Program Agency (CUPA) for all cities and unincorporated areas within Tulare County. The CUPA was created by the California Legislature to minimize the number of inspections and different fees for businesses. The TCEHD provides the management and record keeping of hazardous materials and underground storage tank (UST) sites for Tulare County, including the City of Porterville.

#### **Porterville General Plan Policies**

- PHS-G-1: Minimize risks of property damage and personal injury posed by geologic and seismic hazards.

- PHS-I-2: Maintain and enforce appropriate building standards and codes to avoid and/or reduce risks associated with geologic constraints and to ensure that all new construction is designed to meet current safety regulations.
- PHS-I-17: Require remediation and cleanup of sites contaminated with hazardous substances.
- PHS-I-18: Adopt a Household Hazardous Waste Program and support the proper disposal of hazardous household waste and waste oil; encourage citizens and crime watch organizations to report unlawful dumping of hazardous materials.
- PHS-I-19: Ensure that all specified hazardous facilities conform to the Tulare County Hazardous Waste Management Plan.
- PHS-I-21: Coordinate enforcement of the Hazardous Material Disclosure Law and the implementation of the Hazardous Material Emergency Response Plan with the Tulare County Health and Human Service Agency.

## RESPONSES

- a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

**Less than Significant Impact.** This impact is associated with hazards caused by the routine transport, use, or disposal of hazardous materials or through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. Proposed Project construction activities may involve the use and transport of hazardous materials. These materials may include fuels, oils, mechanical fluids, and other chemicals used during construction. Transportation, storage, use, and disposal of hazardous materials during construction activities would be required to comply with applicable federal, state, and local statutes and regulations. Compliance would ensure that human health and the environment are not exposed to hazardous materials. In addition, the Project would be required to comply with the National Pollutant Discharge Elimination System (NPDES) permit program through the submission and implementation of a Stormwater Pollution Prevention Plan during construction activities to prevent contaminated runoff from leaving the project site. Therefore, no significant impacts would occur during construction activities.

It is anticipated that the proposed Project would not be a large-quantity user of hazardous materials. Small quantities of hazardous materials would be used onsite, including cleaning solvents (e.g., degreasers, paint thinners, and aerosol propellants), paints (both latex- and oil-based), acids and bases (such as many cleaners), disinfectants, and fertilizers. The potential risks posed by the use and storage of these hazardous materials are primarily limited to the immediate vicinity of the materials. Transport of these materials would be

performed by commercial vendors who would be required to comply with various federal and state laws regarding hazardous materials transportation. As such, these materials are not expected to expose human health or the environment to undue risks associated with their use. Therefore, the proposed Project will not create a significant hazard to the public or the environment and any impacts would be *less than significant*.

**Mitigation Measures:** None are required.

- b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

**Less than Significant Impact.** See Response a. above. Any accumulated hazardous construction or operational wastes will be collected and transported away from the site in compliance with all federal, state and local regulations. Any impacts would be *less than significant*.

**Mitigation Measures:** None are required.

- c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

**Less than Significant Impact.** The site is approximately 100 feet from the fenceline of the nearest school (Monache High School), it should be noted that the nearest point is a parking lot for the high school. Other schools in the vicinity include Oak Grove Elementary School which is approximately 1/3 mile northwest of the Project site.

Based on the current project description of a fast food restaurant and future commercial development, it is not reasonably foreseeable that the proposed Project will cause a significant impact by emitting hazardous waste or bringing hazardous materials within one-quarter mile of an existing or proposed school. These land uses do not generate, store, or dispose of significant quantities of hazardous materials. Such uses also do not normally involve dangerous activities that could expose persons onsite or in the surrounding areas to large quantities of hazardous materials. See also Responses a. and b. regarding hazardous material handling. The impact is *less than significant*.

**Mitigation Measures:** None are required.

- d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

**No Impact.** The proposed Project site is not located on a list of hazardous materials sites complied pursuant to Government Code Section 65962.5 (Geotracker and DTSC Envirostor databases – accessed in October 2014). The nearest Department of Toxic Substances Control listed site is the Beckman Instruments – Porterville facility that is located at 187 West Poplar Avenue in Porterville (approximately 3 miles southeast of the Project site). In addition, there are two occurrences of a Leaking Underground Tank (LUST) Cleanup sites (both are closed) in the Project area. One is located at the circle drive near the public recycle/drop-off facility on N. Prospect Street (approximately ½ mile east of the Project site). The second is located near the intersection of Newcomb Street and Grand Avenue (approximately 750 feet south of the Project site). There are no hazardous materials sites that impact the Project. As such, *no impacts* would occur that would create a significant hazard to the public or the environment.

**Mitigation Measures:** None are required.

- e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

**No Impact.** Based on review of the 2030 General Plan, the proposed Project site is approximately 3.0 miles northeast of the Porterville Municipal Airport. Land use controls for this area are provided by the City of Porterville General Plan and Development Ordinance, and the Tulare County General Plan and Zoning Ordinance, Part 77.21. The City of Porterville has also prepared an airport master plan for the Porterville Municipal Airport. The Project site is outside the height and safety restriction zones imposed by these plans. There is *no impact*.

**Mitigation Measures:** None are required.

- f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

**No Impact.** There are no private airstrips in the Project vicinity and as such, there is *no impact*.

**Mitigation Measures:** None are required.

- g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

**Less than Significant Impact.** The proposed Project site will be accessible via three driveway entrances, as seen in Figure 3, which are not a part of the City's emergency response plan or emergency evacuation plan. As such, the Project will not interfere with any adopted emergency response or evacuation plan. Any impacts are *less than significant*.

**Mitigation Measures:** None are required.

- h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

**No Impact.** There are no wildlands on or near the Project site. There is *no impact*.

**Mitigation Measures:** None are required.

## IX. HYDROLOGY AND WATER QUALITY

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## IX. HYDROLOGY AND WATER QUALITY

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
provide substantial additional sources of polluted runoff?				
f. Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## SETTING

### Environmental Setting

The City of Porterville has a dry climate with evaporation rates that exceed rainfall. The local climate is considered warm desert with annual precipitation between approximately seven to nine inches, and rainfall rates are highly variable. The majority of precipitation (roughly 84%) falls during the months of November through April.

The Porterville area is underlain by an unconfined aquifer that is part of the Tule Sub-basin of the San Joaquin Valley Groundwater Basin.

## **Regulatory Setting**

### *Federal*

#### **Clean Water Act**

The Clean Water Act (CWA) is intended to restore and maintain the chemical, physical, and biological integrity of the nation's waters (33 CFR 1251). The regulations implementing the CWA protect waters of the U.S. including streams and wetlands (33 CFR 328.3). The CWA requires states to set standards to protect, maintain, and restore water quality by regulating point source and some non-point source discharges. Under Section 402 of the CWA, the National Pollutant Discharge Elimination System (NPDES) permit process was established to regulate these discharges.

The National Flood Insurance Act (1968) makes available federally subsidized flood insurance to owners of flood-prone properties. To facilitate identifying areas with flood potential, Federal Emergency Management Agency (FEMA) has developed Flood Insurance Rate Maps (FIRM) that can be used for planning purposes.

### *State*

#### **State Water Resources Control Board**

The State Water Resources Control Board (SWRCB), located in Sacramento, is the agency with jurisdiction over water quality issues in the State of California. The SWRCB is governed by the Porter-Cologne Water Quality Act (Division 7 of the California Water Code), which establishes the legal framework for water quality control activities by the SWRCB. The intent of the Porter-Cologne Act is to regulate factors which may affect the quality of waters of the State to attain the highest quality which is reasonable, considering a full range of demands and values. Much of the implementation of the SWRCB's responsibilities is delegated to its nine Regional Boards. The proposed Project site is located within the Central Valley Region.

#### **Regional Water Quality Board**

The Regional Water Quality Control Board (RWQCB) administers the NPDES storm water-permitting program in the Central Valley region. Construction activities on one acre or more are subject to the permitting requirements of the NPDES General Permit for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Permit). The General Construction Permit requires the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The plan will include specifications for Best Management Practices (BMPs) that will be implemented during proposed Project construction to control degradation of surface water by preventing the potential erosion of



sediments or discharge of pollutants from the construction area. The General Construction Permit program was established by the RWQCB for the specific purpose of reducing impacts to surface waters that may occur due to construction activities. BMPs have been established by the RWQCB in the California Storm Water Best Management Practice Handbook (2003), and are recognized as effectively reducing degradation of surface waters to an acceptable level. Additionally, the SWPPP will describe measures to prevent or control runoff degradation after construction is complete, and identify a plan to inspect and maintain these facilities or project elements.

In addition, the proposed Project is being evaluated pursuant to CEQA.

### *Local*

#### **Porterville General Plan Policies**

- OSC-I-43: Work with agricultural and industrial uses to ensure that water contamination and waste products are handled in a manner that protects the long-term viability of water resources.
- OSC-I-44: Work with the Regional Water Quality Control Board to ensure that all point source pollutants are adequately mitigated (as part of the CEQA review and project approval process) and monitored to ensure long-term compliance.
- OSC-I-45: Continue to require use of feasible and practical best management practices (BMPs) and other mitigation measures designed to protect surface water and groundwater from the adverse effects of construction activities and urban runoff in coordination with the Regional Water Quality Control Board.
- OSC-I-51: Prior to the approval of individual projects, require the City Engineer and/or Building Official to verify that the provisions of applicable point source pollution programs have been satisfied.
- PHS-G-2: Protect the community from risks to life and property posed by flooding and stormwater runoff.

## **RESPONSES**

### a. Violate any water quality standards or waste discharge requirements?

**Less than Significant Impact.** The State Water Resources Control Board requires any new construction project over an acre to complete a Stormwater Pollution Prevention Plan (SWPPP). A SWPPP involves

site planning and scheduling, limiting disturbed soil areas, and determining best management practices to minimize the risk of pollution and sediments being discharged from construction sites. Implementation of the SWPPP will minimize the potential for the proposed Project to substantially alter the existing drainage pattern in a manner that will result in substantial erosion or siltation onsite or offsite.

The proposed Project will result in wastewater from restroom and kitchen facilities that will be discharged into the City's existing wastewater treatment system. For comparison purposes, the existing zoning on-site could allow for a similar sized restaurant (although a drive through is prohibited in a CN zone) and similar commercial facilities. In addition, the proposed change from RM-2 to CR at the southern tip of the Project site is negligible for purposes of calculating wastewater. Therefore, the proposed Project will not result in additional production of wastewater that was not already accounted for in the City's infrastructure planning documents.

Additionally, there will be no discharge to any surface or groundwater source. As such, the proposed Project will not violate any water quality standards and will not impact waste discharge requirements. The impact will be *less than significant*.

**Mitigation Measures:** None are required.

- b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

**Less than Significant Impact.** The City of Porterville (and proposed Project site) is located in the Tulare Lake Basin, an area significantly affected by overdraft. The Department of Water Resources (DWR) has estimated the groundwater by hydrologic region and for the Tulare Lake Basin; the total overdraft is estimated at 820,000 acre-feet per year, the greatest overdraft projected in the state, and 56 percent of the statewide total overdraft. The proposed Project site is located within the Tule Sub-basin portion of the greater San Joaquin Valley Groundwater Basin. According to the City's General Plan EIR, wells in and around the city have shown a moderate groundwater level decline of about 0.75 feet per year over the past 20 years. The City's municipal wells are generally scattered west of Plano Avenue and south of Westfield Avenue and the distribution system is operated under pressure.

According to the City's General Plan and Urban Water Management Plan (UWMP), future demand within the City planning area can be met with continued groundwater pumping, surface water purchases

and conservation measures. For comparison purposes, the existing zoning on-site could allow for a similar sized restaurant (although a drive through is prohibited in a CN zone) and similar commercial facilities. In addition, the proposed change from RM-2 to CR at the southern tip of the Project site is negligible for purposes of calculating water use. Therefore, the proposed Project will not result in additional groundwater use that was not already accounted for in the City's UWMP. As such, there is *a less than significant impact* to this impact area.

**Mitigation Measures:** None are required.

- c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?

**Less than Significant Impact.** There are no natural lakes or streams within or adjacent to the Project area. The site is presently a vacant dirt lot, actively maintained for weed control. The proposed Project will introduce new impervious surfaces (pavement) to the entire 1.3 acre site (with the exception of on-site landscaping). The site will be designed so that storm water is collected and deposited in the City's existing storm drain system, which has adequate capacity. The storm water collection system design will be subject to review and approval by the City Public Works Department. Storm water during construction will be managed as part of the Storm Water Pollution Prevention Plan (SWPPP). A copy of the SWPPP is retained on-site during construction. As a result, impacts would be *less than significant*.

**Mitigation Measures:** None are required.

- d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?

**Less than Significant Impact.** Impacts regarding the alteration of drainage patterns to increase runoff that will potentially induce flooding have been discussed in the impact analysis for Response IX-c. Storm water will be managed as part of the Storm Water Pollution Prevention Plan (SWPPP). A copy of the SWPPP is retained on-site during construction. As a result, impacts are *less than significant*.

**Mitigation Measures:** None are required.

- e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

**Less than Significant Impact.** See Responses a, c and d. Implementation of the proposed Project will not require expansion of the City's existing stormwater system, nor will it result in additional sources of polluted runoff. The impact is *less than significant*.

**Mitigation Measures:** None are required.

- f. Otherwise substantially degrade water quality?

**Less than Significant Impact.** See Responses a, c and d. The Project would not otherwise degrade water quality and therefore the impact is *less than significant*.

**Mitigation Measures:** None are required.

- g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

**No Impact.** The Project site is not within a 100-year or 500-year flood zone, as shown on Figure 7-3 of the 2030 General Plan. There is no housing associated with this Project. Therefore, there is *no impact*.

**Mitigation Measures:** None are required.

- h. Place within a 100-year flood hazard area structures which would impede or redirect flood flows?

**No Impact.** The Project site is not within a 100-year or 500-year flood zone, as shown on Figure 7-3 of the 2030 General Plan. No facilities are being proposed that would alter the existing drainage pattern of the area and therefore there is *no impact*.

**Mitigation Measures:** None are required.

- i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?

**Less than Significant Impact.** Flows into the Tule River (located approximately 1.5 miles south of the Project site) are controlled by the Success Dam located approximately five miles upstream from the City. A dam failure is usually the result of neglect, poor design, or structural damage caused by a major event such as an earthquake. Dams must be operated and maintained in a safe manner, which is ensured through inspections for safety deficiencies, analyses using current technologies and designs, and taking corrective actions as needed based on current engineering practices.

The Project site is located within the Success Dam inundation area, as shown on Figure 7-3 of the 2030 General Plan. This inundation area runs through Porterville, to a location downstream of Corcoran, a distance of approximately 44 miles. The Army Corp Of Engineers (ACOE) is in the process of completing an environmental impact statement for reinforcing the strength of the dam in the event of seismically induced failure. The Project site is within the 0.5-hour to 1-hour inundation zone of Success Dam. In the event of a dam failure, most of the City would be flooded within one hour. The Porterville Emergency Operations Plan (EOP), adopted in 2004, includes planning and response scenarios for seismic hazards, extreme weather conditions, landslides, dam failure and other flooding. The City has designated several evacuation routes through Porterville to be used in case of catastrophic emergencies. In the unlikely event that the dam fails before the ACOE's proposed dam reinforcement completion date of 2014–2015, the dam owner would follow the emergency action plan (EAP) developed for Success Dam. The EAP includes a notification flowchart, early detection systems, notification for warning and evacuation by state and local emergency management officials, steps to moderate or alleviate the effects of a dam failure, and inundation maps. No impervious surfaces are being proposed. As such, impacts related to exposure of people or structures to a risk of loss, injury, or death involving flooding as a result of the failure of a levee or dam would be *less than significant*.

**Mitigation Measures:** None are required.

j. Inundation by seiche, tsunami, or mudflow?

**No Impact.** There are no inland water bodies that could be potentially susceptible to a seiche in the Project vicinity. This precludes the possibility of a seiche inundating the Project site. The Project site is more than 100 miles from the Pacific Ocean, a condition that precludes the possibility of inundation by tsunami. There are no steep slopes that would be susceptible to a mudflow in the Project vicinity, nor are there any volcanically active features that could produce a mudflow in the City of Porterville. This precludes the possibility of a mudflow inundating the Project site. *No impacts* would occur.

**Mitigation Measures:** None are required.

## X. LAND USE AND PLANNING

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## SETTING

### Environmental Setting

The proposed Project site is located in the northwestern part of the City of Porterville and is currently a vacant lot, with the exception of an existing house located at the southern end of the Project site that will be removed as part of the Project. See Figure 3 – Aerial Map. The site is located in an urban area that provides a mix of land uses. Monache High School is located northeast of the site and multi-family apartments are planned immediately south of the site. Veterans Park is east of the site (across Newcomb Street) and an existing church facility is located immediately west of the site. A large multi-family complex is proposed to be constructed further west of the site, along Henderson Avenue.

The site is currently zoned CN (Neighborhood Commercial) and RM-2 (Medium Density Residential). Land use and zoning surrounding the site are identified in Table 5, as follows:

**Table 5**  
**Existing Land Use and Zoning**

<b>Location</b>	<b>Existing Land Use</b>	<b>Current Zoning Classification</b>	<b>General Plan Designation</b>
<b>North</b>	Henderson Ave. and single family residential	Low Density Residential (RS-2)	Low Density Residential
<b>South</b>	Single family home; proposed multi-family project	Medium Density Residential (RM-2)	Medium Density Residential
<b>East</b>	Church facilities	High Density Residential (RM-3)	High Density Residential
<b>West</b>	Newcomb Street and Veterans Park	Parks and Public Recreation Facility (PK)	Parks and Recreation

Existing land uses in City of Porterville have been organized into generalized categories that are summarized below on Table 6. City of Porterville has a 2030 General Plan planned build-out of approximately 36,341 acres in size, equivalent to approximately 56.6 square-miles.

**Table 6**  
**Existing Land Use: City of Porterville Planning Area (2005)<sup>3</sup>**

<b>Generalized Land Use Category</b>	<b>Total</b>	<b>Percentage</b>
Agriculture/Rural/Conservation	21,270	59%
Single Family Residential	4,760	13%
Multi Family Residential	240	1%
Retail Shopping	80	0%
Commercial	760	2%
Industrial	350	1%
Public/Quasi-Public	2,630	7%
Vacant	3,590	10%
Unclassified (Roads, water, etc)	2,661	7%
Total Area	36,341	100%

<sup>3</sup> City of Porterville Land Use Element

## **Regulatory Setting**

### *Federal*

Federal regulations for land use are not relevant to the proposed Project because it is not a federal undertaking (the proposed Project site is not located on lands administered by a federal agency, and the Project applicant is not requesting federal funding or a federal permit).

### *State*

The proposed Project is being evaluated pursuant to CEQA; however, there are no state regulations, plans, programs, or guidelines associated with land use and planning that are applicable to the proposed Project.

### *Local*

#### **Porterville General Plan Policies**

- LU-I-20: Establish standards for pedestrian-oriented design in neighborhood centers.
- LU-I-21: Prohibit new strip commercial developments.
- LU-I-22: Promote and support the revitalization and infill development in existing retail shopping centers.
- LUI-23: Establish an incentive program that will provide for density and FAR bonuses for mixed-use development that includes amenities for public benefit, such as workforce housing, pedestrian-oriented facilities (outdoor seating, plazas, weather protection, transit waiting areas), historic preservation, cultural facilities, public art and water features, and open space preservation.
- LU-I-24: Allow supporting retail, business services and other complementary uses in Professional Office districts.

## **RESPONSES**

### a. Physically divide an established community?

**No Impact.** The Project is located within the northwest portion of the City of Porterville. The proposed Project site is an existing vacant field that is surrounded by urban uses. The construction and operation



of the Project would not cause any land use changes in the surrounding vicinity nor would it divide an established community. *No impacts* would occur as a result of this Project.

**Mitigation Measures:** None are required.

- b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

**Less than Significant Impact With Mitigation.** The Project will require a General Plan Amendment and Zone Change to change the land use designations from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers). The Project Applicant intends to construct and operate a 2,418 square foot drive-thru restaurant in the near term located on two parcels (245-070-083 & 47) at the southwest corner of Henderson Avenue and Newcomb Street (see Figure 4 – Site Plan). Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance.

Although the type of future commercial use has not yet been determined, permitted uses in the CR designation (according to Table 203.02 of the City’s Development Code) include retail establishments, automotive facilities (including gas stations), financial institutions, restaurants, and hotels. The future development will also be subject to the City’s maximum Floor Area Ratio of 0.35 for Retail Centers. This equates to a maximum buildout of less than 10,000 square feet of floor space for the remaining portion of the Project site.

If approved, the Project will be consistent with the City of Porterville General Plan and Development Ordinance. See Table 7.

**Table 7**  
**General Plan Consistency Analysis**

Land Use Policies	Consistency Determination
<b>LU-I-20: Establish standards for pedestrian-oriented design in neighborhood centers</b>	<b>Yes:</b> The proposed Project will be located in an area that is easily accessible to pedestrians from existing neighborhoods to the north, proposed multi-family complexes to the south and west, Monache High School to the northeast, and Veteran’s Park to the east. Due to its proximity to the intersection of Henderson Avenue and Newcomb Street, pedestrians will be able to utilize the existing signalized/cross-walk facilities to safely access the site.

<b>LU-I-21: Prohibit new strip commercial developments</b>	<b>Yes:</b> For purposes of this policy, strip development is defined as a row of at least three stores, where each has direct access to a street with a surface parking lot between the building and the street. There may or may not be an anchor tenant. The proposed Project includes construction and operation of a drive-through fast-food restaurant in the near term. Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance (for Retail Centers). Preliminary designs indicate that future development will be laid out in a manner consistent with this Policy. Future components of the Project will be required to be designed in compliance with Policy LU-I-21.
<b>LU-I-22: Promote and support the revitalization and infill development in existing retail shopping centers</b>	<b>Not Applicable:</b> The proposed Project does not include revitalization or infill in an existing retail shopping center. However, the existing zoning on-site could allow for a similar sized restaurant (although a drive through is prohibited in a CN zone) and similar commercial facilities. The proposed Project will not result in new land uses that were not already accounted for in the City's planning documents and will serve a growing population base in the Project area. The Project is therefore not inconsistent with this Policy.
<b>LU-I-23: Establish an incentive program that will provide for density and FAR bonuses for mixed-use development that includes amenities for public benefit, such as workforce housing, pedestrian-oriented facilities (outdoor seating, plazas, weather protection, transit waiting areas), historic preservation, cultural facilities, public art and water features, and open space preservation</b>	<b>Not Applicable</b>
<b>LU-I-24: Allow supporting retail, business services and other complementary uses in Professional Office districts</b>	<b>Not Applicable</b>

Although impacts are considered less than significant, implementation of Mitigation Measure LU-1 will ensure that impacts remain *less than significant with mitigation incorporation*.

**LU-1** Any future development on the site will be required to comply with Land Use Policy LU-I-21, which prohibits new strip commercial developments. Future development will also be required to comply with all applicable City General Plan Policies and provisions outlined in the City's Development Ordinance. The City of Porterville will be responsible for review of future development and interpretation of City planning documents as they apply to the Project.

c. Conflict with any applicable habitat conservation plan or natural community conservation plan?

**No Impact.** A review of the 2030 General Plan, Figure 6-4 (Special Status Species and Sensitive Vegetation) indicates the Project site is not within an adopted or proposed conservation plan area. The nearest such plan area is the Valley Elderberry Longhorn Beetle Conservation Area, located along the Tule River within the Yaudanchi Ecological Reserve. There would be *no impact* to an adopted or proposed conservation plan area.

**Mitigation Measures:** None are required.

## XI. MINERAL RESOURCES

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## SETTING

### Environmental Setting

The City of Porterville is situated along the western slope of a northwest-trending belt of rocks comprising the Sierra Nevada and within the southern portion of the Cascade Range. The Sierra Nevada geomorphic province is primarily composed of cretaceous granitic plutons and remnants of Paleozoic and Mesozoic metavolcanic and metasedimentary rocks, and Cenozoic volcan and sedimentary rocks. The majority of the Planning Area has elevations ranging between 400 and 800 feet; however, the eastern portion is in the Sierra Nevada foothills where elevations reach almost 1,800 feet above sea level.

Historically, the quarrying of magnesite was a significant industry in the City of Porterville. Currently, the most economically significant mineral resources in Tulare County are sand, gravel, and crushed stone, used as sources for aggregate (road materials and other construction). The two major sources of aggregate are alluvial deposits (river beds, and floodplains), and hard rock quarries. Consequently, most Tulare County mines are located along rivers at the base of the Sierra foothills.

Tule River contains various State-classified mineral resource zones (MRZ-2a, MRZ-2b, and MRZ-3a). While this area was once suitable for mining operations, it is now surrounded by urban development. Approximately 890 acres along the Tule River, or 2.5 percent of all lands within the Planning Area, are within mineral resource zones. Tule River contains various State-classified mineral resource zones (MRZ-2a, MRZ-2b, and MRZ-3a). While this area was once suitable for mining operations, it is now surrounded by urban development. Approximately 890 acres along the Tule River, or 2.5 percent of all lands within the Project Area, are within mineral resource zones.

## **Regulatory Setting**

### *Federal*

There are no federal or local regulations pertaining to mineral resources relevant to the proposed Project.

### *State*

#### **California Surface Mining and Reclamation Act of 1975**

Enacted by the State Legislature in 1975, the Surface Mining and Reclamation Act (SMARA), Public Resources Code Section 2710 et seq., ensures a continuing supply of mineral resources for the State.

In addition, the proposed Project is being evaluated pursuant to CEQA.

### *Local*

#### **Porterville General Plan Policies**

- OSC-I-21: Adopt soil conservation regulations to reduce erosion caused by overgrazing, plowing, mining, new roadways and paths, construction, and off-road vehicles.
- OSC-I-23: Require adequate grading and replanting to minimize erosion and prevent slippage of manmade slopes.
- PHS-G-4: Protect soils, surface water, and groundwater from contamination from hazardous materials.
- PHS-I-17: Require remediation and cleanup of sites contaminated with hazardous substances.

## **RESPONSES**

- a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

**No Impact.** As shown in Figure 6-3 of the 2030 General Plan, the proposed Project area is not included in a State classified mineral resource zones. Therefore, there is *no impact*.

**Mitigation Measures:** None are required.

- b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

**No Impact.** As shown in Figure 6-3 of the 2030 General Plan, the proposed Project area is not included in a State classified mineral resource zones. Soil disturbance for the proposed Project would be limited site ground work such as grading, foundations, and installation of infrastructure. Therefore, there is ***no impact***.

**Mitigation Measures:** None are required.

## XII. NOISE

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## SETTING

### Environmental Setting

The Project site is located in the northwestern part of the City of Porterville and is currently a vacant lot, with the exception of an existing house located at the southern end of the Project site that will be removed as part of the Project. See Figure 3 – Aerial Map. The site is located in an urban area that provides a mix of land uses. Monache High School is located northeast of the site and multi-family apartments are planned immediately south of the site. Veterans Park is east of the site (across Newcomb Street) and an existing church facility is located immediately west of the site. A large multi-family complex is proposed to be constructed further west of site, along Henderson Avenue.

### Regulatory Setting

#### *Federal*

The Federal Railway Administration (FRA) and the Federal Transit Administration (FTA) have published guidance relative to vibration impacts. According to the FRA, fragile buildings can be exposed to ground-borne vibration levels of 0.5 PPV without experiencing structural damage<sup>32</sup>. The FTA has identified the human annoyance response to vibration levels as 80 RMS.

#### *State*

The California Noise Control Act was enacted in 1973 (Health and Safety Code § 46010 et seq.), and states that the Office of Noise Control (ONC) should provide assistance to local communities in developing local noise control programs. It also indicates that ONC staff will work with the OPR to provide guidance for the preparation of the required noise elements in city and county General Plans, pursuant to Government Code § 65302(f). California Government Code § 65302(f) requires city and county general plans to include a noise element. The purpose of a noise element is to guide future development to enhance future land use compatibility.

In addition, this proposed Project is being evaluated pursuant to CEQA.

#### *Local*

Measuring and reporting noise levels involves accounting for variations in sensitivity to noise during the daytime versus nighttime hours. Noise descriptors used for analysis need to factor in human sensitivity to nighttime noise when background noise levels are generally lower than in the daytime and outside noise intrusions are more noticeable. Common descriptors include the Community Noise Equivalent Level (CNEL) and the Day-Night Average Level (Ldn). Both reflect noise exposure over an average day



with weighting to reflect the increased sensitivity to noise during the evening and night. The two descriptors are roughly equivalent. The CNEL descriptor is used in relation to major continuous noise sources, such as aircraft or traffic, and is the reference level for the Noise Element under State planning law. The Noise Element included in the 2030 City of Porterville General Plan (2008) includes noise and land use compatibility standards for various land uses. These are shown in Table 8 below.

**Table 8**  
**Land Use Compatibility for Community Noise Environment**

<b>Land Use Category</b>	<b>Community Noise Exposure, <math>L_{dn}</math> or CNEL dB</b>			
	Normally Acceptable	Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable
<b>Residential – Low density single family, duplex,</b>	<65 (<45 Interior)	65 to 70	70 to 75	>75 (>45 Interior)
<b>Residential – Multiple family</b>	<65 (<45 Interior)	65 to 70	70 to 75	>75 (>45 Interior)
<b>Schools, libraries, churches, hospitals, nursing</b>	<70	60 to 75	70 to 80	>80
<b>Industrial, manufacturing, utilities, agriculture</b>	<75	70 to 80	75 to 85	No levels identified

Normally acceptable – Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

Conditionally acceptable – New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.

Normally unacceptable – New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.

Clearly unacceptable – New construction or development should generally not be undertaken.

### **Porterville General Plan Policies**

- N-G-1: Minimize vehicular and stationary noise levels and noise from temporary activities.
- N-G-2: Ensure that new development is compatible with the noise environment.

- N-G-5: Reduce noise intrusion generated by miscellaneous noise sources through conditions of approval to control noise-generating activities.
- N-I-7: Require noise from existing mechanical equipment to be reduced by soundproofing materials and sound-deadening installation.

## RESPONSES

- a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

**Less than Significant Impact With Mitigation.** According to the City's General Plan EIR, the major noise sources in Porterville are related to roadways and vehicle traffic. Much of the Project area, along with the area adjacent to the Project site is in an established noise contour (Henderson Avenue) for noise levels greater than 60 dB as shown in Figure 9-2 of the City's General Plan Noise Element.

The site itself is located in an intense urban area adjacent to roadways that are heavily travelled. Noise from the Project will be similar to existing conditions and will generally include noise from vehicles, air conditioner units and other similar equipment. Because of its location at a heavily used intersection and its location in a noise contour, it is not expected that the proposed Project will result in a discernable increase in noise to surrounding land uses. Additionally, the Project will be required to construct a block wall along the western border of the site, which will reduce traffic related noise associated with the drive-thru restaurant. A block wall will also be constructed at the southern border of the site (to be constructed by the proposed multi-family project immediately south of the site).

Proposed Project construction related activities will involve temporary noise sources and are anticipated to last approximately four months. Typical construction related equipment include graders, trenchers, small tractors and excavators. During the proposed Project construction, noise from construction related activities will contribute to the noise environment in the immediate vicinity. Activities involved in construction will generate maximum noise levels, as indicated in Table 9, ranging from 79 to 91 dBA at a distance of 50 feet, without feasible noise control (e.g., mufflers) and ranging from 75 to 80 dBA at a distance of 50 feet, with feasible noise controls.

**Table 9**  
**Typical Construction Noise Levels**

Type of Equipment	dBA at 50 ft	
	Without Feasible Noise Control	With Feasible Noise
Dozer or Tractor	80	75
Excavator	88	80
Scraper	88	80
Front End Loader	79	75
Backhoe	85	75
Grader	85	75
Truck	91	75

The City of Porterville's General Plan Noise Element (2008) sets the standard noise threshold of 60 dBA at the exterior of nearby residences; however, it does not identify a short-term, construction-noise-level threshold. The distinction between short-term construction noise impacts and long-term operational noise impacts is a typical one in both CEQA documents and local noise ordinances, which generally recognize the reality that short-term noise from construction is inevitable and cannot be mitigated beyond a certain level. Thus, local agencies frequently tolerate short-term noise at levels that they would not accept for permanent noise sources. A more severe approach would be impractical and might preclude the kind of construction activities that are to be expected from time to time in urban environments. Most residents of urban areas recognize this reality and expect to hear construction activities on occasion.

Although impacts are considered less than significant, implementation of Mitigation Measure NO-1 through NO-4 will ensure that impacts remain *less than significant with mitigation incorporation*.

- NO-1** Delivery trucks serving the Project shall be limited to between 6:00 A.M. and 9:00 P.M. Monday through Friday and between 7:00 A.M. and 5:00 PM on Saturday or Sunday to avoid noise-sensitive hours of the day.
- NO-2** The drive-thru restaurant shall include on-site signage directing that car stereo/radio volumes be reduced so that stereo/radio noise from vehicles waiting in the drive-thru lane do not produce excessive noise.
- NO-3** Construction activities shall be limited to between 6:00 A.M. and 9:00 P.M. Monday through Friday and between 7:00 A.M. and 5:00 PM on Saturday or Sunday to avoid noise-sensitive hours of the day. Construction activities shall be prohibited on holidays (President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Day, and New Year's Day).

**NO-4** The construction contract shall require the construction contractor to ensure that construction equipment noise is minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.

b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?

**Less than Significant Impact.** Typical outdoor sources of perceptible ground borne vibration are construction equipment, steel-wheeled trains, and traffic on rough roads. Construction vibrations can be transient, random, or continuous. Construction associated with the proposed Project is the excavation of the reservoir basin and installation of associated pipeline to connect the reservoir basin to the exiting stormwater system

The approximate threshold of vibration perception is 65 VdB, while 85 VdB is the vibration acceptable only if there are an infrequent number of events per day. Table 10 describes the typical construction equipment vibration levels.

Table 10 Typical Construction Vibration Levels	
Equipment	VdB at 25 ft
Small Bulldozer	58
Jackhammer	79

Vibration from construction activities will be temporary and not exceed the FTA threshold for the nearest residences which are located approximately 75 feet north of the facility. The impact will be *less than significant*.

**Mitigation Measures:** None are required.

c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

**Less than Significant Impact.** See Response a. There will be no substantial permanent increase in ambient noise levels and therefore the impact is *less than significant*.

**Mitigation Measures:** None are required.

## XIII. POPULATION AND HOUSING

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## SETTING

### Environmental Setting

Over the past 30 years, the City of Porterville's population has grown at an average annual rate of 3.7 percent. However, the City's population growth slowed to an average annual rate of 2.8 percent over the most recent 15 years. In 2006, the California Department of Finance (DOF) estimated the City with a population of 45,220 residents. In 2010, the City had an estimated population of 54,165 residents. In 2011 the City grew to 54,676 residents, while the City recorded an approximate population of 55,490 in 2012. According to the most recent California DOF report, the City currently is at approximately 55,490 residents, a 0.5 percent increase from 2012. Build-out of the 2030 General Plan will accommodate a population of approximately 107,300 in Porterville, which represents an annual population growth rate of 3.7 percent.

### Regulatory Setting

The proposed Project is being evaluated pursuant to CEQA; however, there are no federal, state or local regulations, plans, programs, and guidelines associated with population or housing that are applicable to the proposed Project.

## RESPONSES

- a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

**No Impact.** There are no new homes associated with the proposed Project. The relatively minor amount of new employment opportunities that would be created by the proposed Project could be readily filled by the existing employment base, given the City's existing unemployment rates. The proposed Project will not affect any regional population, housing, or employment projections anticipated by City policy documents. There is *no impact*.

**Mitigation Measures:** None are required.

- b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

**Less than Significant.** There is an existing vacant house located toward the southern end of the proposed Project site that will be removed as part of the Project. The Project will not otherwise displace any housing and therefore there is *less than significant*.

**Mitigation Measures:** None are required.

- c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

**No Impact.** The Project will not displace any people and therefore there is *no impact*.

**Mitigation Measures:** None are required.

## XIV. PUBLIC SERVICES

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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- a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## SETTING

### Environmental Setting

The nearest fire station is Porterville Fire Station 2, which is located at the Public Works complex that is directly south of the Project site. The physical address of the fire station is 500 N Newcomb Street. The Porterville Police Department is located approximately 2.1 miles east of the proposed Project site at 350 N D Street.

The Teapot Dome Landfill plant is approximately 4.8 miles southwest of the proposed Project site, while the Porterville Wastewater Treatment Plant is located immediately south and east of the site, across Newcomb Street. The site is approximately 100 feet from the fenceline of the nearest school (Monache High School), it should be noted that the nearest point is a parking lot for the high school.

Veteran's Park is located immediately east of the site across Newcomb Street.

### **Regulatory Setting**

#### *Federal*

#### **National Fire Protection Association**

The National Fire Protection Association (NFPA) is an international nonprofit organization that provides consensus codes and standards, research, training, and education on fire prevention and public safety. The NFPA develops, publishes, and disseminates more than 300 such codes and standards intended to minimize the possibility and effects of fire and other risks. The NFPA publishes the NFPA 1, Uniform Fire Code, which provides requirements to establish a reasonable level of fire safety and property protection in new and existing buildings.

#### *State*

#### **California Fire Code and Building Code**

The 2007 California Fire Code (Title 24, Part 9 of the California Code of Regulations) establishes regulations to safeguard against hazards of fire, explosion, or dangerous conditions in new and existing buildings, structures, and premises. The Fire Code also establishes requirements intended to provide safety and assistance to fire fighters and emergency responders during emergency operations. The provision of the Fire Code includes regulations regarding fire-resistance rated construction, fire protection systems such as alarm and sprinkler systems, fire service features such as fire apparatus access roads, fire safety during construction and demolition, and wildland urban interface areas.

In addition, the proposed Project is being evaluated pursuant to CEQA.

#### *Local*

#### **Porterville General Plan Policies**

- LU-G-5: Promote sustainability in the design and development of public and private development projects.
- OSC-G-10: Reduce and conserve energy use in existing and new commercial, industrial, and public structures.
- PHS-I-28: Ensure that new development incorporates safety concerns into the site, circulation, building design and landscaping plans.



## RESPONSES

- a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

### Fire protection?

**Less than Significant Impact.** The proposed Project site will continue to be served by the City of Porterville fire department. No additional fire personnel or equipment is anticipated. The impact is *less than significant*.

### Police Protection?

**Less than Significant Impact.** The proposed Project will continue to be served by the City of Porterville police department. No additional police personnel or equipment is anticipated. The impact is *less than significant*.

### Schools?

**No Impact.** The direct increase in demand for schools is normally associated with new residential projects that bring new families with school-aged children to a region. The proposed Project does not contain any residential uses. The proposed Project, therefore, would not result in an influx of new students in the Project area and is not expected to result in an increased demand upon District resources and would not require the construction of new facilities. There is *no impact*.

### Parks?

**No Impact.** The Project would not result in an increase in demand for parks and recreation facilities because it would not result in an increase in population. Accordingly, the proposed Project would have *no impacts* on parks.

### Other public facilities?

**No Impact.** The proposed Project is within the land use and growth projections identified in the City's General Plan and other infrastructure studies. The Project, therefore, would not result in increased demand for, or impacts on, other public facilities such as library services. Accordingly, *no impact* would occur.

**Mitigation Measures:** None are required.

## XV. RECREATION

### Would the project:

- a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?
- b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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## SETTING

### Environmental Setting

The City of Porterville provides its residents several types of parks and recreational facilities. Parks are defined as land owned or leased by the City and used for public recreational purposes. The City classifies parks and recreational facilities in five categories: Pocket Parks, Neighborhood Parks, Community Parks, Specialized Recreation, and Trail/Parkways. Currently, the City of Porterville has 15 parks for a total of approximately 295 acres of parkland.

These facilities range in size from the 0.1-acre North Park pocket park up to the 95-acre Sports Complex facility. With a 2006 population of 45,220 residents, the City has a ratio of 5.1 acres of parkland per 1,000 residents. The park ratio is based on Neighborhood Parks, Community Parks, and Specialized Recreation areas only. Trails, Community Facilities and Pocket Parks do not contribute to the ratio.

### Regulatory Setting

The proposed Project is being evaluated pursuant to CEQA; however, there are no additional federal, state or local regulations, plans, programs, and guidelines associated with recreation that are applicable to the proposed Project.

## RESPONSES

- a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

**No Impact.** The proposed Project does not include the construction of residential uses and would not directly or indirectly induce population growth. Therefore, the proposed Project would not cause physical deterioration of existing recreational facilities from increased usage or result in the need for new or expanded recreational facilities. The Project would have *no impact* to existing parks.

**Mitigation Measures:** None are required.

- b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

**No Impact.** The proposed Project does not include the construction of residential uses and would not directly induce population growth. Therefore, the Project would not cause physical deterioration of existing recreational facilities from increased usage or result in the need for new or expanded recreational facilities. There is *no impact*.

**Mitigation Measures:** None are required.

## XVI. TRANSPORTATION/ TRAFFIC

### Would the project:

- a. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?
- b. Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?
- c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks?
- d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
- e. Result in inadequate emergency access?

Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

- f. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?

☐ ☐ ☒ ☐

## SETTING

### Environmental Setting

The proposed Project is located on four parcels (APNs 245-07- 87, 36, 47, and 83) totaling approximately 1.3 acres at the southwest corner of Henderson Avenue and Newcomb Street in the City of Porterville. The site is approximately 0.75 miles west of SR65. See Figures 1 and 2– Regional Map and Vicinity Map, respectively. The fast food restaurant will be located on the two northern-most parcels.

The nearest airport to the proposed Project site is the Porterville Municipal Airport, which is located approximately 3.0 miles south of the site.

Henderson Avenue is classified as a four-lane arterial between Newcomb Street and Plano Street. It provides east-west access for Porterville residents and has an interchange at SR65. Henderson Avenue bisects North Main Street and provides access to businesses and residences to the east.

Newcomb Street is a four-lane road in the Project vicinity that provides for important north-south circulation in Porterville.

### Regulatory Setting

#### *Federal*

Several federal regulations govern transportation issues. They include:

- Title 49, CFR, Sections 171-177 (49 CFR 171-177), governs the transportation of hazardous materials, the types of materials defined as hazardous, and the marking of the transportation vehicles.
- 49 CFR 350-399, and Appendices A-G, Federal Motor Carrier Safety Regulations, address safety considerations for the transport of goods, materials, and substances over public highways.
- 49 CFR 397.9, the Hazardous Materials Transportation Act of 1974, directs the U.S. Department of Transportation to establish criteria and regulations for the safe transportation of hazardous materials.

## *State*

### **State of California Transportation Department Transportation Concept Reports**

Each District of the State of California Transportation Department (Caltrans) prepares a Transportation Concept Report (TCR) for every state highway or portion thereof in its jurisdiction. The TCR usually represents the first step in Caltrans' long-range corridor planning process. The purpose of the TCR is to determine how a highway will be developed and managed so that it delivers the targeted LOS and quality of operations that are feasible to attain over a 20-year period, otherwise known as the "route concept" or beyond 20 years, for what is known as the "ultimate concept".

State Route 190 is designated as Segment 3 in the proposed Project vicinity. Route 190 is classified by Caltrans as rural except for the portion in Porterville that is designated urban. The route is also predominately indicated as a Minor Arterial and Major Collector. Therefore, the Route Concept LOS of D has been assigned to the entire route. Segment 3 is a 4-lane expressway and there are no changes expected to this segment.

SR 65 is designated as Segment 7 in the vicinity of the proposed Project site and has a LOS of C. The route concept for Segment 7 of Route 65 is described by Caltrans as a two-lane expressway, with improvements potentially being a four-lane expressway over the next 10 years.

In addition, the proposed Project is being evaluated pursuant to CEQA.

## *Local*

The City of Porterville and the Tulare County Regional Transportation Plan designate level of service "D" as the minimum acceptable intersection peak hour level of service standard.

### **Porterville General Plan Policies**

- C-G-6: Maintain acceptable levels of service and ensure that future development and the circulation system are in balance.
- C-G-7: Ensure that new development pays its fair share of the costs of transportation facilities.
- C-I-12: Continue to require that new development pay a fair share of the costs of street and other traffic and local transportation improvements based on traffic generated and impacts on traffic service levels.

## RESPONSES

a. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?

**Less than Significant Impact With Mitigation.** The Project Applicant intends to construct and operate a 2,418 square foot drive-thru restaurant in the near term located on two parcels (245-070-083 & 47) at the southwest corner of Henderson Avenue and Newcomb Street (see Figure 4 – Site Plan). Future development on the remaining parcels will comply with the City of Porterville General Plan and Development Ordinance. Although the type of future commercial use has not yet been determined, permitted uses (according to Table 203.02 of the City’s Development Code) include retail establishments, automotive facilities, financial institutions, restaurants, and hotels. The future development will also be subject to the City’s maximum Floor Area Ratio of 0.35 for Retail Centers. This equates to a maximum buildout of less than 10,000 square feet of floor space for the remaining portion of the Project site. Other Project improvements include:

- Installation of road frontage improvements along the site perimeter along Henderson Avenue and Newcomb Street.
- Installation of median improvements in Newcomb Street to allow for a north-bound (Newcomb) left-turn pocket to provide access to the project site.

According to the ITE Trip Generation Report (8<sup>th</sup> Edition), the drive-thru restaurant (ITE Code 934) and 10,000 square feet of retail (ITE Code 820) will produce the following vehicle trips:

Project Component	Total Daily Trips	PM Peak Hour In	PM Peak Hour Out
<b>Fast-food drive-thru</b>	1,200	42	39
<b>Retail/Shopping</b>	429	17	17
<b>Total:</b>	<b>1,629</b>	<b>59</b>	<b>56</b>

According to the City’s General Plan, the intersection of Henderson Avenue and Newcomb Street currently operates at a Level of Service C (Existing Conditions). The road segment on Newcomb Street from SR 190 to Henderson Avenue is projected to operate at LOS B with an AADT (average annual daily traffic) of 12,750 upon buildout of the General Plan in 2030. The road segment of Henderson Avenue from Westwood Street to Prospect Street is projected to operate at LOS B with an AADT of 18,610 upon buildout of the General Plan in 2030.

The existing zoning on-site could allow for a similar sized restaurant (although a drive-thru is prohibited in a CN zone) and similar commercial facilities. The proposed Project will therefore not result in new land uses that were not already accounted for in the City's General Plan and Circulation Element. Given the acceptable levels of service at the nearest intersection and surrounding road segments, and the relatively minor change in land use, it is not anticipated that the Project will result in significant impacts.

Although impacts are considered less than significant, implementation of Mitigation Measure TR-1 will ensure that impacts remain *less than significant with mitigation incorporation*.

**TR-1** Prior to issuance of a building permit, the final design of Project-related ingress/egress (location of driveways, improvements of median, signage requirements, and other components) will be subject to review and approval by the City of Porterville Public Works Department.

b. Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

**Less than Significant Impact.** As shown in Response a., the proposed Project will have a *less than significant* impact on any existing level of service or other travel demand measures. The Project will not conflict with any congestion management programs, as none are applicable to the Project.

**Mitigation Measures:** None are required.

c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks?

**No Impact.** The Project site is approximately 3.0 miles north of the Porterville Municipal Airport. There are no characteristics of the Project that would have any impact on air traffic patterns. There is *no impact*.

**Mitigation Measures:** None are required.

d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?



**No Impact.** No roadway design features associated with this proposed Project would result in an increase in hazards due to a design feature or be an incompatible use. See also Response XVI-a. There is *no impact*.

**Mitigation Measures:** None are required.

## XVII. UTILITIES AND SERVICE SYSTEMS

### Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- g. Comply with federal, state, and local statutes and regulations related to solid waste?

☐☐☒☐

## SETTING

### Environmental Setting

The Teapot Dome Landfill plant is approximately 4.8 miles southwest of the proposed Project site, while the Porterville Wastewater Treatment Plant is located immediately south and east of the site, across Newcomb Street.

### Regulatory Setting

#### *State*

#### **State Water Resources Control Board (SWRCB)**

Waste Discharge Requirements Program. State regulations pertaining to the treatment, storage, processing, or disposal of solid waste are found in Title 27, CCR, Section 20005 et seq. (hereafter Title 27). In general, the Waste Discharge Requirements (WDRs) Program (sometimes also referred to as the "Non Chapter 15 (Non 15) Program") regulates point discharges that are exempt pursuant to Subsection 20090 of Title 27 and not subject to the Federal Water Pollution Control Act. Exemptions from Title 27 may be granted for nine categories of discharges (e.g., sewage, wastewater, etc.) that meet, and continue to meet, the preconditions listed for each specific exemption. The scope of the WDRs Program also includes the discharge of wastes classified as inert, pursuant to section 20230 of Title 2744. Several SWRCB programs are administered under the WDR Program, including the Sanitary Sewer Order and recycled water programs.

#### **National Pollutant Discharge Elimination System (NPDES) Permit**

As authorized by the Clean Water Act (CWA), the National Pollutant Discharge Elimination System (NPDES) Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. In California, it is the responsibility of Regional Water Quality Control Boards (RWQCB) to preserve and enhance the quality of the state's waters through the development of water quality control plans and the issuance of waste discharge requirements (WDRs). WDRs for discharges to surface waters also serve as NPDES permits. Tulare County is within the Central Valley RWQCB's jurisdiction.

In addition, the proposed Project is being evaluated pursuant to CEQA.

*Local***Porterville General Plan Policies**

- OSC-G-10: Reduce and conserve energy use in existing and new commercial, industrial, and public structures.
- OSC-I-41: Work with agricultural and industrial uses to ensure that water contamination and waste products are handled in a manner that protects the long-term viability of water resources.
- OSC-I-44: Work with the Regional Water Quality Control Board to ensure that all point source pollutants are adequately mitigated (as part of the CEQA review and project approval process) and monitored to ensure long-term compliance.
- OSC-I-51: Prior to the approval of individual projects, require the City Engineer and/or Building Official to verify that the provisions of applicable point source pollution programs have been satisfied.

**RESPONSES**a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

**Less than Significant Impact.** The proposed Project will result in wastewater from restroom and kitchen facilities that will be discharged into the City's existing wastewater treatment system. For comparison purposes, the existing zoning on-site could allow for a similar sized restaurant (although a drive through is prohibited in a CN zone) and similar commercial facilities. In addition, the proposed change from RM-2 to CR at the southern tip of the Project site is negligible for purposes of calculating wastewater. Therefore, the proposed Project will not result in additional production of wastewater that was not already accounted for in the City's infrastructure planning documents. The City has indicated that it has capacity to serve the Project.

As such, the proposed Project will not exceed wastewater treatment requirements of the Regional Water Quality Control Board. The impact will be *less than significant*.

**Mitigation Measures:** None are required.

- b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

**Less than Significant Impact.** See Response a, above. The proposed Project will not require construction of any new water or wastewater facilities. Therefore, the impact is *less than significant*.

**Mitigation Measures:** None are required.

- c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

**Less than Significant Impact.** The proposed Project will introduce new impervious surfaces (pavement) to the entire 1.3 acre site (with the exception of on-site landscaping). The site will be designed so that storm water is collected and deposited in the City's existing storm drain system, which has adequate capacity. The storm water collection system design will be subject to review and approval by the City Public Works Department. Storm water during construction will be managed as part of the Storm Water Pollution Prevention Plan (SWPPP). A copy of the SWPPP is retained on-site during construction. As a result, any impacts are *less than significant*.

**Mitigation Measures:** None are required.

- d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?

**Less Than Significant Impact.** The City of Porterville (and proposed Project site) is located in the Tulare Lake Basin, an area significantly affected by overdraft. The Department of Water Resources (DWR) has estimated the groundwater by hydrologic region and for the Tulare Lake Basin; the total overdraft is estimated at 820,000 acre-feet per year, the greatest overdraft projected in the state, and 56 percent of the statewide total overdraft. The proposed Project site is located within the Tule Sub-basin portion of the greater San Joaquin Valley Groundwater Basin. According to the City's General Plan EIR, wells in and around the city have shown a moderate groundwater level decline of about 0.75 feet per year over the past 20 years. The City's municipal wells are generally scattered west of Plano Avenue and south of Westfield Avenue and the distribution system is operated under pressure.

According to the City's General Plan and Urban Water Management Plan (UWMP), future demand within the City planning area can be met with continued groundwater pumping, surface water purchases

and conservation measures. For comparison purposes, the existing zoning on-site could allow for a similar sized restaurant (although a drive through is prohibited in a CN zone) and similar commercial facilities. In addition, the proposed change from RM-2 to CR at the southern tip of the Project site is negligible for purposes of calculating water use. Therefore, the proposed Project will not result in additional water use that was not already accounted for in the City's UWMP. As such, there is *a less than significant impact* to this impact area.

**Mitigation Measures:** None are required.

- e. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

**Less than Significant Impact.** The proposed Project will result in wastewater from restroom and kitchen facilities that will be discharged into the City's existing wastewater treatment system. For comparison purposes, the existing zoning on-site could allow for a similar sized restaurant (although a drive through is prohibited in a CN zone) and similar commercial facilities. In addition, the proposed change from RM-2 to CR at the southern tip of the Project site is negligible for purposes of calculating wastewater. Therefore, the proposed Project will not result in additional production of wastewater that was not already accounted for in the City's infrastructure planning documents. The City has indicated that it has capacity to serve the Project.

There is *a less than significant impact*.

**Mitigation Measures:** None are required.

- f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

**Less than Significant Impact.** Proposed Project construction and operation will generate minimal amounts of solid waste. Solid waste from the site during operation, as well as any construction debris that is not recycled will be received at the Teapot Dome Landfill. Any impacts will be *less than significant*.

**Mitigation Measures:** None are required.

g. Comply with federal, state, and local statutes and regulations related to solid waste?

**Less than Significant Impact.** See Response f, above. The proposed Project will comply with all federal, state and local statutes and regulations related to solid waste. As such, any impacts would be *less than significant*.

**Mitigation Measures:** None are required.

# XVIII. MANDATORY FINDINGS OF SIGNIFICANCE

## Would the project:

	Potentially Significant Impact	Less than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



## RESPONSES

- a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

**Less than Significant Impact With Mitigation.** The analyses of environmental issues contained in this Initial Study indicate that the proposed Project is not expected to have substantial impact on the environment or on any resources identified in the Initial Study. Mitigation measures have been incorporated in the project design to reduce all potentially significant impacts to *less than significant*.

- b. Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

**Less than Significant Impact.** CEQA Guidelines Section 15064(i) states that a Lead Agency shall consider whether the cumulative impact of a project is significant and whether the effects of the project are cumulatively considerable. The assessment of the significance of the cumulative effects of a project must, therefore, be conducted in connection with the effects of past projects, other current projects, and probable future projects. Due to the nature of the Project and consistency with environmental policies, incremental contributions to impacts are considered less than cumulatively considerable. The proposed Project would not contribute substantially to adverse cumulative conditions, or create any substantial indirect impacts (i.e., increase in population could lead to an increase need for housing, increase in traffic, air pollutants, etc). The impact is *less than significant*.

- c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

**Less than Significant Impact With Mitigation.** The analyses of environmental issues contained in this Initial Study indicate that the project is not expected to have substantial impact on human beings, either directly or indirectly. Mitigation measures have been incorporated in the Project design to reduce all potentially significant impacts to *less than significant*.

# Chapter 4

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MMRP

# MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the Initial Study/Mitigated Negative Declaration (IS/MND) for the City of Porterville's Newcomb Commercial Development Project (proposed Project). The MMRP lists mitigation measures recommended in the IS/MND for the proposed Project and identifies monitoring and reporting requirements as well as conditions recommended by responsible agencies who commented on the project.

The first column of the Table identifies the mitigation measure. The second column, entitled "Party Responsible for Implementing Mitigation," names the party responsible for carrying out the required action. The third column, "Implementation Timing," identifies the time the mitigation measure should be initiated. The fourth column, "Party Responsible for Monitoring," names the party ultimately responsible for ensuring that the mitigation measure is implemented. The last column will be used by the City to ensure that individual mitigation measures have been monitored.

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<b>BIO-1</b> To protect raptors and migratory song birds and to assist in avoiding take of avian species as required by Fish and Game Code Section 3503, 3503.5, and 3513, Project related activities will occur during the non-breeding season (September 16 <sup>th</sup> through December 31 <sup>st</sup> ).	City of Porterville	During construction	City of Porterville	
<b>BIO-2</b> If Project related activities will occur during the breeding season (Jan 1 through Sept 15), the City of Porterville shall conduct nest surveys for nesting Swainson's hawks within ½ mile buffer around the Project site before starting any Project related activities following the survey methodology developed by the Swainson's hawk Technical Advisory Committee <sup>1</sup> . In the event that Swainson's hawk is detected, California Department of Fish & Wildlife (CDFW) shall be consulted by the Applicant or the Applicant's consultant to discuss project implementation and take avoidance. If take cannot be avoided the City shall obtain an	City of Porterville	During construction	City of Porterville	

<sup>1</sup> Swainson's Hawk Technical Advisory Committee. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. May 31, 2000. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990>. Accessed October, 2014.

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p>Incidental Take Permit from CDWF for project related incidental take of Swainson's hawk.</p> <p>If other nesting raptors and migratory songbirds are identified, the following minimum no disturbance buffers shall be required:</p> <ul style="list-style-type: none"> <li>• 250 feet around active passerine (perching birds and songbirds) nests</li> <li>• 500 feet around active raptor nests</li> </ul> <p>These buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined and CDFW has agreed in writing that the birds have fledged and are no longer reliant upon the nest or parental care for survival.</p>				
<p><b>BIO-3</b> Vertical tubes such as chain link fencing poles can result in the entrapment and death of a variety of bird species. All vertical tubes such as chain link fencing poles shall be immediately capped at the time that they are installed to prevent avian fatalities.</p>	City of Porterville	During construction	City of Porterville	

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p><b>CUL-1</b></p> <ul style="list-style-type: none"> <li>▪ The City shall require that the provisions of Senate Bill 18, which requires consultation with California Native American Tribes, be completed prior to initiation of construction or ground-disturbing activities associated with the Project.</li> <li>▪ Before initiation of construction or ground-disturbing activities associated with the Project, the Project proponent for all Project phases shall require all construction personnel to be alerted to the possibility of buried cultural resources, including historic, archeological and paleontological resources;</li> <li>▪ The general contractor and its supervisory staff shall be responsible for monitoring the construction Project for disturbance of cultural resources; and</li> <li>▪ If a potentially significant historical, archaeological, or paleontological resource, such as structural features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains or trash deposits are encountered during subsurface construction activities (i.e., trenching, grading), all construction activities within a 100-foot radius of the identified potential resource shall cease until a qualified archaeologist evaluates the item for its significance and records the item on the</li> </ul>	City of Porterville	Prior to and during construction	City of Porterville	

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p>appropriate State Department of Parks and Recreation (DPR) forms. The archaeologist shall determine whether the item requires further study. If, after the qualified archaeologist conducts appropriate technical analyses, the item is determined to be significant under California Environmental Quality Act, the archaeologist shall recommend feasible mitigation measures, which may include avoidance, preservation in place or other appropriate measure, as outlined in Public Resources Code section 21083.2. The City of Porterville shall implement said measures.</p>				
<p><b>CUL-2</b> The City of Porterville will incorporate into the construction contract(s) a provision that in the event a fossil or fossil formations are discovered during any subsurface construction activities for the proposed Project (i.e., trenching, grading), all excavations within 100 feet of the find shall be temporarily halted until the find is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The paleontologist shall notify the appropriate representative at the City of Porterville, who shall coordinate with the paleontologist as to any necessary investigation of the find. If the find is determined to be significant under CEQA, the City shall implement those measures, which may include</p>	City of Porterville	During construction	City of Porterville	

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
avoidance, preservation in place, or other appropriate measures, as outlined in Public Resources Code section 21083.2.				
<b>LU-1</b> Any future development on the site will be required to comply with Land Use Policy LU-I-21, which prohibits new strip commercial developments. Future development will also be required to comply with all applicable City General Plan Policies and provisions outlined in the City's Development Ordinance. The City of Porterville will be responsible for review of future development and interpretation of City planning documents as they apply to the Project.	City of Porterville	Prior to issuance of building permits associated with the future development	City of Porterville	
<b>NO-1</b> Delivery trucks serving the Project shall be limited to between 6:00 A.M. and 9:00 P.M. Monday through Friday and between 7:00 A.M. and 5:00 PM on Saturday or Sunday to avoid noise-sensitive hours of the day.  <b>NO-2</b> The drive-thru restaurant shall include on-site signage directing that car stereo/radio volumes be reduced so that stereo/radio noise from vehicles waiting in the drive-thru lane do not produce excessive noise.	City of Porterville	During construction and operation	City of Porterville	



Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p><b>NO-3</b> Construction activities shall be limited to between 6:00 A.M. and 9:00 P.M. Monday through Friday and between 7:00 A.M. and 5:00 PM on Saturday or Sunday to avoid noise-sensitive hours of the day. Construction activities shall be prohibited on holidays (President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Day, and New Year's Day).</p> <p><b>NO-4</b> The construction contract shall require the construction contractor to ensure that construction equipment noise is minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.</p>				
<p><b>TR-1</b> Prior to issuance of a building permit, the final design of Project-related ingress/egress (location of driveways, improvements of median, signage requirements, and other components) will be subject to review and approval by the City of Porterville Public Works Department.</p>	City of Porterville	Prior to issuance of a building permit	City of Porterville	

## Chapter 5

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# Preparers and References

# LIST OF PREPARERS AND REFERENCES

## List of Preparers

### **Crawford & Bowen Planning, Inc.**

- Travis Crawford, AICP, Principal Environmental Planner
- Emily Bowen, LEED AP, Principal Environmental Planner

## Persons and Agencies Consulted

### **City of Porterville**

- Julie Phillips, AICP, Community Development Manager
- Jenni Byers, Community Development Director

### **California Historic Resources Information System**

- Celeste Thomson, Coordinator

## References

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# Appendices

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# Appendix A

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## CalEEMod Output Files

**Newcomb Commercial Development**  
**Tulare County, Annual**

## 1.0 Project Characteristics

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### 1.1 Land Usage

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	Population
Fast Food Restaurant with Drive Thru	2.40	1000sqft	0.06	2,400.00	0
Strip Mall	10.00	1000sqft	0.23	10,000.00	0

### 1.2 Other Project Characteristics

Urbanization	Urban	Wind Speed (m/s)	2.2	Precipitation Freq (Days)	51
Climate Zone	3			Operational Year	2014
Utility Company					
CO2 Intensity (lb/MWhr)	0	CH4 Intensity (lb/MWhr)	0	N2O Intensity (lb/MWhr)	0

### 1.3 User Entered Comments & Non-Default Data

Project Characteristics -

Land Use -

Table Name	Column Name	Default Value	New Value
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## 2.0 Emissions Summary

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## 2.1 Overall Construction

### Unmitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	tons/yr										MT/yr					
2015	0.1752	0.8461	0.5279		4.1300e-003	0.0583	0.0624	1.2800e-003	0.0538	0.0551	0.0000	68.5667	68.5667		0.0000	68.9556
<b>Total</b>	<b>0.1752</b>	<b>0.8461</b>	<b>0.5279</b>		<b>4.1300e-003</b>	<b>0.0583</b>	<b>0.0624</b>	<b>1.2800e-003</b>	<b>0.0538</b>	<b>0.0551</b>	<b>0.0000</b>	<b>68.5667</b>	<b>68.5667</b>		<b>0.0000</b>	<b>68.9556</b>

### Mitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	tons/yr										MT/yr					
2015	0.1752	0.8461	0.5279		4.1300e-003	0.0583	0.0624	1.2800e-003	0.0538	0.0551	0.0000	68.5666	68.5666		0.0000	68.9555
<b>Total</b>	<b>0.1752</b>	<b>0.8461</b>	<b>0.5279</b>		<b>4.1300e-003</b>	<b>0.0583</b>	<b>0.0624</b>	<b>1.2800e-003</b>	<b>0.0538</b>	<b>0.0551</b>	<b>0.0000</b>	<b>68.5666</b>	<b>68.5666</b>		<b>0.0000</b>	<b>68.9555</b>

[illegible]



## 2.2 Overall Operational

### Unmitigated Operational

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Area	0.0571	0.0000	1.2000e-004			0.0000	0.0000		0.0000	0.0000	0.0000	2.2000e-004	2.2000e-004		0.0000	2.4000e-004
Energy	3.3500e-003	0.0304	0.0256			2.3100e-003	2.3100e-003		2.3100e-003	2.3100e-003	0.0000	33.1387	33.1387		6.1000e-004	33.3404
Mobile	1.5942	2.8360	12.3466		0.6874	0.0393	0.7267	0.1845	0.0360	0.2204	0.0000	1,002.0586	1,002.0586		0.0000	1,003.1209
Waste						0.0000	0.0000		0.0000	0.0000	7.7441	0.0000	7.7441		0.0000	17.3550
Water						0.0000	0.0000		0.0000	0.0000	0.4661	0.0000	0.4661		1.1300e-003	1.8219
<b>Total</b>	<b>1.6546</b>	<b>2.8664</b>	<b>12.3723</b>		<b>0.6874</b>	<b>0.0416</b>	<b>0.7290</b>	<b>0.1845</b>	<b>0.0383</b>	<b>0.2227</b>	<b>8.2102</b>	<b>1,035.1976</b>	<b>1,043.4078</b>		<b>1.7400e-003</b>	<b>1,055.6385</b>

## 2.2 Overall Operational

### Mitigated Operational

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Area	0.0571	0.0000	1.2000e-004			0.0000	0.0000		0.0000	0.0000	0.0000	2.2000e-004	2.2000e-004		0.0000	2.4000e-004
Energy	3.3500e-003	0.0304	0.0256			2.3100e-003	2.3100e-003		2.3100e-003	2.3100e-003	0.0000	33.1387	33.1387		6.1000e-004	33.3404
Mobile	1.5942	2.8360	12.3466		0.6874	0.0393	0.7267	0.1845	0.0360	0.2204	0.0000	1,002.0586	1,002.0586		0.0000	1,003.1209
Waste						0.0000	0.0000		0.0000	0.0000	7.7441	0.0000	7.7441		0.0000	17.3550
Water						0.0000	0.0000		0.0000	0.0000	0.4661	0.0000	0.4661		1.1300e-003	1.8219
<b>Total</b>	<b>1.6546</b>	<b>2.8664</b>	<b>12.3723</b>		<b>0.6874</b>	<b>0.0416</b>	<b>0.7290</b>	<b>0.1845</b>	<b>0.0383</b>	<b>0.2227</b>	<b>8.2102</b>	<b>1,035.1976</b>	<b>1,043.4078</b>		<b>1.7400e-003</b>	<b>1,055.6385</b>

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio-CO2	Total CO2	CH4	N2O	CO2e
Percent Reduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

## 3.0 Construction Detail

### Construction Phase

Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days	Phase Description
1	Demolition	Demolition	1/1/2015	1/14/2015	5	10	
2	Site Preparation	Site Preparation	1/15/2015	1/15/2015	5	1	
3	Grading	Grading	1/16/2015	1/19/2015	5	2	
4	Building Construction	Building Construction	1/20/2015	6/8/2015	5	100	
5	Paving	Paving	6/9/2015	6/15/2015	5	5	
6	Architectural Coating	Architectural Coating	6/16/2015	6/22/2015	5	5	

**Acres of Grading (Site Preparation Phase): 0.5**

**Acres of Grading (Grading Phase): 0**

**Acres of Paving: 0**

**Residential Indoor: 0; Residential Outdoor: 0; Non-Residential Indoor: 18,600; Non-Residential Outdoor: 6,200 (Architectural Coating – sqft)**

**OffRoad Equipment**

Phase Name	Offroad Equipment Type	Amount	Usage Hours	Horse Power	Load Factor
Architectural Coating	Air Compressors	1	6.00	78	0.48
Paving	Cement and Mortar Mixers	4	6.00	9	0.56
Demolition	Concrete/Industrial Saws	1	8.00	81	0.73
Grading	Concrete/Industrial Saws	1	8.00	81	0.73
Building Construction	Cranes	1	4.00	226	0.29
Building Construction	Forklifts	2	6.00	89	0.20
Site Preparation	Graders	1	8.00	174	0.41
Paving	Pavers	1	7.00	125	0.42
Paving	Rollers	1	7.00	80	0.38
Demolition	Rubber Tired Dozers	1	1.00	255	0.40
Grading	Rubber Tired Dozers	1	1.00	255	0.40
Building Construction	Tractors/Loaders/Backhoes	2	8.00	97	0.37
Demolition	Tractors/Loaders/Backhoes	2	6.00	97	0.37
Grading	Tractors/Loaders/Backhoes	2	6.00	97	0.37
Paving	Tractors/Loaders/Backhoes	1	7.00	97	0.37
Site Preparation	Tractors/Loaders/Backhoes	1	8.00	97	0.37

**Trips and VMT**

Phase Name	Offroad Equipment Count	Worker Trip Number	Vendor Trip Number	Hauling Trip Number	Worker Trip Length	Vendor Trip Length	Hauling Trip Length	Worker Vehicle Class	Vendor Vehicle Class	Hauling Vehicle Class
Demolition	4	10.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Site Preparation	2	5.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Grading	4	10.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Building Construction	5	4.00	2.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Paving	7	18.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Architectural Coating	1	1.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT

### 3.1 Mitigation Measures Construction

### 3.2 Demolition - 2015

#### Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	7.0600e-003	0.0597	0.0441			4.3700e-003	4.3700e-003		4.1800e-003	4.1800e-003	0.0000	5.4460	5.4460		0.0000	5.4694
<b>Total</b>	<b>7.0600e-003</b>	<b>0.0597</b>	<b>0.0441</b>			<b>4.3700e-003</b>	<b>4.3700e-003</b>		<b>4.1800e-003</b>	<b>4.1800e-003</b>	<b>0.0000</b>	<b>5.4460</b>	<b>5.4460</b>		<b>0.0000</b>	<b>5.4694</b>

#### Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	2.5000e-004	2.9000e-004	2.8700e-003		4.0000e-004	0.0000	4.0000e-004	1.1000e-004	0.0000	1.1000e-004	0.0000	0.3597	0.3597		0.0000	0.3602
<b>Total</b>	<b>2.5000e-004</b>	<b>2.9000e-004</b>	<b>2.8700e-003</b>		<b>4.0000e-004</b>	<b>0.0000</b>	<b>4.0000e-004</b>	<b>1.1000e-004</b>	<b>0.0000</b>	<b>1.1000e-004</b>	<b>0.0000</b>	<b>0.3597</b>	<b>0.3597</b>		<b>0.0000</b>	<b>0.3602</b>

**3.2 Demolition - 2015****Mitigated Construction On-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	7.0600e-003	0.0597	0.0441			4.3700e-003	4.3700e-003		4.1800e-003	4.1800e-003	0.0000	5.4460	5.4460		0.0000	5.4694
<b>Total</b>	<b>7.0600e-003</b>	<b>0.0597</b>	<b>0.0441</b>			<b>4.3700e-003</b>	<b>4.3700e-003</b>		<b>4.1800e-003</b>	<b>4.1800e-003</b>	<b>0.0000</b>	<b>5.4460</b>	<b>5.4460</b>		<b>0.0000</b>	<b>5.4694</b>

**Mitigated Construction Off-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	2.5000e-004	2.9000e-004	2.8700e-003		4.0000e-004	0.0000	4.0000e-004	1.1000e-004	0.0000	1.1000e-004	0.0000	0.3597	0.3597		0.0000	0.3602
<b>Total</b>	<b>2.5000e-004</b>	<b>2.9000e-004</b>	<b>2.8700e-003</b>		<b>4.0000e-004</b>	<b>0.0000</b>	<b>4.0000e-004</b>	<b>1.1000e-004</b>	<b>0.0000</b>	<b>1.1000e-004</b>	<b>0.0000</b>	<b>0.3597</b>	<b>0.3597</b>		<b>0.0000</b>	<b>0.3602</b>

### 3.3 Site Preparation - 2015

#### Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					2.7000e-004	0.0000	2.7000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.0000	0.0000		0.0000	0.0000
Off-Road	7.1000e-004	7.1500e-003	3.7000e-003			4.4000e-004	4.4000e-004		4.0000e-004	4.0000e-004	0.0000	0.4466	0.4466		0.0000	0.4494
<b>Total</b>	<b>7.1000e-004</b>	<b>7.1500e-003</b>	<b>3.7000e-003</b>		<b>2.7000e-004</b>	<b>4.4000e-004</b>	<b>7.1000e-004</b>	<b>3.0000e-005</b>	<b>4.0000e-004</b>	<b>4.3000e-004</b>	<b>0.0000</b>	<b>0.4466</b>	<b>0.4466</b>		<b>0.0000</b>	<b>0.4494</b>

#### Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	1.0000e-005	1.0000e-005	1.4000e-004		2.0000e-005	0.0000	2.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0180	0.0180		0.0000	0.0180
<b>Total</b>	<b>1.0000e-005</b>	<b>1.0000e-005</b>	<b>1.4000e-004</b>		<b>2.0000e-005</b>	<b>0.0000</b>	<b>2.0000e-005</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>0.0180</b>	<b>0.0180</b>		<b>0.0000</b>	<b>0.0180</b>

### 3.3 Site Preparation - 2015

#### Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					2.7000e-004	0.0000	2.7000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.0000	0.0000		0.0000	0.0000
Off-Road	7.1000e-004	7.1500e-003	3.7000e-003			4.4000e-004	4.4000e-004		4.0000e-004	4.0000e-004	0.0000	0.4466	0.4466		0.0000	0.4494
<b>Total</b>	<b>7.1000e-004</b>	<b>7.1500e-003</b>	<b>3.7000e-003</b>		<b>2.7000e-004</b>	<b>4.4000e-004</b>	<b>7.1000e-004</b>	<b>3.0000e-005</b>	<b>4.0000e-004</b>	<b>4.3000e-004</b>	<b>0.0000</b>	<b>0.4466</b>	<b>0.4466</b>		<b>0.0000</b>	<b>0.4494</b>

#### Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	1.0000e-005	1.0000e-005	1.4000e-004		2.0000e-005	0.0000	2.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0180	0.0180		0.0000	0.0180
<b>Total</b>	<b>1.0000e-005</b>	<b>1.0000e-005</b>	<b>1.4000e-004</b>		<b>2.0000e-005</b>	<b>0.0000</b>	<b>2.0000e-005</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>0.0180</b>	<b>0.0180</b>		<b>0.0000</b>	<b>0.0180</b>



**3.4 Grading - 2015****Unmitigated Construction On-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					7.5000e-004	0.0000	7.5000e-004	4.1000e-004	0.0000	4.1000e-004	0.0000	0.0000	0.0000		0.0000	0.0000
Off-Road	1.4100e-003	0.0119	8.8100e-003			8.7000e-004	8.7000e-004		8.4000e-004	8.4000e-004	0.0000	1.0892	1.0892		0.0000	1.0939
<b>Total</b>	<b>1.4100e-003</b>	<b>0.0119</b>	<b>8.8100e-003</b>		<b>7.5000e-004</b>	<b>8.7000e-004</b>	<b>1.6200e-003</b>	<b>4.1000e-004</b>	<b>8.4000e-004</b>	<b>1.2500e-003</b>	<b>0.0000</b>	<b>1.0892</b>	<b>1.0892</b>		<b>0.0000</b>	<b>1.0939</b>

**Unmitigated Construction Off-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	5.0000e-005	6.0000e-005	5.7000e-004		8.0000e-005	0.0000	8.0000e-005	2.0000e-005	0.0000	2.0000e-005	0.0000	0.0719	0.0719		0.0000	0.0720
<b>Total</b>	<b>5.0000e-005</b>	<b>6.0000e-005</b>	<b>5.7000e-004</b>		<b>8.0000e-005</b>	<b>0.0000</b>	<b>8.0000e-005</b>	<b>2.0000e-005</b>	<b>0.0000</b>	<b>2.0000e-005</b>	<b>0.0000</b>	<b>0.0719</b>	<b>0.0719</b>		<b>0.0000</b>	<b>0.0720</b>

**3.4 Grading - 2015****Mitigated Construction On-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					7.5000e-004	0.0000	7.5000e-004	4.1000e-004	0.0000	4.1000e-004	0.0000	0.0000	0.0000		0.0000	0.0000
Off-Road	1.4100e-003	0.0119	8.8100e-003			8.7000e-004	8.7000e-004		8.4000e-004	8.4000e-004	0.0000	1.0892	1.0892		0.0000	1.0939
<b>Total</b>	<b>1.4100e-003</b>	<b>0.0119</b>	<b>8.8100e-003</b>		<b>7.5000e-004</b>	<b>8.7000e-004</b>	<b>1.6200e-003</b>	<b>4.1000e-004</b>	<b>8.4000e-004</b>	<b>1.2500e-003</b>	<b>0.0000</b>	<b>1.0892</b>	<b>1.0892</b>		<b>0.0000</b>	<b>1.0939</b>

**Mitigated Construction Off-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	5.0000e-005	6.0000e-005	5.7000e-004		8.0000e-005	0.0000	8.0000e-005	2.0000e-005	0.0000	2.0000e-005	0.0000	0.0719	0.0719		0.0000	0.0720
<b>Total</b>	<b>5.0000e-005</b>	<b>6.0000e-005</b>	<b>5.7000e-004</b>		<b>8.0000e-005</b>	<b>0.0000</b>	<b>8.0000e-005</b>	<b>2.0000e-005</b>	<b>0.0000</b>	<b>2.0000e-005</b>	<b>0.0000</b>	<b>0.0719</b>	<b>0.0719</b>		<b>0.0000</b>	<b>0.0720</b>

### 3.5 Building Construction - 2015

#### Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	0.0727	0.7189	0.4149			0.0500	0.0500		0.0460	0.0460	0.0000	54.0547	54.0547		0.0000	54.3936
<b>Total</b>	<b>0.0727</b>	<b>0.7189</b>	<b>0.4149</b>			<b>0.0500</b>	<b>0.0500</b>		<b>0.0460</b>	<b>0.0460</b>	<b>0.0000</b>	<b>54.0547</b>	<b>54.0547</b>		<b>0.0000</b>	<b>54.3936</b>

#### Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	1.5300e-003	0.0113	0.0154		6.5000e-004	2.1000e-004	8.5000e-004	1.9000e-004	1.9000e-004	3.8000e-004	0.0000	2.1815	2.1815		0.0000	2.1820
Worker	9.8000e-004	1.1600e-003	0.0115		1.5900e-003	1.0000e-005	1.6100e-003	4.2000e-004	1.0000e-005	4.4000e-004	0.0000	1.4389	1.4389		0.0000	1.4407
<b>Total</b>	<b>2.5100e-003</b>	<b>0.0125</b>	<b>0.0269</b>		<b>2.2400e-003</b>	<b>2.2000e-004</b>	<b>2.4600e-003</b>	<b>6.1000e-004</b>	<b>2.0000e-004</b>	<b>8.2000e-004</b>	<b>0.0000</b>	<b>3.6204</b>	<b>3.6204</b>		<b>0.0000</b>	<b>3.6227</b>

### 3.5 Building Construction - 2015

#### Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	0.0727	0.7189	0.4149			0.0500	0.0500		0.0460	0.0460	0.0000	54.0546	54.0546		0.0000	54.3935
<b>Total</b>	<b>0.0727</b>	<b>0.7189</b>	<b>0.4149</b>			<b>0.0500</b>	<b>0.0500</b>		<b>0.0460</b>	<b>0.0460</b>	<b>0.0000</b>	<b>54.0546</b>	<b>54.0546</b>		<b>0.0000</b>	<b>54.3935</b>

#### Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	1.5300e-003	0.0113	0.0154		6.5000e-004	2.1000e-004	8.5000e-004	1.9000e-004	1.9000e-004	3.8000e-004	0.0000	2.1815	2.1815		0.0000	2.1820
Worker	9.8000e-004	1.1600e-003	0.0115		1.5900e-003	1.0000e-005	1.6100e-003	4.2000e-004	1.0000e-005	4.4000e-004	0.0000	1.4389	1.4389		0.0000	1.4407
<b>Total</b>	<b>2.5100e-003</b>	<b>0.0125</b>	<b>0.0269</b>		<b>2.2400e-003</b>	<b>2.2000e-004</b>	<b>2.4600e-003</b>	<b>6.1000e-004</b>	<b>2.0000e-004</b>	<b>8.2000e-004</b>	<b>0.0000</b>	<b>3.6204</b>	<b>3.6204</b>		<b>0.0000</b>	<b>3.6227</b>

**3.6 Paving - 2015****Unmitigated Construction On-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	3.0200e-003	0.0289	0.0184			1.8100e-003	1.8100e-003		1.6800e-003	1.6800e-003	0.0000	2.4801	2.4801		0.0000	2.4943
Paving	0.0000					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
<b>Total</b>	<b>3.0200e-003</b>	<b>0.0289</b>	<b>0.0184</b>			<b>1.8100e-003</b>	<b>1.8100e-003</b>		<b>1.6800e-003</b>	<b>1.6800e-003</b>	<b>0.0000</b>	<b>2.4801</b>	<b>2.4801</b>		<b>0.0000</b>	<b>2.4943</b>

**Unmitigated Construction Off-Site**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	2.2000e-004	2.6000e-004	2.5800e-003		3.6000e-004	0.0000	3.6000e-004	1.0000e-004	0.0000	1.0000e-004	0.0000	0.3238	0.3238		0.0000	0.3242
<b>Total</b>	<b>2.2000e-004</b>	<b>2.6000e-004</b>	<b>2.5800e-003</b>		<b>3.6000e-004</b>	<b>0.0000</b>	<b>3.6000e-004</b>	<b>1.0000e-004</b>	<b>0.0000</b>	<b>1.0000e-004</b>	<b>0.0000</b>	<b>0.3238</b>	<b>0.3238</b>		<b>0.0000</b>	<b>0.3242</b>

### 3.6 Paving - 2015

#### Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	3.0200e-003	0.0289	0.0184			1.8100e-003	1.8100e-003		1.6800e-003	1.6800e-003	0.0000	2.4801	2.4801		0.0000	2.4943
Paving	0.0000					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
<b>Total</b>	<b>3.0200e-003</b>	<b>0.0289</b>	<b>0.0184</b>			<b>1.8100e-003</b>	<b>1.8100e-003</b>		<b>1.6800e-003</b>	<b>1.6800e-003</b>	<b>0.0000</b>	<b>2.4801</b>	<b>2.4801</b>		<b>0.0000</b>	<b>2.4943</b>

#### Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	2.2000e-004	2.6000e-004	2.5800e-003		3.6000e-004	0.0000	3.6000e-004	1.0000e-004	0.0000	1.0000e-004	0.0000	0.3238	0.3238		0.0000	0.3242
<b>Total</b>	<b>2.2000e-004</b>	<b>2.6000e-004</b>	<b>2.5800e-003</b>		<b>3.6000e-004</b>	<b>0.0000</b>	<b>3.6000e-004</b>	<b>1.0000e-004</b>	<b>0.0000</b>	<b>1.0000e-004</b>	<b>0.0000</b>	<b>0.3238</b>	<b>0.3238</b>		<b>0.0000</b>	<b>0.3242</b>

### 3.7 Architectural Coating - 2015

#### Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Archit. Coating	0.0862					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Off-Road	1.0200e-003	6.4300e-003	4.7500e-003			5.5000e-004	5.5000e-004		5.5000e-004	5.5000e-004	0.0000	0.6383	0.6383		0.0000	0.6401
<b>Total</b>	<b>0.0872</b>	<b>6.4300e-003</b>	<b>4.7500e-003</b>			<b>5.5000e-004</b>	<b>5.5000e-004</b>		<b>5.5000e-004</b>	<b>5.5000e-004</b>	<b>0.0000</b>	<b>0.6383</b>	<b>0.6383</b>		<b>0.0000</b>	<b>0.6401</b>

#### Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	1.0000e-005	1.0000e-005	1.4000e-004		2.0000e-005	0.0000	2.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0180	0.0180		0.0000	0.0180
<b>Total</b>	<b>1.0000e-005</b>	<b>1.0000e-005</b>	<b>1.4000e-004</b>		<b>2.0000e-005</b>	<b>0.0000</b>	<b>2.0000e-005</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>0.0180</b>	<b>0.0180</b>		<b>0.0000</b>	<b>0.0180</b>

### 3.7 Architectural Coating - 2015

#### Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Archit. Coating	0.0862					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Off-Road	1.0200e-003	6.4300e-003	4.7500e-003			5.5000e-004	5.5000e-004		5.5000e-004	5.5000e-004	0.0000	0.6383	0.6383		0.0000	0.6401
<b>Total</b>	<b>0.0872</b>	<b>6.4300e-003</b>	<b>4.7500e-003</b>			<b>5.5000e-004</b>	<b>5.5000e-004</b>		<b>5.5000e-004</b>	<b>5.5000e-004</b>	<b>0.0000</b>	<b>0.6383</b>	<b>0.6383</b>		<b>0.0000</b>	<b>0.6401</b>

#### Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Vendor	0.0000	0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Worker	1.0000e-005	1.0000e-005	1.4000e-004		2.0000e-005	0.0000	2.0000e-005	1.0000e-005	0.0000	1.0000e-005	0.0000	0.0180	0.0180		0.0000	0.0180
<b>Total</b>	<b>1.0000e-005</b>	<b>1.0000e-005</b>	<b>1.4000e-004</b>		<b>2.0000e-005</b>	<b>0.0000</b>	<b>2.0000e-005</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>1.0000e-005</b>	<b>0.0000</b>	<b>0.0180</b>	<b>0.0180</b>		<b>0.0000</b>	<b>0.0180</b>

### 4.0 Operational Detail - Mobile



#### 4.1 Mitigation Measures Mobile

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Mitigated	1.5942	2.8360	12.3466		0.6874	0.0393	0.7267	0.1845	0.0360	0.2204	0.0000	1,002.0586	1,002.0586		0.0000	1,003.1209
Unmitigated	1.5942	2.8360	12.3466		0.6874	0.0393	0.7267	0.1845	0.0360	0.2204	0.0000	1,002.0586	1,002.0586		0.0000	1,003.1209

#### 4.2 Trip Summary Information

Land Use	Average Daily Trip Rate			Unmitigated	Mitigated
	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Fast Food Restaurant with Drive Thru	1,190.69	1,732.87	1302.53	1,199,785	1,199,785
Strip Mall	443.20	420.40	204.30	624,967	624,967
Total	1,633.89	2,153.27	1,506.83	1,824,753	1,824,753

#### 4.3 Trip Type Information

Land Use	Miles			Trip %			Trip Purpose %		
	H-W or C-W	H-S or C-C	H-O or C-NW	H-W or C-W	H-S or C-C	H-O or C-NW	Primary	Diverted	Pass-by
Fast Food Restaurant with Drive	9.50	7.30	7.30	2.20	78.80	19.00	29	21	50
Strip Mall	9.50	7.30	7.30	16.60	64.40	19.00	45	40	15

LDA	LDT1	LDT2	MDV	LHD1	LHD2	MHD	HHD	OBUS	UBUS	MCY	SBUS	MH
0.408999	0.071178	0.163258	0.196144	0.057919	0.008335	0.018354	0.062533	0.001936	0.001543	0.006293	0.001241	0.002268

**5.0 Energy Detail**

Historical Energy Use: N

**5.1 Mitigation Measures Energy**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Electricity Mitigated						0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Electricity Unmitigated						0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
NaturalGas Mitigated	3.3500e-003	0.0304	0.0256			2.3100e-003	2.3100e-003		2.3100e-003	2.3100e-003	0.0000	33.1387	33.1387		6.1000e-004	33.3404
NaturalGas Unmitigated	3.3500e-003	0.0304	0.0256			2.3100e-003	2.3100e-003		2.3100e-003	2.3100e-003	0.0000	33.1387	33.1387		6.1000e-004	33.3404

## 5.2 Energy by Land Use - NaturalGas

### Unmitigated

	NaturalGas Use	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Land Use	kBTU/yr	tons/yr										MT/yr					
Fast Food Restaurant with Drive Thru	509496	2.7500e-003	0.0250	0.0210			1.9000e-003	1.9000e-003		1.9000e-003	1.9000e-003	0.0000	27.1887	27.1887		5.0000e-004	27.3541
Strip Mall	111500	6.0000e-004	5.4700e-003	4.5900e-003			4.2000e-004	4.2000e-004		4.2000e-004	4.2000e-004	0.0000	5.9501	5.9501		1.1000e-004	5.9863
<b>Total</b>		<b>3.3500e-003</b>	<b>0.0305</b>	<b>0.0256</b>			<b>2.3200e-003</b>	<b>2.3200e-003</b>		<b>2.3200e-003</b>	<b>2.3200e-003</b>	<b>0.0000</b>	<b>33.1387</b>	<b>33.1387</b>		<b>6.1000e-004</b>	<b>33.3404</b>

### Mitigated

	NaturalGas Use	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Land Use	kBTU/yr	tons/yr										MT/yr					
Strip Mall	111500	6.0000e-004	5.4700e-003	4.5900e-003			4.2000e-004	4.2000e-004		4.2000e-004	4.2000e-004	0.0000	5.9501	5.9501		1.1000e-004	5.9863
Fast Food Restaurant with Drive Thru	509496	2.7500e-003	0.0250	0.0210			1.9000e-003	1.9000e-003		1.9000e-003	1.9000e-003	0.0000	27.1887	27.1887		5.0000e-004	27.3541
<b>Total</b>		<b>3.3500e-003</b>	<b>0.0305</b>	<b>0.0256</b>			<b>2.3200e-003</b>	<b>2.3200e-003</b>		<b>2.3200e-003</b>	<b>2.3200e-003</b>	<b>0.0000</b>	<b>33.1387</b>	<b>33.1387</b>		<b>6.1000e-004</b>	<b>33.3404</b>

### 5.3 Energy by Land Use - Electricity

#### Unmitigated

	Electricity Use	Total CO2	CH4	N2O	CO2e
Land Use	kWh/yr	MT/yr			
Fast Food Restaurant with Drive Thru	74856	0.0000		0.0000	0.0000
Strip Mall	91300	0.0000		0.0000	0.0000
<b>Total</b>		<b>0.0000</b>		<b>0.0000</b>	<b>0.0000</b>

#### Mitigated

	Electricity Use	Total CO2	CH4	N2O	CO2e
Land Use	kWh/yr	MT/yr			
Fast Food Restaurant with Drive Thru	74856	0.0000		0.0000	0.0000
Strip Mall	91300	0.0000		0.0000	0.0000
<b>Total</b>		<b>0.0000</b>		<b>0.0000</b>	<b>0.0000</b>

### 6.0 Area Detail

#### 6.1 Mitigation Measures Area

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Mitigated	0.0571	0.0000	1.2000e-004			0.0000	0.0000		0.0000	0.0000	0.0000	2.2000e-004	2.2000e-004		0.0000	2.4000e-004
Unmitigated	0.0571	0.0000	1.2000e-004			0.0000	0.0000		0.0000	0.0000	0.0000	2.2000e-004	2.2000e-004		0.0000	2.4000e-004

## 6.2 Area by SubCategory

### Unmitigated

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
SubCategory	tons/yr										MT/yr					
Architectural Coating	8.6200e-003					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Consumer Products	0.0484					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Landscaping	1.0000e-005	0.0000	1.2000e-004			0.0000	0.0000		0.0000	0.0000	0.0000	2.2000e-004	2.2000e-004		0.0000	2.4000e-004
<b>Total</b>	<b>0.0571</b>	<b>0.0000</b>	<b>1.2000e-004</b>			<b>0.0000</b>	<b>0.0000</b>		<b>0.0000</b>	<b>0.0000</b>	<b>0.0000</b>	<b>2.2000e-004</b>	<b>2.2000e-004</b>		<b>0.0000</b>	<b>2.4000e-004</b>

## 6.2 Area by SubCategory

### Mitigated

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
SubCategory	tons/yr										MT/yr					
Architectural Coating	8.6200e-003					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Consumer Products	0.0484					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000
Landscaping	1.0000e-005	0.0000	1.2000e-004			0.0000	0.0000		0.0000	0.0000	0.0000	2.2000e-004	2.2000e-004		0.0000	2.4000e-004
<b>Total</b>	<b>0.0571</b>	<b>0.0000</b>	<b>1.2000e-004</b>			<b>0.0000</b>	<b>0.0000</b>		<b>0.0000</b>	<b>0.0000</b>	<b>0.0000</b>	<b>2.2000e-004</b>	<b>2.2000e-004</b>		<b>0.0000</b>	<b>2.4000e-004</b>

## 7.0 Water Detail

### 7.1 Mitigation Measures Water

	Total CO2	CH4	N2O	CO2e
Category	MT/yr			
Mitigated	0.4661		1.1300e-003	1.8219
Unmitigated	0.4661		1.1300e-003	1.8219

## 7.2 Water by Land Use

### Unmitigated

	Indoor/Outdoor Use	Total CO2	CH4	N2O	CO2e
Land Use	Mgal	MT/yr			
Fast Food Restaurant with Drive Thru	0.728481 / 0.0464988	0.2311		5.6000e-004	0.9034
Strip Mall	0.740725 / 0.453993	0.2350		5.7000e-004	0.9185
<b>Total</b>		<b>0.4661</b>		<b>1.1300e-003</b>	<b>1.8219</b>

### Mitigated

	Indoor/Outdoor Use	Total CO2	CH4	N2O	CO2e
Land Use	Mgal	MT/yr			
Fast Food Restaurant with Drive Thru	0.728481 / 0.0464988	0.2311		5.6000e-004	0.9034
Strip Mall	0.740725 / 0.453993	0.2350		5.7000e-004	0.9185
<b>Total</b>		<b>0.4661</b>		<b>1.1300e-003</b>	<b>1.8219</b>

## 8.0 Waste Detail

### 8.1 Mitigation Measures Waste

**Category/Year**

	Total CO2	CH4	N2O	CO2e
	MT/yr			
Mitigated	7.7441		0.0000	17.3550
Unmitigated	7.7441		0.0000	17.3550

**8.2 Waste by Land Use****Unmitigated**

	Waste Disposed	Total CO2	CH4	N2O	CO2e
Land Use	tons	MT/yr			
Fast Food Restaurant with Drive Thru	27.65	5.6127		0.0000	12.5784
Strip Mall	10.5	2.1314		0.0000	4.7766
<b>Total</b>		<b>7.7441</b>		<b>0.0000</b>	<b>17.3550</b>



## 8.2 Waste by Land Use

### Mitigated

	Waste Disposed	Total CO2	CH4	N2O	CO2e
Land Use	tons	MT/yr			
Fast Food Restaurant with Drive Thru	27.65	5.6127		0.0000	12.5784
Strip Mall	10.5	2.1314		0.0000	4.7766
<b>Total</b>		<b>7.7441</b>		<b>0.0000</b>	<b>17.3550</b>

## 9.0 Operational Offroad

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Equipment Type	Number	Hours/Day	Days/Year	Horse Power	Load Factor	Fuel Type
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## 10.0 Vegetation

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## Appendix B

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# Biological Database Files

Element_Type	Scientific_Name	Common_Name	Element_Code	Federal_Status	State_Status	CDFW_Status	CA_Rare_Plant_Rank
Animals - Amphibians	Rana boylei	foothill yellow-legged frog	AAABH01050	None	None	SSC	-
Animals - Amphibians	Spea hammondi	western spadefoot	AAABF02020	None	None	SSC	-
Animals - Birds	Buteo swainsoni	Swainson's hawk	ABNKC19070	None	Threatened	-	-
Animals - Birds	Gymnogyps californianus	California condor	ABNKA03010	Endangered	Endangered	-	-
Animals - Birds	Athene cunicularia	burrowing owl	ABNSB10010	None	None	SSC	-
Animals - Crustaceans	Branchinecta lynchi	vernal pool fairy shrimp	ICBRA03030	Threatened	None	-	-
Animals - Insects	Desmocerus californicus dimorphus	valley elderberry longhorn beetle	IICOL48011	Threatened	None	-	-
Animals - Insects	Lytta hoppingi	Hopping's blister beetle	IICOL4C010	None	None	-	-
Animals - Insects	Lytta molesta	molestan blister beetle	IICOL4C030	None	None	-	-
Animals - Insects	Lytta morrisoni	Morrison's blister beetle	IICOL4C040	None	None	-	-
Animals - Mammals	Vulpes macrotis mutica	San Joaquin kit fox	AMAJA03041	Endangered	Threatened	-	-
Animals - Mammals	Dipodomys nitratoideus	Tipton kangaroo rat	AMAFD03152	Endangered	Endangered	-	-
Animals - Mammals	Perognathus inornatus	San Joaquin pocket mouse	AMAFD01061	None	None	-	-
Animals - Mammals	Eumops perotis californicus	western mastiff bat	AMACD02011	None	None	SSC	-
Animals - Mammals	Taxidea taxus	American badger	AMAJF04010	None	None	SSC	-
Animals - Mammals	Antrozous pallidus	pallid bat	AMACC10010	None	None	SSC	-

Animals - Mammals	<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	AMACC08 010	None	Candidate Threatened	SSC	-
Animals - Mammals	<i>Lasiurus cinereus</i>	hoary bat	AMACC05 030	None	None	-	-
Community - Terrestrial	Northern Claypan Vernal Pool	Northern Claypan Vernal Pool	CTT44120 CA	None	None	-	-
Community - Terrestrial	Sycamore Alluvial Woodland	Sycamore Alluvial Woodland	CTT62100 CA	None	None	-	-
Plants - Vascular	<i>Eryngium spinosepalum</i>	spiny-sepaed button-celery	PDAP10Z0 Y0	None	None	-	1B.2
Plants - Vascular	<i>Oreonana purpurascens</i>	purple mountain-parsley	PDAP11G0 20	None	None	-	1B.2
Plants - Vascular	<i>Pseudobahia peirsonii</i>	San Joaquin adobe sunburst	PDAST7P 030	Threatened	Endangered	-	1B.1
Plants - Vascular	<i>Azolla microphylla</i>	Mexican mosquito fern	PPAZO01 030	None	None	-	4.2
Plants - Vascular	<i>Caulanthus californicus</i>	California jewelflower	PDBRA31 010	Endangered	Endangered	-	1B.1
Plants - Vascular	<i>Atriplex cordulata</i> var. <i>erecticaulis</i>	Earlimart orache	PDCHE04 2V0	None	None	-	1B.2
Plants - Vascular	<i>Atriplex coronata</i> var. <i>vallicola</i>	Lost Hills crownscale	PDCHE04 250	None	None	-	1B.2
Plants - Vascular	<i>Atriplex depressa</i>	brittlescale	PDCHE04 2L0	None	None	-	1B.2
Plants - Vascular	<i>Atriplex minuscula</i>	lesser saltscale	PDCHE04 2M0	None	None	-	1B.1
Plants - Vascular	<i>Atriplex persistens</i>	vernal pool smallscale	PDCHE04 2P0	None	None	-	1B.2
Plants - Vascular	<i>Atriplex subtilis</i>	subtle orache	PDCHE04 2T0	None	None	-	1B.2
Plants - Vascular	<i>Convolvulus simulans</i>	small-flowered morning-glory	PDCON05 060	None	None	-	4.2
Plants - Vascular	<i>Fritillaria striata</i>	striped adobe-lily	PMLILOV0 K0	None	Threatened	-	1B.1

Plants - Vascular	<i>Sidalcea keckii</i>	Keck's checkerbloom	PDMAL11 0D0	Endanger ed	None	-	1B.1
Plants - Vascular	<i>Clarkia exilis</i>	slender clarkia	PDONA05 0G0	None	None	-	4.3
Plants - Vascular	<i>Clarkia springvillensis</i>	Springville clarkia	PDONA05 120	Threatene d	Endangered	-	1B.2
Plants - Vascular	<i>Mimulus pictus</i>	calico monkeyflower	PDSCR1B 240	None	None	-	1B.2
Plants - Vascular	<i>Mimulus pictus</i>	calico monkeyflower	PDSCR1B 240	None	None	-	1B.2
Plants - Vascular	<i>Leptosiphon serrulatus</i>	Madera leptosiphon	PDPLM09 130	None	None	-	1B.2
Plants - Vascular	<i>Eriogonum twisselmannii</i>	Twisselmann's buckwheat	PDPGN08 610	None	Rare	-	1B.2
Plants - Vascular	<i>Delphinium hansenii</i> ssp. <i>ewanianum</i>	Ewan's larkspur	PDRAN0B 0T2	None	None	-	4.2
Plants - Vascular	<i>Delphinium inopinum</i>	unexpected larkspur	PDRAN0B 0W0	None	None	-	4.3
Plants - Vascular	<i>Delphinium recurvatum</i>	recurved larkspur	PDRAN0B 1J0	None	None	-	1B.2

Cairns Corner  
 Lindsay  
 Frazier Valley  
 Woodville  
 Porterville  
 Success Dam  
 Sausalito School  
 Ducor  
 Fountain Springs

## Appendix C

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# CHRIS Records Search



**To:** Emily Bowen  
Crawford Bowen  
113 N. Church Street, Suite 302  
Visalia, CA 93291

**Record Search 14-384**

**Date:** October 27, 2014

**Re:** City of Porterville Newcomb Commercial Development

**County:** Tulare

**Map(s):** Porterville 7.5'

### **CULTURAL RESOURCES RECORDS SEARCH**

The California Office of Historic Preservation (OHP) contracts with the California Historical Resources Information System's (CHRIS) regional Information Centers (ICs) to maintain information in the CHRIS inventory and make it available to local, state, and federal agencies, cultural resource professionals, Native American tribes, researchers, and the public. Recommendations made by IC coordinators or their staff regarding the interpretation and application of this information are advisory only. Such recommendations do not necessarily represent the evaluation or opinion of the State Historic Preservation Officer in carrying out the OHP's regulatory authority under federal and state law. The following are the results of a search of the cultural resource files at the Southern San Joaquin Valley Information Center. These files include known and recorded cultural resources sites, inventory and excavation reports filed with this office, and resources listed on the National Register of Historic Places, Historic Property Directory (3/18/13), California State Historical Landmarks, California Register of Historical Resources, California Inventory of Historic Resources, and California Points of Historical Interest. Due to processing delays and other factors, not all of the historical resource reports and resource records that have been submitted to the Office of Historic Preservation are available via this records search. Additional information may be available through the federal, state, and local agencies that produced or paid for historical resource management work in the search area.

### **PRIOR CULTURAL RESOURCE STUDIES CONDUCTED WITHIN THE PROJECT AREA AND THE ONE-HALF MILE RADIUS**

According to the information in our files, there has been one previous cultural resource study conducted within the project area, TU-00209. There have been three additional studies conducted within the one-half mile radius, TU-01097, 01294, and 01338.

**KNOWN/RECORDED CULTURAL RESOURCES WITHIN THE PROJECT AREA AND THE ONE-HALF MILE RADIUS**

There are no recorded cultural resources within project area or within the one-half mile radius and it is not known if any exist in most places.

There are no recorded cultural resources within the project area or radius that are listed in the National Register of Historic Places, the California Register of Historical Resources, the California Points of Historical Interest, California Inventory of Historic Resources, or the California State Historic Landmarks.

**COMMENTS AND RECOMMENDATIONS**

We understand this project consists of construction of the construction of a 2,418 square foot drive-thru restaurant. Further, we understand the project area is currently a fallow field. Please note that agricultural activity does not constitute development, as farming does not destroy cultural resources but merely moves them around within the plow zone. The study that was done on this property was completed in 1978. Due to changes in field methods and technology, the Information Center routinely recommends a new study be conducted when a previous one is more than five to seven years old. Therefore, we recommend a qualified, professional archaeologist conduct a field survey to determine if cultural resources are present prior to any ground disturbance activities. A list of professionals is available at [www.chrisinfo.org](http://www.chrisinfo.org).

We also recommend that you contact the Native American Heritage Commission in Sacramento. They will provide you with a current list of Native American individuals/organizations that can assist you with information regarding cultural resources that may not included in the CHRIS Inventory and that may be of concern to the Native groups in the area. The Commission will consult their "Sacred Lands Inventory" file in order to determine what sacred resources, if any, exist within this project area and the way in which these resources might be managed. Finally, please consult with the lead agency on this project to determine if any other cultural resource investigation is required. If you need any additional information or have any questions or concerns, please contact our office at (661) 654-2289.

By:

Celeste M. Thomson, Coordinator

**Date:** October 27, 2014

Please note that invoices for Information Center services will be sent under separate cover from the California State University, Bakersfield Accounting Office.





[www.candbplanning.com](http://www.candbplanning.com)

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF  
A MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT  
FOR THE GENERAL PLAN AMENDMENT AND ZONE CHANGE LOCATED AT THE  
SOUTHWEST CORNER OF HENDERSON AVENUE AND NEWCOMB STREET

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 2, 2014, conducted a public hearing to consider approval of the Mitigated Negative Declaration which evaluates the environmental impacts of a General Plan Amendment and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) and development of the project in a manner consistent with City codes and plans; and

WHEREAS: General Plan Amendment (PRC 2014-026-GZ) proposes to change the land use designation on the General Plan Land Use Diagram for the subject parcels (APNs 245-070-087, 245-070-036, 245-070-047 and 245-070-083) from High-Density Residential and Medium Density Residential to Retail Centers; and

WHEREAS: Zone Change PRC 2014-026-GZ proposes to change the present zoning classifications of the subject parcels from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) contingent upon approval of the General Plan Amendment; and

WHEREAS: Development of the project area would require additional review by the Project Review Committee and would be subject to the City's development standards and the General Plan Land Use Implementation Policies, including but not limited to General Plan Land Use Implementation Policy LU-I-21 (prohibits new strip commercial development); and

WHEREAS: On October 30, 2014, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate for the General Plan Amendment and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) and development of the project in a manner consistent with City codes and plans; and

WHEREAS: The City Council considered the following findings in its review of the environmental circumstances for this project:

1. That a Mitigated Negative Declaration was prepared in accordance with the California Environmental Quality Act.
2. The General Plan Amendment and Zone Change will not create adverse environmental impacts on biological resources or adjacent neighborhoods when mitigation measures are implemented and standards of the Development Ordinance and General Plan are applied to the subsequent development project.

**ATTACHMENT  
ITEM NO. 3**

3. That the City Council is the decision making body for the project.
4. On October 30, 2014, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate for the General Plan Amendment and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers). The Initial Study has been transmitted to interested agencies, groups and individuals for review and comment. The review period ran for thirty (30) days from October 31, 2014, to December 1, 2014. No comments were received.
5. That review of the environmental circumstances regarding this project indicates that no adverse impacts would accrue to biological resources when the mitigation measures are implemented and standards of the Development Ordinance and General Plan are applied. Mitigation measures to reduce impacts to less than significant were defined and have been incorporated into the Mitigation Monitoring Program attached hereto as Exhibit A.
6. That the environmental assessment and analysis prepared for this project supporting the Mitigated Negative Declaration reflects the independent judgment of the City of Porterville.
7. The developer/applicant shall comply with all mitigation measures adopted as a component of the approval of the Mitigated Negative Declaration for this project. The developer/applicant will be required to sign a document committing to comply with the adopted mitigation measures prior to any construction on the site.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Mitigated Negative Declaration prepared for the General Plan Amendment and Zone Change (PRC 2014-026-GZ) and development of the project in a manner consistent with City codes and plans, and that the mitigation measures defined in Exhibit A shall be implemented by the developer/applicant or his/her partners and successors with project implementation.

By: \_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<b>BIO-1</b> To protect raptors and migratory song birds and to assist in avoiding take of avian species as required by Fish and Game Code Section 3503, 3503.5, and 3513, Project related activities will occur during the non-breeding season (September 16 <sup>th</sup> through December 31 <sup>st</sup> ).	City of Porterville	During construction	City of Porterville	
<b>BIO-2</b> If Project related activities will occur during the breeding season (Jan 1 through Sept 15), the City of Porterville shall conduct nest surveys for nesting Swainson's hawks within ½ mile buffer around the Project site before starting any Project related activities following the survey methodology developed by the Swainson's hawk Technical Advisory Committee <sup>1</sup> . In the event that Swainson's hawk is detected, California Department of Fish & Wildlife (CDFW) shall be consulted by the Applicant or the Applicant's consultant to discuss project implementation and take avoidance. If take cannot be avoided the City shall obtain an	City of Porterville	During construction	City of Porterville	

<sup>1</sup> Swainson's Hawk Technical Advisory Committee. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. May 31, 2000. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990>. Accessed October, 2014.

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p>Incidental Take Permit from CDWF for project related incidental take of Swainson's hawk.</p> <p>If other nesting raptors and migratory songbirds are identified, the following minimum no disturbance buffers shall be required:</p> <ul style="list-style-type: none"> <li>• 250 feet around active passerine (perching birds and songbirds) nests</li> <li>• 500 feet around active raptor nests</li> </ul> <p>These buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined and CDWF has agreed in writing that the birds have fledged and are no longer reliant upon the nest or parental care for survival.</p>				
<p><b>BIO-3</b> Vertical tubes such as chain link fencing poles can result in the entrapment and death of a variety of bird species. All vertical tubes such as chain link fencing poles shall be immediately capped at the time that they are installed to prevent avian fatalities.</p>	City of Porterville	During construction	City of Porterville	

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p><b>CUL-1</b></p> <ul style="list-style-type: none"> <li>▪ The City shall require that the provisions of Senate Bill 18, which requires consultation with California Native American Tribes, be completed prior to initiation of construction or ground-disturbing activities associated with the Project.</li> <li>▪ Before initiation of construction or ground-disturbing activities associated with the Project, the Project proponent for all Project phases shall require all construction personnel to be alerted to the possibility of buried cultural resources, including historic, archeological and paleontological resources;</li> <li>▪ The general contractor and its supervisory staff shall be responsible for monitoring the construction Project for disturbance of cultural resources; and</li> <li>▪ If a potentially significant historical, archaeological, or paleontological resource, such as structural features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains or trash deposits are encountered during subsurface construction activities (i.e., trenching, grading), all construction activities within a 100-foot radius of the identified potential resource shall cease until a qualified archaeologist evaluates the item for its significance and records the item on the</li> </ul>	City of Porterville	Prior to and during construction	City of Porterville	

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p>appropriate State Department of Parks and Recreation (DPR) forms. The archaeologist shall determine whether the item requires further study. If, after the qualified archaeologist conducts appropriate technical analyses, the item is determined to be significant under California Environmental Quality Act, the archaeologist shall recommend feasible mitigation measures, which may include avoidance, preservation in place or other appropriate measure, as outlined in Public Resources Code section 21083.2. The City of Porterville shall implement said measures.</p>				
<p><b>CUL-2</b> The City of Porterville will incorporate into the construction contract(s) a provision that in the event a fossil or fossil formations are discovered during any subsurface construction activities for the proposed Project (i.e., trenching, grading), all excavations within 100 feet of the find shall be temporarily halted until the find is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The paleontologist shall notify the appropriate representative at the City of Porterville, who shall coordinate with the paleontologist as to any necessary investigation of the find. If the find is determined to be significant under CEQA, the City shall implement those measures, which may include</p>	City of Porterville	During construction	City of Porterville	

Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
avoidance, preservation in place, or other appropriate measures, as outlined in Public Resources Code section 21083.2.				
<b>LU-1</b> Any future development on the site will be required to comply with Land Use Policy LU-I-21, which prohibits new strip commercial developments. Future development will also be required to comply with all applicable City General Plan Policies and provisions outlined in the City's Development Ordinance. The City of Porterville will be responsible for review of future development and interpretation of City planning documents as they apply to the Project.	City of Porterville	Prior to issuance of building permits associated with the future development	City of Porterville	
<b>NO-1</b> Delivery trucks serving the Project shall be limited to between 6:00 A.M. and 9:00 P.M. Monday through Friday and between 7:00 A.M. and 5:00 PM on Saturday or Sunday to avoid noise-sensitive hours of the day.  <b>NO-2</b> The drive-thru restaurant shall include on-site signage directing that car stereo/radio volumes be reduced so that stereo/radio noise from vehicles waiting in the drive-thru lane do not produce excessive noise.	City of Porterville	During construction and operation	City of Porterville	



Mitigation Measure	Party responsible for Implementing Mitigation	Implementation Timing	Party responsible for Monitoring	Verification (name/date)
<p><b>NO-3</b> Construction activities shall be limited to between 6:00 A.M. and 9:00 P.M. Monday through Friday and between 7:00 A.M. and 5:00 PM on Saturday or Sunday to avoid noise-sensitive hours of the day. Construction activities shall be prohibited on holidays (President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Day, and New Year's Day).</p> <p><b>NO-4</b> The construction contract shall require the construction contractor to ensure that construction equipment noise is minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.</p>				
<p><b>TR-1</b> Prior to issuance of a building permit, the final design of Project-related ingress/egress (location of driveways, improvements of median, signage requirements, and other components) will be subject to review and approval by the City of Porterville Public Works Department.</p>	City of Porterville	Prior to issuance of a building permit	City of Porterville	

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
CONTAINING FINDINGS IN SUPPORT OF APPROVAL FOR THE GENERAL PLAN  
AMENDMENT (PRC 2014-026-GC) FOR THAT 1.3± ACRE SITE DESCRIBED HEREIN  
LOCATED AT THE SOUTHWEST CORNER OF HENDERSON AVENUE AND  
NEWCOMB STREET

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 2, 2014, conducted a public hearing to consider approval of a General Plan amendment from High Density Residential and Medium Density Residential to Retail Centers located at the southwest corner of Henderson Avenue and Newcomb Street (APNs 245-070-087, 245-070-036, 245-070-047 and 245-070-083); and

WHEREAS: Zone Change 2014-026-GZ proposes to change the present zoning classifications of the subject parcels from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) contingent upon approval of the General Plan Amendment; and

WHEREAS: Development of the project area would require additional review by the Project Review Committee and would be subject to the City's development standards and the General Plan Land Use Implementation Policies, including but not limited to General Plan Land Use Implementation Policy LU-I-21 (prohibits new strip commercial development); and

WHEREAS: Approval of the General Plan Amendment would allow the project site to be developed for a regional bases with multiple uses in an integrated manner, and that may provide for commercial, office, and public and semi-public uses to the existing region. In essence, the proposed land use designations would foster strong, visually attractive regional commercial center with a mix of tenants to serve both local and regional needs; and

WHEREAS: Approval of the General Plan Amendment furthers the goals and objectives of the General Plan by establishing regional shopping centers located at major intersections and that Henderson Avenue and Newcomb Street are identified as Major Arterials pursuant to the General Plan Circulation Element; and

WHEREAS: On December 2, 2014, the City Council adopted a resolution approving a Mitigated Negative Declaration for the General Plan Amendment and Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) and development of the project in a manner consistent with City codes and plans.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Porterville does hereby make the following findings:

1. The proposed General Plan Amendment has been requested by the applicant to accommodate opportunities for regional commercial development that was unanticipated at the time of the adoption of the General Plan. The General Plan

**ATTACHMENT  
ITEM NO. 4**

Amendment from High Density Residential and Medium Density Residential to Retail Centers would allow for the intended development of an approximate 2,418 square foot drive-through restaurant. In essence, the proposed land use designations would foster strong, visually attractive regional commercial center with a mix of tenants to serve both local and regional needs.

2. Based on review of application materials and submitted plans, the proposed project serves to fulfill the goals of the General Plan as adopted, and the amendment of the land use designation on the subject parcel Street (APNs 245-070-087, 245-070-036, 245-070-047 and 245-070-083) does not infringe on the goals of the General Plan to maintain transitions between types and intensities of land use.
3. That a Mitigated Negative Declaration was prepared for the project in accordance with the California Environmental Quality Act and was transmitted to interested agencies and made available for public review and comment. The review period ran for twenty (30) days, from October 31, 2014, to November 30, 2014.
4. The City Council is the decision-making body for the project.

BE IT FURTHER RESOLVED: That the City Council does hereby approve the General Plan Amendment from High Density Residential and Medium Density Residential to Retail Centers for those four parcels located at the southwest corner of Henderson Avenue and Newcomb Street (APNs 245-070-087, 245-070-036, 245-070-047 and 245-070-083).

PASSED, APPROVED AND ADOPTED this 2nd day of December 2014.

By: \_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
APPROVING ZONE CHANGE (PRC 2014-026-GZ) FROM CN (NEIGHBORHOOD  
COMMERCIAL) AND RM-2 (MEDIUM DENSITY RESIDENTIAL) TO CR (RETAIL  
CENTERS) FOR THAT 1.3± ACRE SITE DESCRIBED HEREIN LOCATED AT THE  
SOUTHWEST CORNER OF HENDERSON AVENUE AND NEWCOMB STREET

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of December 2, 2014, conducted a public hearing to approve findings and consider Zone Change PRC 2014-026-GZ, being a change of zone from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) located at the southwest corner of Henderson Avenue and Newcomb Street (APNs 245-070-087, 245-070-036, 245-070-047 and 245-070-083); and

WHEREAS: The City Council of the City of Porterville determined that the proposed Zone Change (PRC 2014-026-GZ) is consistent with the guiding and implementation policies of the adopted 2030 General Plan; and

WHEREAS: Development of the project area would require additional review by the Project Review Committee and would be subject to the City's development standards and the General Plan Land Use Implementation Policies, including but not limited to General Plan Land Use Implementation Policy LU-I-21 (prohibits new strip commercial development); and

WHEREAS: That a Mitigated Negative Declaration was prepared for the project in accordance with the California Environmental Quality Act and was transmitted to interested agencies and made available for public review and comment. The review period ran for thirty (30) days from October 31, 2014 to December 1, 2014; and

WHEREAS: The City Council made the following findings that the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted.

- a. The project supports and complies with the following General Plan guiding policies:
  - LU-G-1: Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.
  - LU-G-3 Promote sustainability in the design and development of public and private development projects.
  - LU-G-11: Foster strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.
  - LU-G-21: Prohibit new strip commercial developments.
- b. Development of the site would be required to be reviewed by the Project Review Committee and would be subject to the City's development standards.

- c. An amendment to the General Plan designation is being processed concurrently with this Zone Change request. Approval of the Zone Change is contingent upon the approval of General Plan Amendment (PRC 2014-026-GZ), to ensure consistency between the General Plan and Zoning. The Zone Change from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) would foster strong, visually attractive regional commercial center with a mix of tenants to serve both local and regional needs
- d. The subject Zone Change will not create adverse environmental impacts on the biological resources or adjacent neighborhood when mitigation measures are implemented and standards of the Development Ordinance and General Plan are applied to the subsequent development project.

NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of Porterville does ordain as follows:

Section 1: That the following described property in the City of Porterville, County of Tulare, State of California, known as Zone Change PRC 2014-026-GZ, is hereby rezoned from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) pursuant to Section 3 below, for the parcels described herein as Assessor's Parcel Numbers 245-070-087, 245-070-036, 245-070-047 and 245-070-083 located on the southwest corner of Henderson Avenue and Newcomb Street; and

Section 2: It is further ordained that all records of the City of Porterville, together with the official zoning map of the City of Porterville, shall be changed to show the above described real property is rezoned from CN (Neighborhood Commercial) and RM-2 (Medium Density Residential) to CR (Retail Centers) for the site described above, more particularly shown on the attached map as Exhibit "A"; and

Section 3: This ordinance shall be in full force and effect not sooner than thirty (30) days from and after the ordinance's publication and passage, subject to the following condition:

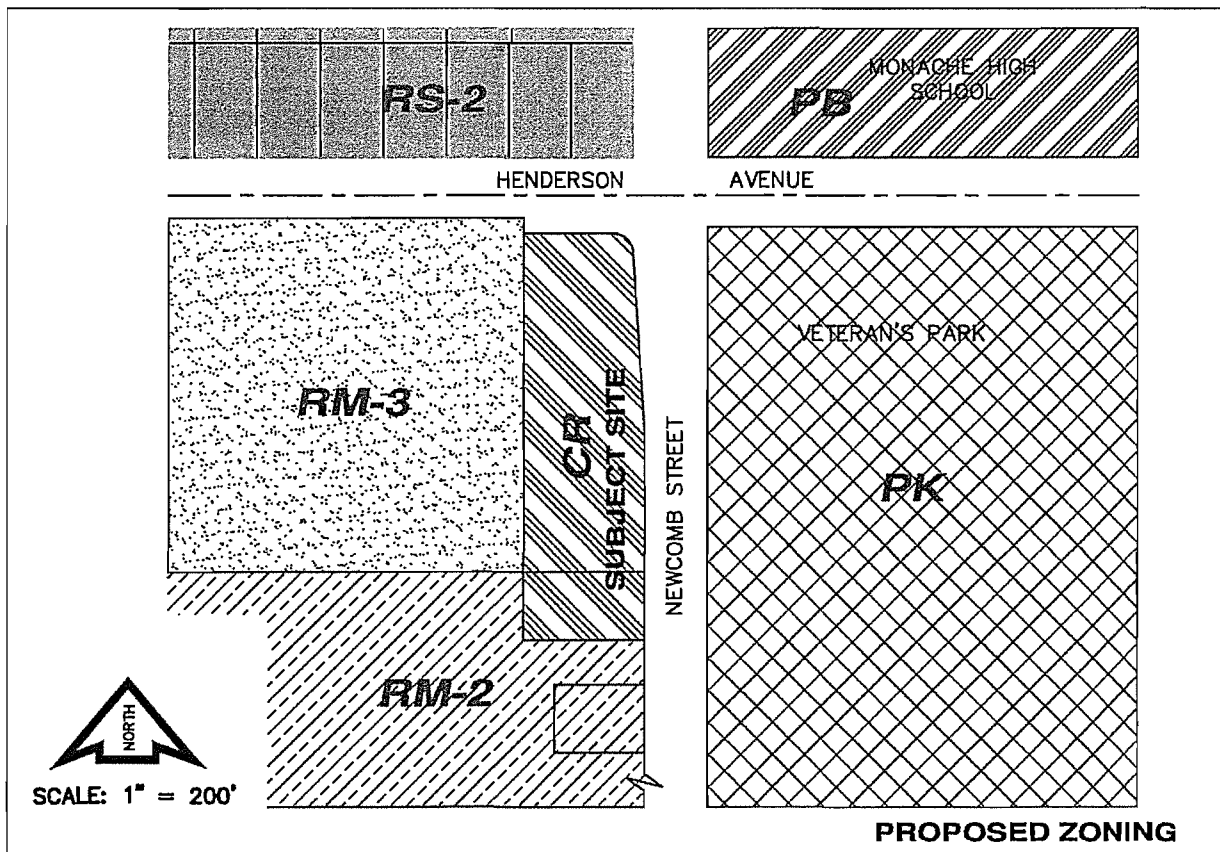
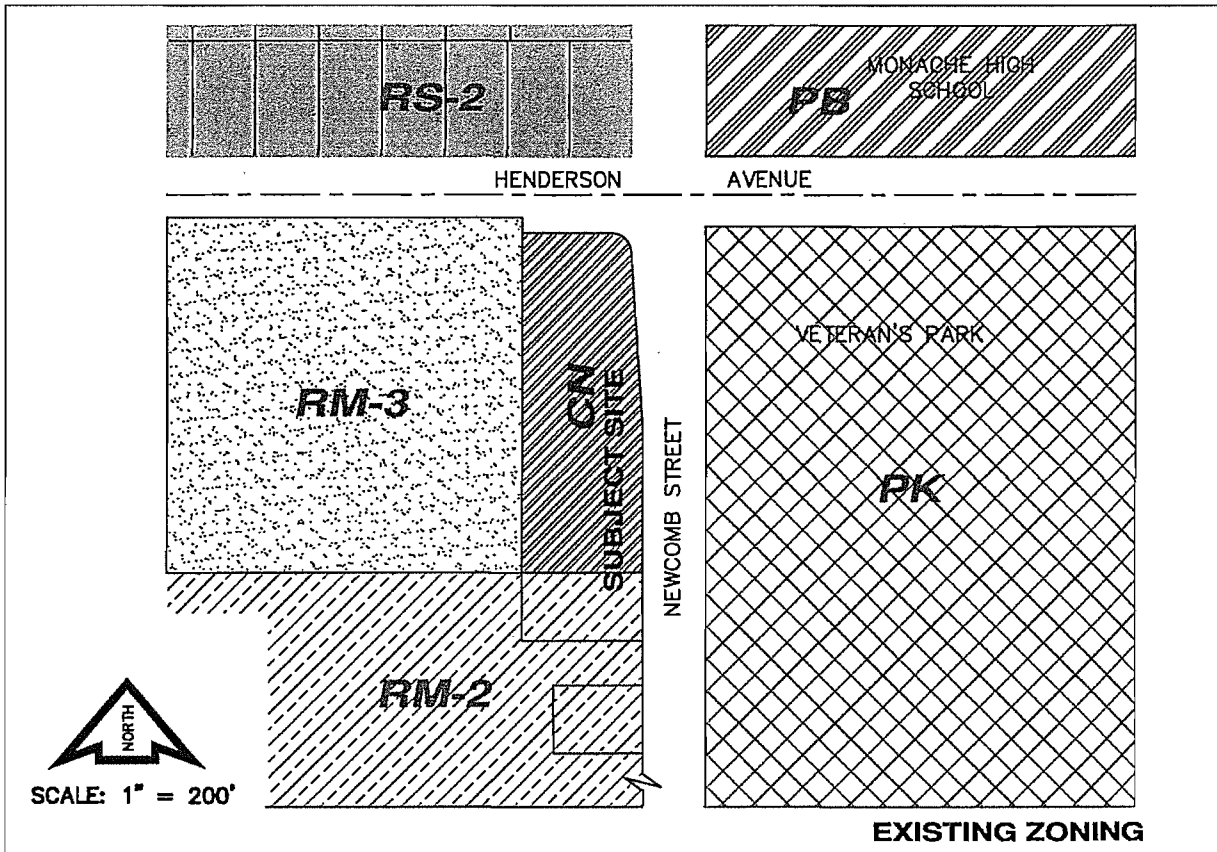
Development of the site would be required to be reviewed by the Project Review Committee and would be subject to the City's development standards.

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of December, 2014.

By: \_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk





CITY COUNCIL AGENDA: DECEMBER 2, 2014

PUBLIC HEARING

TITLE: MODIFICATIONS TO THE MUNICIPAL CODE RELATED TO MOBILE BUSINESSES, FARMER'S MARKETS AND YARD SALES

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The Porterville Municipal Code includes various regulations addressing businesses and the locations and methods in which they operate. Over the last few years, the City Council has reviewed those sections of the Municipal Code related to non-standard businesses activities, such as yard sales and itinerant vendors. The ordinance amendments proposed at this time are in response to past Council direction as well as a recent increase in requests by members of the public. The proposed revisions address three distinct, but inter-related topics: mobile businesses, farmer's markets, and yard sales.


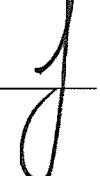
Business licenses are issued by the City of Porterville for four distinct business models:

1. The business operates fully within the city limits, in a building authorized for commercial uses.
2. The business operates outside the city limits, but provides services within the city limits.
3. The business is an itinerant vendor as defined in Chapter 15 of the Municipal Code, and sells goods within the city limits for not more than ninety days unless otherwise excluded.
4. The business is a street vendor or peddler, subject to specific additional business regulations as defined in Chapter 15 of the Municipal Code.

The ordinance amendments proposed herein for Mobile Businesses and Farmer's Markets would accommodate two specific and atypical business models, promoting local businesses by allowing them to legally operate within the city limits.

**Mobile Businesses:**

As the general economy improves after the Great Recession, staff has noted an increase in the number of applicants for new business licenses and home occupation permits where the business activity is a mobile service rather than activities based in the home. In earlier discussions about itinerant vending in November 2011, the City Council had expressed interest in encouraging new locally based businesses while protecting the investment made by more traditional "brick and mortar" businesses. To that end, discussion had focused on additional regulations, fees, and/or enforcement activities on itinerant vendors. However,

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more recent inquiries relate not to vendors coming in from out of town for a short period, but businesses based in city limits that do not have a storefront.

One such inquiry relates to a service-related mobile business where the business owner maintains an office within the home, but the activities occur at the home of the client. Considering the number of services that occur intermittently in the home, it is reasonable that some businesses would have no need for a store front. The Development Ordinance does have provisions for these business models to some extent with the allowance of “offices for personal services such as janitorial service, gardening service, office services, etc.,” but not all businesses meet the definition of personal services. Personal services are defined within the Development Ordinance as recurrently needed services of a personal nature. The proposed language would allow service-oriented businesses to use a home occupation permit to obtain a business license where the services occur at the client’s location, subject to conditions identified in Section 301.09 - Home Occupations, of the Development Ordinance.

### **Farmer’s Markets:**

Since the last consideration by the Council of itinerant vendors, multiple individuals have approached staff with the concept of developing a for-profit farmer’s market that would coordinate other itinerant vendors for sale of food, food products, plants, and arts & crafts with a specific event. The Development Ordinance was drafted with the intent to support such a business, and Farmer’s Markets (interchangeable with “Swap Meet” or “Flea Market” in Chapter 21 of the Municipal Code) are allowed within certain zone districts subject to a Conditional Use Permit. Section 15-1 of the Municipal Code defines itinerant vendors as follows:

ITINERANT VENDOR OR ITINERANT MERCHANT: All persons, both principal and agent, who engage in a temporary or transient business in the city, selling or offering to sell goods, wares or merchandise or any other thing of value, with the intention of conducting such business for a period of less than ninety (90) days, and who for the purpose of such business hires, leases or occupies any room, doorway, vacant lot, building or other place, for the exhibition for sale of goods, wares, merchandise or other thing of value. If any such place, occupied or used for such business, is rented or leased for a period of less than ninety (90) days, such fact shall be presumptive evidence that the business carried on therein is a transient business; and any person so engaged shall not be relieved from the provisions of this section or from payment of the license taxes herein provided for such business, by reason of any temporary association with local dealer, trader, merchant or auctioneer.

It goes on to exempt from the definition of itinerant vendor certain merchants as follows:

The provisions of this definition shall not apply to commercial travelers or selling agents, selling their goods exclusively to merchants, dealers or traders, whether selling for present or future delivery, by sample or otherwise, nor to peddlers, as the

same is defined in this chapter, nor to persons selling fruit, vegetables, eggs, butter or other farm or ranch products of their own farm or dairy, exclusively.

The regulations, as currently written, would allow fruits, vegetables, eggs, and cheese at such an event, but would limit the supplemental sort of items available at many farmer's markets. For example, it is not uncommon to find a farmer's market that sells jams & jellies, cut flowers, live plants (either ornamental or edible), grilled corn, or homemade arts & crafts when sold by the artist or craftsperson at the event. Staff has drafted the following text for consideration that would expand the exclusions within the definition of Itinerant Vendors in Chapter 15:

The provisions of this definition shall not apply to commercial travelers or selling agents, selling their goods exclusively to merchants, dealers or traders, whether selling for present or future delivery, by sample or otherwise, nor to peddlers, as the same is defined in this chapter. Further, the provisions of this definition shall not apply ~~nor~~ to persons selling fruit, vegetables, eggs, butter or other farm or ranch products of their own farm or dairy, exclusively, ~~nor shall it apply to food products defined as "cottage foods" pursuant to the Health and Safety Code, live plants or plant cuttings, or homemade arts or crafts when such items are offered for sale by the preparer at a coordinated Farmer's Market or similar event approved through the City.~~

By including these types of vendors in the exempting provision, such vendors could be allowed at a future Farmer's Market under the umbrella of the business license obtained by the Farmer's Market operator. If the proposed language modification is not approved, a vendor of these specific types would be limited to ninety days of participation at the market, according to the current restrictions within Chapter 15 of the Municipal Code.

To provide clarity, the definition of "Flea Market" or "Swap Meet" in Chapter 15 would also be amended to add "Farmer's Market" as referenced in Chapter 21.

FLEA MARKET OR SWAP MEET: Any collection of two (2) or more vendors gathered together in a common area segregated by spaces, booths or other designated selling locations for the purpose of selling, offering to sell, bartering, or offering to barter, or any combination thereof, goods, wares, merchandise or articles of value. This definition shall be liberally construed so as to apply to any activity commonly known and referred to as a flea market, ~~or swap meet,~~ or farmer's market.

### **Yard Sales:**

Earlier this year, an increased number of code enforcement actions related to a proliferation of yard sale signs resulted in the discovery of perpetual yard sales. As a result of concerns voiced by the public, the Council directed staff to look into increasing the number of yard sales allowed per year, and address the issue of yard sale signage. Staff has developed a new standard related to signage, which was the initial issue. The following language is

proposed to be added to Section 301.21 - Temporary Uses (Chapter 21 - Development Ordinance):

- (b) (3). One sign not exceeding two feet by two feet in size may be posted on the property where the sale is being held during the duration of the sale only. No signs regarding such sale shall be posted on any property other than where the sale is held.

The California Board of Equalization (BOE) requires a person to obtain a seller's permit if yard sales events are three or greater in a 12-month period. Staff is of the opinion that more than four yard sales per year would significantly detract from the residential quality of a neighborhood and is effectively a commercial enterprise, which should be conducted in a commercially zoned district or at an event coordinated for such activities such as the Porterville swap meet. To establish a permit process that accommodates more than two yard sales per year, staff recommends the best way to maintain compliance with the BOE is to use the City's existing business license permit process, supplemented by a home occupation permit. Section 301.09, Home Occupations, of the Development Ordinance would be amended to specify conditions related to additional yard sales as follows:

- (p) More than two yard sales per year, but not more than four yard sales per year, may be permitted subject to issuance of a business license and a home occupation permit subject to the following standards:
  - (1) A Seller's Permit must be obtained through the State Board of Equalization prior to the date of the third yard sale.
  - (2) The sales events must be compliant with the provisions of Section 301.21, Temporary Uses, of this Chapter.

Additionally, Section 301.21(b) - Temporary Uses, would be further amended to read:

- (1) Garage sales are limited to no more two (2) events for no more than three (3) consecutive days in any six (6) month period.

Section 18-8.2: Sale of Personal Property from Residential Premises of the Municipal Code would be amended as follows:

18-8.2 B. Time And Place of Sale: Only two (2) such sales may be conducted at a particular place in any six (6) month period. No sale shall continue more than three (3) days. Sales shall be conducted between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. only.

ENVIRONMENTAL: The proposed ordinance serves to provide greater clarity to uses as identified in the Porterville 2030 General Plan, and the proposed ordinance is an implementation measure of the policies, goals and objectives of the Plan. The Environmental Coordinator made a determination on the basis of substantial evidence that no additional environmental review is necessary beyond the environmental review already considered for the General Plan and the Development Ordinance.

RECOMMENDATION: That the City Council:

1. Approve the proposed ordinance for the Development Code and Municipal Code and give first reading to the draft ordinance; and
2. Waive further reading and order the Ordinance to print.

ATTACHMENTS: Draft Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
AMENDING CHAPTER 21, SECTION 301.09 OF THE PORTERVILLE MUNICIPAL CODE  
CONCERNING MOBILE BUSINESSES, AMENDING CHAPTER 15, SECTION 15-1 OF  
THE PORTERVILLE MUNICIPAL CODE CONCERNING DEFINITIONS OF ITINERANT  
VENDORS, AND AMENDING CHAPTER 21, SECTION 301.21 OF THE PORTERVILLE  
MUNICIPAL CODE CONCERNING YARD SALE SIGNAGE

WHEREAS, the City Council has reviewed the current limitations on atypical business models and found that accommodations could be made that would encourage development and growth of local businesses without compromising the success of existing businesses in the city; and

WHEREAS, the City Council finds that complaints of excessive signage advertising yard sales may be reduced if specific parameters were clearly defined for residents throughout the city; and

WHEREAS, Pursuant to State and local environmental regulations, the proposed ordinance amendments serve to provide greater clarity to uses as identified in the Porterville 2030 General Plan, and the proposed ordinance is an implementation measure of the policies, goals and objectives of the Plan. The Environmental Coordinator made a determination on the basis of substantial evidence that no additional environmental review is necessary beyond the environmental review already considered for the General Plan and the Development Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES HEREBY ORDAIN as follows:

SECTION 1. The Porterville Municipal Code, Chapter 21, Series 300, Chapter 301.09 is hereby amended as follows:

Home occupations that are carried on by an occupant of a dwelling unit for gainful employment, are clearly incidental and subordinate to the use of the structure for dwelling purposes and that do not change the residential character of the primary use, are allowed and shall be operated in compliance with the following standards. Home occupations are subject to zoning conformance approval pursuant to Chapter 602, "Zoning Conformance Review".

(a) Permitted Uses: Home occupations generally include, but are limited to the following uses:

- (1) Professional offices.
- (2) Offices for personal services such as janitorial service, gardening service, office services, etc.
- (3) Dressmaking, millinery, and other home sewing work.

**ATTACHMENT NO. 1**

- (4) Handicrafts such as weaving, leatherwork, and other arts and crafts.
- (5) Instructional classes, not exceeding two (2) students at one time.
- (6) Internet sales, mail order or direct sales provided no merchandise is sold on the premises.
- (7) Cottage food operations.

(b) Prohibited Uses: The following uses are not permitted as a home occupation:

- (1) The repair, reconditioning, servicing or manufacture of any internal combustion or diesel engine or of any motor vehicle, including automobiles, trucks, motorcycles, or boats.
- (2) Repair, fix it or plumbing shops.
- (3) Uses that entail the harboring, training, raising, or grooming of dogs, cats or other animals, on the premises.
- (4) Uses that entail food handling, processing or packing, other than specialized minor cooking or baking.
- (5) Healing arts.
- (6) Spiritual advisory service (fortune telling).

(c) The residential use remains the primary activity on the property.

(d) No sign shall be publicly displayed on the premises relating to the home occupation or product thereof.

(e) No person not residing on the premises may be employed at the site of the home occupation.

(f) Sale of goods on the premises shall be limited to the products of the home occupations, and no other merchandise or goods shall be sold, kept or displayed for the purposes of sale on the premises.

(g) The home occupation shall not attract or generate excessive auto or foot traffic, require additional off street parking spaces, involve the use of commercial vehicles for delivery of materials or supplies to or from the premises, or exceed six (6) patrons or customers for any calendar day.

(h) No use of materials, mechanical equipment, utilities, or community facilities beyond that normal to the use of the property for residential purposes shall be permitted.

- (i) Storage related to the home occupation shall be confined to the dwelling or accessory building.
- (j) No dwelling or accessory buildings shall be built, altered, finished, or decorated externally for the purposes of conducting the home occupation in such a manner as to change the residential character and appearance of the dwelling, or in such a manner as to cause the structure to be reasonably recognized as a place where a home occupation is conducted.
- (k) No garage or accessory building shall be altered or used in such a manner that would reduce the number of covered parking spaces required in the district in which it is located.
- (l) Not more than one vehicle of not more than one ton capacity used in connection with the home occupation shall be kept on the site. Any trailer, wheeled equipment, or any vehicle displaying or advertising the home occupation shall not be visible from off the premises.
- (m) The home occupation shall not involve the use of power equipment on the premises using motors exceeding one horsepower combined capacity.
- (n) No equipment or process shall be used which creates noise, vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the lot if the occupation is conducted in a single-family detached residence, or outside the dwelling unit if conducted in other than a single-family detached residence. No equipment or process shall be used which creates visual or audible electrical interference in any radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.
- (o) Service oriented mobile businesses that provide services at the location of a client may function as a home based business, where compliant with all other provisions of this section and subject to the following standards:
  - (1) No business activities other than office activities occur on the premises. A client may not come to the home of the business to use the mobile unit.
  - (2) The primary business activity involves provision of services that by their nature are intermittent and convenient to be provided at the home or business of the client. Examples include: mobile notary, personal services, minor vehicle repair not involving engines as prohibited above (windshield repair or battery replacement), computer maintenance and repair.
  - (3) Sale of goods is permitted only as an accessory to the service oriented use, such as sale of a windshield when it is replaced, or a new hard-drive when it is required and installed as a part of a computer repair.
- (p) More than two yard sales per year, but not more than four yard sales per year, may be permitted subject to issuance of a business license and a home occupation permit subject to the following standards:

- (1) A Seller's Permit must be obtained through the State Board of Equalization prior to the date of the third yard sale.
- (2) The sales events must be compliant with the provisions of Section 301.21 of this Chapter.

SECTION 2. The Porterville Municipal Code, Chapter 15, Article I, Section 15-1 is hereby amended as follows:

ITINERANT VENDOR OR ITINERANT MERCHANT: All persons, both principal and agent, who engage in a temporary or transient business in the city, selling or offering to sell goods, wares or merchandise or any other thing of value, with the intention of conducting such business for a period of less than ninety (90) days, and who for the purpose of such business hires, leases or occupies any room, doorway, vacant lot, building or other place, for the exhibition for sale of goods, wares, merchandise or other thing of value. If any such place, occupied or used for such business, is rented or leased for a period of less than ninety (90) days, such fact shall be presumptive evidence that the business carried on therein is a transient business; and any person so engaged shall not be relieved from the provisions of this section or from payment of the license taxes herein provided for such business, by reason of any temporary association with local dealer, trader, merchant or auctioneer.

The provisions of this definition shall not apply to commercial travelers or selling agents, selling their goods exclusively to merchants, dealers or traders, whether selling for present or future delivery, by sample or otherwise, nor to peddlers, as the same is defined in this chapter. Further, the provisions of this definition shall not apply to persons selling fruit, vegetables, eggs, butter or other farm or ranch products of their own farm or dairy, exclusively, nor shall it apply to food products defined as "cottage foods" pursuant to the Health and Safety Code, live plants or plant cuttings, or homemade arts or crafts when such items are offered for sale by the preparer at a coordinated Farmer's Market or similar event approved through the City.

FLEA MARKET OR SWAP MEET: Any collection of two (2) or more vendors gathered together in a common area segregated by spaces, booths or other designated selling locations for the purpose of selling, offering to sell, bartering, or offering to barter, or any combination thereof, goods, wares, merchandise or articles of value. This definition shall be liberally construed so as to apply to any activity commonly known and referred to as a flea market, swap meet, or farmer's market.

SECTION 3. The Porterville Municipal Code, Chapter 21, Series 300, Chapter 301.21 is hereby amended as follows:

#### 301.21: TEMPORARY USES

(b) Garage Sales: A garage or yard sale may be permitted on any developed lot in an R district, in accordance with Section 18-8.2 of the Municipal Code and the following standards:

- (1) Garage sales are limited to no more than three (3) consecutive days in any six (6) month period.



(2) All merchandise to be sold shall be displayed on a private lot and not within the public right of way.

(3) One sign not exceeding two feet by two feet in size may be posted on the property where the sale is being held during the duration of the sale only. No signs regarding such sale shall be posted on any property other than where the sale is held.

SECTION 4. The Porterville Municipal Code, Chapter 18, Article 8.2 is hereby amended as follows:

18-8.2 Sale of Personal Property from Residential Premises

B. Time And Place of Sale: Only two (2) such sales may be conducted at a particular place in any six (6) month period. No sale shall continue more than three (3) days. Sales shall be conducted between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. only.

SECTION 5. This ordinance shall be in full force and effect not sooner than thirty days from and after the ordinance's publication and passage.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of December, 2014.

By: \_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

SUBJECT: Consideration of Modification to Loan Agreement and Amendment to License and Development Agreement with the Tulare County Junior Livestock Show and Community Fair

SOURCE: City Manager

COMMENT: At its meeting on September 7, 2010, the City Council approved direct financial assistance from the City to the Fair by a Construction Loan Agreement, whereby up to \$2,000,000 in City financing would be made available to the Fair at an annual interest rate of three percent (3%) over a ten (10) year amortization period, with no prepayment penalty. The purpose of the financing was to provide assistance to the Fair to complete construction in relocating from its original Downtown site that now serves as the location of the South County Justice Center. Upon completion of construction in 2011, the Fair financed a total amount of \$1,900,283.11, and consistent with the Agreement, began making semi-annual payments of \$110,620.00 in January 2012. For the past three years, the Fair has made its payments, paying the balance of financing down to \$1,387,540.42 (please see attached financing schedule).

Beginning in January 2015, the Fair has requested that the City Council consider a modification to the Construction Loan Agreement, whereby the Fair would first pay \$132,860.97 toward reducing the current principal to \$1,200,000, then refinance the new balance over twenty-five (25) years at an annual interest rate of four percent (4%). Instead of semi-annual payments in January and July of each year, the Fair would make a single annual payment in July (please see attached financing schedule). Also, the Fair proposes to modify the License and Development Agreement regarding the ten (10) acre joint-use property immediately adjacent to the east of the Fair, to designate the property as exclusive use for the Fair, and in consideration not seek reimbursement for eligible development expenses in (approximately \$60,000) of the property as specified in the Agreement (Part 4.3.3).

As an alternative, the Fair has pursued independent financing through the Bank of the Sierra, however, given the City owns the fifteen (15) acres of land upon which the Fair is located, the City would need to commit the property as collateral to the Bank's loan. Under City financing, the City maintains control of the property, and per the Construction Loan Agreement in the event of default, would assume possession of Fair facilities without a foreclosure process or other compensation for improvements on the property.

C/M



Item No. 18

Consistent with Council's consideration and direction, the City Attorney can draft an Amendment to the Construction Loan Agreement, License and Development Agreement, and Promissory Note.

RECOMMENDATION: That the City Council consider the request of the Fair to refinance its Construction Loan Agreement, as well as Amendment to the License and Development Agreement, and provide direction to staff accordingly.

ATTACHMENTS: 1. Current Loan Amortization Schedule  
2. Proposed Loan Amortization Schedule  
3. Construction Loan Agreement  
4. License and Development Agreement

Porterville Fair  
Amortization Schedule - City of Porterville Construction Loan  
**Equal Payments** - 2 payments per year for 10 years

PRINCIPAL	\$ 1,900,283.11
INTEREST	3.0000%
# OF PAYMENTS	20
PMTS/YEAR	2
PAYMENT	\$ 110,620.00

				PRINCIPAL	
	DUE	PMT	INTEREST	PRINCIPAL	BALANCE
1	1/15/2012	110,620.00	27,391.80	83,228.20	1,817,054.91
2	7/15/2012	110,620.00	27,255.82	83,364.18	1,733,690.73
3	1/15/2013	110,620.00	26,005.36	84,614.64	1,649,076.09
4	7/15/2013	110,620.00	24,736.14	85,883.86	1,563,192.24
5	1/15/2014	110,620.00	23,447.88	87,172.12	1,476,020.12
6	7/15/2014	110,620.00	22,140.30	88,479.70	1,387,540.42
7	1/15/2015	110,620.00	20,813.11	89,806.89	1,297,733.53
8	7/15/2015	110,620.00	19,466.00	91,154.00	1,206,579.53
9	1/15/2016	110,620.00	18,098.69	92,521.31	1,114,058.22
10	7/15/2016	110,620.00	16,710.87	93,909.13	1,020,149.10
11	1/15/2017	110,620.00	15,302.24	95,317.76	924,831.33
12	7/15/2017	110,620.00	13,872.47	96,747.53	828,083.80
13	1/15/2018	110,620.00	12,421.26	98,198.74	729,885.06
14	7/15/2018	110,620.00	10,948.28	99,671.72	630,213.34
15	1/15/2019	110,620.00	9,453.20	101,166.80	529,046.54
16	7/15/2019	110,620.00	7,935.70	102,684.30	426,362.23
17	1/15/2020	110,620.00	6,395.43	104,224.57	322,137.67
18	7/15/2020	110,620.00	4,832.07	105,787.93	216,349.73
19	1/15/2021	110,620.00	3,245.25	107,374.75	108,974.98
20	7/15/2021	110,620.00	1,634.62	108,985.38	(10.40)
		<u>2,212,400.00</u>	<u>312,106.49</u>	<u>1,900,293.51</u>	

Porterville Fair

Amortization Schedule - City of Porterville Construction Loan (Proposed)

**Equal Payments** - 1 payment per year for 25 years

PRINCIPAL	\$ 1,200,000.00
INTEREST	4.0000%
# OF PAYMENTS	25
PMTS/YEAR	1
PAYMENT	\$ 76,814.36

					PRINCIPAL
	DUE	PMT	INTEREST	PRINCIPAL	BALANCE
1	7/15/2015	76,814.36	48,000.00	28,814.36	1,171,185.64
2	7/15/2016	76,814.36	46,847.43	29,966.93	1,141,218.71
3	7/15/2017	76,814.36	45,648.75	31,165.61	1,110,053.09
4	7/15/2018	76,814.36	44,402.12	32,412.24	1,077,640.86
5	7/15/2019	76,814.36	43,105.63	33,708.73	1,043,932.13
6	7/15/2020	76,814.36	41,757.29	35,057.07	1,008,875.06
7	7/15/2021	76,814.36	40,355.00	36,459.36	972,415.70
8	7/15/2022	76,814.36	38,896.63	37,917.73	934,497.97
9	7/15/2023	76,814.36	37,379.92	39,434.44	895,063.53
10	7/15/2024	76,814.36	35,802.54	41,011.82	854,051.71
11	7/15/2025	76,814.36	34,162.07	42,652.29	811,399.42
12	7/15/2026	76,814.36	32,455.98	44,358.38	767,041.03
13	7/15/2027	76,814.36	30,681.64	46,132.72	720,908.31
14	7/15/2028	76,814.36	28,836.33	47,978.03	672,930.29
15	7/15/2029	76,814.36	26,917.21	49,897.15	623,033.14
16	7/15/2030	76,814.36	24,921.33	51,893.03	571,140.10
17	7/15/2031	76,814.36	22,845.60	53,968.76	517,171.35
18	7/15/2032	76,814.36	20,686.85	56,127.51	461,043.84
19	7/15/2033	76,814.36	18,441.75	58,372.61	402,671.23
20	7/15/2034	76,814.36	16,106.85	60,707.51	341,963.72
21	7/15/2035	76,814.36	13,678.55	63,135.81	278,827.91
22	7/15/2036	76,814.36	11,153.12	65,661.24	213,166.67
23	7/15/2037	76,814.36	8,526.67	68,287.69	144,878.98
24	7/15/2038	76,814.36	5,795.16	71,019.20	73,859.78
25	7/15/2039	76,814.36	2,954.39	73,859.97	(0.19)
		<u>1,920,359.00</u>	<u>720,358.81</u>	<u>1,200,000.19</u>	

## CONSTRUCTION LOAN AGREEMENT

THIS AGREEMENT is executed by the TULARE COUNTY JUNIOR LIVESTOCK SHOW AND COMMUNITY FAIR, hereinafter called "FAIR," licensee of certain real property in the County of Tulare, State of California, described in Exhibit "A" attached hereto, for the purpose of obtaining a loan from the CITY OF PORTERVILLE, owner of said real property, hereinafter called "CITY," the proceeds of which shall be used for the construction of certain improvements upon said real property consisting of Fairgrounds facilities as listed in Section 4.2 (Phases 1 through 3) of the License and Development Agreement between the parties dated December 10, 2009 (attached hereto as Exhibit "B"). This loan agreement is contingent upon execution of Amendment No. 1 to License and Development Agreement Between City of Porterville and Tulare County Junior Livestock Show and Community Fair (also attached hereto as part of Exhibit "B").

### LOAN AMOUNT:

1. City shall loan to Fair the funds necessary for Fair to have constructed on the licensed real property, the improvements identified in Exhibit "B" in an amount not to exceed TWO MILLION DOLLARS (\$2,000,000.00). The actual amount of the loan shall be determined upon completion of all such improvements and the submission by Fair to City of proper evidence of costs of said improvements, as more fully set forth hereinafter. Said loan shall be evidenced by a Promissory Note consistent with the terms of this Agreement and executed by the parties, the form of which is attached hereto as Exhibit "E."

### DISBURSEMENTS FROM LOANS IN PROCESS ACCOUNTS:

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2. (a) From said total the following Loans In Process Accounts shall be established at City:

Account "A" for onsite construction ..... \$ 1,900,000.00

Account "B" for contingency ..... \$ 100,000.00

(b) As to the above accounts which are established, the following shall prevail:

Account "A" shall be used for the purpose of defraying the cost of construction of improvements contemplated by the plans and specifications heretofore approved by City.

Account "B" shall be a contingency account and may be used by City in its discretion to pay any shortages for the items for which Account "A" is established.

(c) Accounts "A" and "B" are to be disbursed by City during the progress of the work of construction on a monthly basis after review and approval by the Oversight

Committee per 2(d) below. Fair shall, as a condition precedent to the monthly disbursement of any of the funds from said Accounts "A" and "B", furnish City and Oversight Committee with bills, invoices or other evidences of costs incurred by Fair equal to the total funds requested to be disbursed from said accounts, and also furnish releases of lien rights covering work performed and materials furnished for said improvements. All funds disbursed by City from said accounts will be received by Fair in trust for the purpose of fully paying all contractors, subcontractors, materialmen, laborers and others engaged in the construction of the subject improvements.

(d) Fair shall establish an Oversight Committee to meet monthly to review and approve for submission to City all such requests for disbursements. Membership in said Oversight Committee shall be as set forth in Exhibit "C" attached hereto and incorporated by this reference and shall include at least one representative of City.

(e) City may defer making any disbursement from said Accounts "A" and "B" (i) until it receives evidence that the work being performed conforms with the plans and specifications approved by City, or, if no plans and specifications are required, then in accordance with good construction practices, and in any event in compliance with all laws and regulations of local, federal or state authorities relating thereto; (ii) until City's authorized representative certifies in writing that the construction required for the making of such disbursement has been completed; (iii) until any default existing under the provisions of this agreement has been corrected; (iv) so long as any conflicting claims based upon assignments, or otherwise, are being made to any of the funds in said accounts; (v) so long as any notice to withhold served upon City remains unsatisfied, or any lien or claim of mechanics, materialmen or others affecting said real property appears and remains of record, or any suit upon any such notice to withhold or for the foreclosure of any such lien or claim is pending; and (vi) so long as any levy or service of any process affecting or appearing to affect the funds in said accounts or any part thereof remains in force.

(f) City shall disburse said funds within five (5) days of its approval of all requests submitted in conformance with Subsections 2 (c), (d) and (e) hereinabove.

#### **INTEREST ON DISBURSEMENTS:**

3. Interest shall accrue on each disbursement made by City from all of said Loans in Process Accounts at the rate of three percent (3%) per annum, compounded semi-annually on each January 15 and July 15.

#### **PAYMENTS:**

4. Fair shall repay said loan, including principal and interest, in twenty (20) semi-annual payments, commencing with an interest only payment due on or before January 15, 2011, and interest and principal payment due on or before July 15, 2011, and each succeeding January 15 and July 15 thereafter until paid in full. The term of

the loan shall be ten (10) years commencing on January 15, 2011 and terminating on January 15, 2021.

It is anticipated that all construction of improvements shall be completed on or before December 31, 2010. At the time of such completion the actual amount of the loan shall be determined based upon the total of disbursements from the Loans in Process Accounts set forth in Paragraph 2 above. City shall then establish the principal/interest portions of the semi-annual payments by dividing the amount of the loan into twenty (20) payments amortized over 10 years, and a copy of said calculation shall be attached hereto as Exhibit "D" and incorporated herein by this reference. If construction and/or disbursements are not completed prior to the first payment deadline, until construction/disbursements are completed, at least 30 days prior to the payment due date for each semi-annual payment, City shall provide to Fair an invoice with the specific payment amount due in accord with this agreement.

**PREPAYMENT:**

5. Fair may, at any time, prepay any or all of the amount then due and payable without imposition of any prepayment penalty.

**COMMENCEMENT OF CONSTRUCTION AND COMPLIANCE WITH PLANS AND SPECIFICATIONS:**

6. (a) Fair shall promptly commence construction of said improvements and continue such construction diligently and without delay in a good and workmanlike manner. Fair will complete such improvements in accordance with the plans and specifications approved by City, including any additional specifications prescribed by City, and in compliance with all requirements of governmental authorities having or asserting jurisdiction.

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(b) No change shall be made in the plans and specifications approved by City, which would result in said improvements having a value less than the value which would have existed had such deviation not occurred. In the event a change in the plans or specifications results in a decrease in the value of any improvement, City may reduce the principal amount of the loan by an amount equivalent to the reduction in value of said improvements.

(c) Fair, should City so request, will immediately upon completion of the building foundations cause a survey to be made and certified by a licensed engineer or surveyor, showing that said foundations are located entirely within the property lines and do not encroach upon any easement or breach or violate any covenant, condition or restriction of record, or any building or zoning ordinance.

(d) It is anticipated that all construction shall be completed on or before December 31, 2010. Should Fair determine this will not happen, it shall promptly so notify City, in writing, and provide a new scheduled completion date.



## **NO PURCHASES UNDER CONDITIONAL SALES AGREEMENTS, ETC.:**

7. No supplies, materials, equipment, fixtures, carpets, appliances, or any part of said improvements shall be purchased or installed under any conditional sales agreement, lease or under any other arrangement wherein the right is reserved or accrues to anyone to remove or to repossess any such items without prior written approval of the City. It is expressly agreed that all such items (other than leased items approved by City) become a part of the real property upon delivery to the site. It is understood by City and Fair that certain items such as fire and burglar alarms, video, and telephone equipment are routinely leased rather than purchased and remain the property of the installer.

## **SECURITY AGREEMENT:**

8. Fair hereby grants to City a security interest in all supplies, materials, fixtures, carpets, appliances, furniture or equipment now or hereafter located on said real property, together with all proceeds thereof, including insurance proceeds paid or payable as the result of any loss, injury or damage of the foregoing collateral, whether or not City is named beneficiary under any such insurance. Upon request, from time to time, Fair shall furnish City with an inventory of such collateral. Nothing contained in this paragraph shall affect the provisions of Paragraph 7.

## **INSURANCE:**

9. Upon request, Fair agrees to furnish City with a valid fire and extended coverage insurance policy covering the collateral described in Paragraph 8 above, written by an insurance company satisfactory to City, in an amount as required by City, with loss payable to Fair and City as their interests may appear.

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## **DEPOSIT BY FAIR OF ADDITIONAL FUNDS AND DISPOSITION OF REMAINING FUNDS AFTER COMPLETION:**

10. If at any time City shall determine that the amount of funds remaining in said accounts is less than the amount required to complete and pay for said improvements and shall demand that Fair deposit with City for credit to said accounts an amount equal to the deficiency as estimated by City, Fair shall comply with such demand within ten (10) days from the date thereof, and the judgment of City shall be final and conclusive in this report.

## **STOPPAGE OF WORK BY CITY:**

11. City or its agents shall have the right at all times to enter upon said real property and the improvements during the period of construction. If the work of construction is not in conformance with the plans specifications or is not otherwise satisfactory to City, it shall have the right to stop the work and order the replacement of any unsatisfactory work theretofore incorporated in said improvements, and to withhold

all disbursements from the accounts until it is satisfied with the work. If the work is not made satisfactory to City within sixty (60) calendar days from the date written notice of the deficiency and demand for cure is provided by the City, such shall constitute a default hereunder. In the event the deficiency is such that the parties agree it will take more than sixty days to remedy, if the work is not made satisfactory within the mutually agreed upon time period in writing, such shall constitute a default hereunder. In addition to all other remedies available to the City, City shall have the option to have such unsatisfactory or deficient work repaired or replaced at Fair's expense, such costs to be subtracted from the available account balances then in place.

#### **DEFAULT BY FAIR:**

12. (a) In the event of a default by Fair in the performance of any of the terms, covenants and conditions contained in this agreement, or any Note given in conjunction herewith, or in the event of the filing of a Bankruptcy or chapter proceeding by or against Fair, all sums disbursed or advanced by City shall at the option of City immediately become due and payable and City shall have no obligation to disburse any further funds from said account, or otherwise, and City shall be released from any and all obligations to Fair under the terms of this agreement.

(b) In addition to any other consequences of default, should Fair fail to make a semi-annual loan payment within thirty (30) days of its due date, it is specifically understood and agreed as follows:

(i) this Construction Loan Agreement shall be terminated without any need for City to provide any further notices to Fair and without any right of Fair to cure such default; and

~~(ii) all improvements constructed or under construction on the subject real~~  
property shall immediately become the property of City with no right of Fair to receive any compensation therefore; and

(iii) that certain License and Development Agreement between City and Fair, dated December 10, 2009, and attached as Exhibit B, and as amended per Exhibit E, shall terminate and Fair shall no longer have any right or interest to occupy or use the subject real property; and

(iv) Fair shall immediately convey copies to City of all documents, records, contracts and invoices from contractors; materialmen, suppliers and parties providing professional services relating to the design, development and construction of all said improvements on the subject real property.

#### **CESSATION OF WORK, COMPLETION BY CITY, ETC.:**

13. Should the work of constructing the improvements cease, specifically including stoppage by City in accordance with Paragraph 11 hereof, or should said work

for any reason whatsoever not progress continuously in a manner satisfactory to City, it being the sole judge as to this requirement, then City may, at its option and without notice, declare Fair to be in default hereunder, and City may thereupon, should it so elect, take possession of said property and let contracts for the completion of said improvements and pay the cost thereof, plus a fee of fifteen (15) percent for supervision of construction, disbursing all or any part of the loan for such purposes; and should the cost of completing said improvements plus such fee exceed the undisbursed balance of the loan, then the amount of such excess may be expended by City, in which event such amount shall be considered as an additional loan to Fair, and the repayment thereof, together with interest thereon at the rate provided in the promissory note, shall be repaid within thirty (30) days after the completion of said improvements, and Fair agrees to pay the same. Fair further hereby authorizes City at its option at any time, whether default exists or not, either in its own name or in the name of Fair, to do any act or thing necessary or expedient in the opinion of City to secure the performance of construction contracts and assure the completion of construction of the improvements substantially in accordance with the plans and specifications, disbursing all or any part of the loan funds for such purposes. In addition to the specific rights and remedies hereinabove mentioned, City shall have the right to avail itself of any other rights or remedies to which it may be entitled under any existing law or laws or as otherwise specified in this Agreement.

#### **MECHANIC'S LIENS AND NOTICES TO WITHHOLD:**

14. In the event of the filing with City of a notice to withhold or the recording of a mechanic's lien pursuant to Division 3, Part 4, Title 15 of the Civil Code of the State of California, City may summarily refuse to honor any request for payment pursuant to this agreement. In the event Fair fails to furnish City with a bond causing such notice or lien to be released within ten (10) days after the filing or recording thereof, such failure shall at the option of City constitute a default under the terms of this agreement.

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#### **INDEMNIFICATION:**

15. Fair agrees to indemnify and hold harmless City from and against any and all claims, damages, losses, liability or expense (including but not limited to attorney's fees) arising from the works of improvements contemplated herein or this loan transaction, including but not limited to, any claim made by any person performing labor or furnishing material by way of a mechanic's lien, stop notice, equitable lien, or other proceeding, and any claims made by any purchasers or the subject property or their successors, or any other person with regard to any claimed defects in design or construction of the improvements.

#### **INVOLVEMENT OF CITY IN LEGAL PROCEEDINGS:**

16. The City shall have the right to commence, to appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds in said account and in connection therewith pay out of said

deposited funds necessary expenses, employ counsel and pay his/her reasonable fees, all of which the undersigned agree to repay to the City upon demand.

**INSPECTIONS BY CITY DO NOT CONSTITUTE SUPERVISION OF CONSTRUCTION:**

17. Fair agrees that City shall be under no obligation to construct or supervise construction of said improvements; that inspections by City of the construction of said improvements shall be for the purpose of protecting the security of City; that such inspections are not to be construed as a representation by City that the improvements have been or will be constructed in strict compliance with said plans and specifications; and that such inspections are not to be construed as a representation that the construction is or will be free from faulty material or workmanship.

**DESIGNATION OF CITY AS FAIR'S AGENT:**

18. Fair does hereby irrevocably appoint, designate, empower and authorize City as Fair's agent, coupled with an interest, to sign and file for record any notices of completion, notices of cessation of labor, or any other notice or written document that City may deem necessary to file or record to protect its interest. The City is hereby irrevocably authorized to deliver copies of this contract or excerpts therefrom to any person, firm or corporation supplying labor, materials, supplies or equipment for the improvements contemplated by this Agreement.

**BOOKS AND RECORDS:**

19. The undersigned Fair and contractor shall maintain complete and accurate books and records showing all of the income and disbursements made in connection with the work of improvements and such books and records shall be available for inspection and copy by the City upon request.

**CITY'S RELIANCE ON STATEMENTS AND DISCLOSURES OF FAIR:**

20. Fair has made certain statements and disclosures in order to induce City to make said loan and enter into this agreement, and in the event Fair has made material misrepresentations or failed to disclose any material fact, City may treat such misrepresentation or omission as a breach of this agreement, and the act of so doing shall not affect any remedies City may have under the promissory note and loan agreement for such misrepresentation or concealment.

**CITY NOT LIABLE FOR ACTS OR OMISSIONS OF FAIR OR OTHERS:**

21. City shall in no way be liable for any acts or omissions of Fair, any agent or contractor employed by Fair, or any person furnishing labor and/or materials used in or related to the construction of said improvements.

**TIME OF THE ESSENCE:**

22. Time is of the essence of this agreement and of each and every provision hereof. The waiver by City of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

**SUCCESSORS AND ASSIGNS, AND INTEGRATED AGREEMENT:**

23. This agreement is made for the sole benefit and protection of Fair and City, and City's successors and assigns, and no other person shall have any right of action or right to rely thereon. This agreement and the other executed loan documents contain all of the terms and conditions agreed upon between Fair and City, and no other

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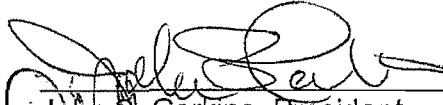
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agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged.

NO MODIFICATION OR CHANGE IN THIS INSTRUMENT SHALL BE VALID UNLESS APPROVED IN WRITING BY AN OFFICER OF CITY.

Executed this 7th day of September, 2010

TULARE COUNTY JUNIOR LIVESTOCK SHOW  
AND COMMUNITY FAIR


  
\_\_\_\_\_  
John S. Corkins, President

  
\_\_\_\_\_  
Dennis Sexton, Vice President

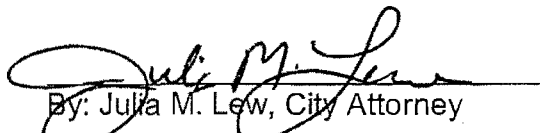
Approved as to form:

\_\_\_\_\_  
By:  
Legal Counsel

\_\_\_\_\_  
CITY OF PORTERVILLE

  
\_\_\_\_\_  
~~Ronald L. Irish, Mayor~~  
Cameron Hamilton, Vice Mayor

Approved as to form:

  
\_\_\_\_\_  
By: Julia M. Lew, City Attorney

LICENSE AND  
DEVELOPMENT AGREEMENT  
(Porterville, California)

THIS PROPERTY LICENSE AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this 10<sup>TH</sup> day of December 2009, by and between the CITY OF PORTERVILLE (the "City"), a municipal corporation, and TULARE COUNTY JUNIOR LIVESTOCK SHOW AND COMMUNITY FAIR ("Fair"), with respect to the following:

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WHEREAS, the City is the owner of an approximate 37± acres of land, located in the City of Porterville, County of Tulare, State of California, more particularly described on Exhibits A-1 and A-2 attached hereto and depicted as the "Property." The Property is currently a part of the Porterville Municipal Airport.

WHEREAS, the Fair desires an exclusive License for the approximate 15 acres of land depicted on Exhibit A-1, and referenced as Parcel 1, to develop as a Fairplex (community fair); and

WHEREAS, the Fair desires to utilize the approximate 10 acres of land depicted on Exhibit A-2, and referenced as Parcel 2, to be used for parking, staging, and a carnival midway during the period of May 1 through June 1 annually, and used throughout the year by the Fair for general uses until such time as the City begins construction, development, or usage of the property whereas the terms of use by the Fair will be modified, but not be unduly limited or eliminated. Such development will be mutually complementary; and

WHEREAS, the City is willing to enter into a License with the Fair under the terms and conditions set forth below.

ACCORDINGLY IT IS AGREED:

**PART 1**  
**LICENSE, TERM, OPTION TO EXTEND, HOLDOVER, ASSIGNMENT,**  
**SUBLICENSING**

**1.1 License.**

The Fair will obtain a License of the Premises located in the City of Porterville, County of Tulare, California, depicted on Exhibit A-1, from the City on the terms and conditions set forth below.

**1.2 Licensee's Usage Date and Terms**

The Fair will be entitled to exclusive use of Parcel 1 of the Premises on the date to be mutually agreed upon by the Fair and the City. If the Fair commences utilization of the Premises on other than the first day of a calendar month, the initial term will consist of the unexpired portion of the calendar month in which the Fair holds the license of the

Premises plus fifty (50) full years from the first day of the calendar month immediately following. The anniversary date will be the first day of the first full month of the term.

### **1.3 Licensee's Option to Extend Term**

Provided Fair is not then in default of this License at maturity of the initial term, the Fair is granted the option to extend this License for a period of two (2) fifty (50) year extensions. In the event the property is not released from FAA obligations at the end of the initial term, said extensions may be subject to Federal approval.

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### **1.4 Assignment and Sublicensing**

The Fair may not assign this Agreement to any organization, nor shall the Fair grant any sublicenses inconsistent with the uses allowed in Section 3.1, without the prior written consent of the City, which consent will not be unreasonably withheld.

## **PART II LICENSE FEE**

### **2.1 Amount**

The Fair will pay the following License Fee to the City for the exclusive use and occupancy of the Property.

#### **2.1.1 Annual License Fee**

##### **2.1.1.1 Tier 1**

The Fair acknowledges that the property is under the purview of the Federal Aviation Administration (FAA) and, as such, commands an annual license fee equal to fair market value for the property. Therefore, until such time as the land is released from FAA obligations, the annual license fee shall be the sum of \$13,500. In the event the Fair takes use of the Property on a day other than the first day of the month, the annual license fee shall include payment of \$37.00 per day for any unexpired portion of the calendar month in which the Fair has possession of the Property. License Fees shall be paid in annual installments on the anniversary date.

The City agrees to provide annual license fee assistance in an amount not to exceed \$13,500 during the license period of the Fair. The assistance is provided from the Porterville Municipal Airport fund as a credit against the debt owed from the Airport to the City. Said assistance shall be available to the Fair for a period not to exceed ten (10) years or until such time as the Fair either (a) purchases the property from the City or (b) is no longer operating at the site.

##### **2.1.1.2 Tier 2**

Upon release of the property from FAA purview, the annual license fee shall be reduced to \$1.00 per year for the remainder of the term of this License and any extensions thereof. Said reduction shall be effective upon the first



anniversary date following the release from the FAA. There shall be no proration nor shall there be any refund of license fees.

### **2.1.2 Place of Payment**

The Fair will pay all license fees at the City of Porterville Finance Department, located at 291 North Main Street, Porterville, California 93257

## **PART III USE OF PREMISES**

### **3.1 Allowed Uses**

The Fair and the Fair's sublicensees will use the Premises to:

- Provide a venue for junior exhibitors of livestock, agricultural products, handicrafts, and other artistic works; and
- Provide a source of community entertainment, as well as a showplace for local businesses, civic groups, and youth groups; and
- Provide a venue for local community groups to participate in community service.

The Fair will use the Premises in compliance with all laws, ordinances, and other governmental regulations now in force or which may hereafter be in force relating thereto, including, but not limited to all building, safety, and public health requirements and regulations. Additionally, at no profit to the Fair, the Fair will make every effort to support the use of the fairgrounds by all community oriented and/or non-profit organizations. These organizations may include, but are not limited to, 4-H Clubs, Future Farmers of America Chapters, Comision Honorifica Mexicana-Americana, Inc., and other community service organizations.

### **3.2 Prohibited Uses**

Fair will not commit or permit the commission of any acts on the Property that:

1. Increase the City's existing rates for, or causes the cancellation of any fire, casualty, liability, or other policy of Lessor insuring the Premises or its contents; or
2. Violate or conflict with any law, statute, ordinance, or governmental rule or regulation, where now in force or hereafter enacted, applicable to the Premises; or
3. Constitute waste on the Premises, or the maintenance of a nuisance as defined by the laws of California; or
4. Adult oriented business or residual uses will not be allowed.

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## PART IV DEVELOPMENT OBLIGATIONS

### 4.1 Development Assistance

4.1.1 To assist with the relocation of the Fair to Parcel 1 of the City-owned property described on Exhibit A-1, the City agrees to provide financial assistance to the Fair from the proceeds of the sale of the Olive Street site upon which the Fairgrounds is currently located. Said assistance shall be the net proceeds from the property sale, exclusive of brokerage, escrow, and other related fees, and is subject to the terms and conditions set forth in this Agreement. ~~The proceeds of the assistance may be utilized by the Fair for relocation, construction of facilities, and related costs. No portion of the assistance may be allocated to costs relating to the operation of the Fair.~~

4.1.2 It is anticipated that the Fair and the City will prepare an application for tax-exempt bonds through California Communities, or a similar organization, in an amount supportable by a capital fund raising campaign for the construction of facilities. Said amount of bonding shall not exceed Two Million Dollars (\$2,000,000.00).

4.2 **Development of Parcel 1 (Exhibit A-1)** Fair agrees to construct upon Parcel 1 those improvements that are related to fair activities. Improvements may be made in Phases as set forth below:

#### **Phase 1**

- Site Preparation
- Installation of On-Site Infrastructure
- Construction of Multipurpose Building #1
- Construction of Livestock Barn
- Construction of Rabbit Barn/Livestock Office
- Construction of Outdoor Stage (2)
- Construction of 100' x 200' Entertainment Area
- Storage for Pens, Panels, and Livestock Parking
- Preparation of Area for "Kiddie Land"
- Restroom (1)
- Ticket Booth(s)
- Concession Stands
- Bank of the Sierra Structure
- Fire Lanes
- Site Landscaping and Irrigation
- Parking Lot along Teapot Dome Avenue

#### **Phase 2**

- Construction of Livestock Barn
- Construction of Livestock Parking
- Pen and Panel Storage Area
- Restroom #2

### **Phase 3**

#### **Construction of Multipurpose Building #2**

- 4.2.1 Fair will submit plans for Project Review Committee review.
- 4.2.2 Fair will submit complete plans for issuance of building permit for the initial phase within six (6) months from date of this Agreement.
- 4.2.3 City Connection Fees (Impact Fees) including Trunk Line Sewer Fees, Treatment Plant Fees, Sewer Connection Charges, Water Trunk Fees, Water Connection Fees, Street Light Fees, Storm Drainage Fees, Fire Hydrant Fees, ~~Transportation Impact Fees, Frontage Improvement~~ Valuation Threshold, and Park Impact Fees will be calculated for the project. Said fees shall be deferred while the site remains under the ownership of the City. In the event that the Fair acquires ownership of the site, fees shall become due and payable to the City. Furthermore, Fair shall have the option to enter into a Development Fee Payment Plan for the payment of said fees.
- 4.2.4 Fair will be responsible for all fees related to the issuance of a building permits, with the exception of those fees identified in Section 4.2.3 above. Fair shall have the option to enter into a Development Fee Payment Plan for the payment of said fees.
- 4.2.5 Fair will be responsible for utility connections and associated fees.
- 4.2.6 Concurrent with the Agreement, Fair will apply for an alcohol agreement, which shall not be unreasonably withheld. Fair desires to utilize an "Adult Refreshment Area" concept to keep the consumption of alcohol within contained areas and away from the general public. A copy of said agreement is included as Exhibit B.
- 4.2.7 City hereby agrees to expedite the issuance of the building permit for the Project in order that the building permit or comments will be available within fourteen (14) days of submittal of complete building plans, inclusive of electrical and plumbing plans.
- 4.2.8 City will provide water and sewer services to the property boundary.
- 4.2.9 City will make every effort to obtain approval for the release of land from the purview of the Federal Aviation Administration within twelve months from the date of this Agreement. All fees and expenses related to the FAA release will be the responsibility of the City.

#### **4.3 Development of Parcel 2 (Exhibit A-2)**

- 4.3.1 City anticipates developing Parcel 2 for shared use by the City, Fair, and other public/governmental use. Future use may include a training/entertainment center.
- 4.3.2 City will provide the Fair exclusive use of all or a portion of Parcel 2 for the thirty-day period surrounding the annual fair, and may be used by the Fair throughout the year for general uses until such time as the City begins construction, development, or usage of the property. Fair will provide insurance pursuant to Section 7 of this Agreement for the use of this parcel.

- 4.3.3 In conjunction with development of Phase I by the Fair, Fair may perform site improvements to Parcel 2. Site work is subject to reimbursement to the Fair upon future development of Parcel 2 by the City, or within four (4) years from the date of the completion of mutually agreed upon improvements, whichever occurs first.
- 4.3.4 City will install curb, gutter, sidewalk, and street paveout along Teapot Dome Avenue.

#### **4.4 Other Obligations**

- ~~4.4.1 City agrees to allow the Fair use of a portion of City's Sports Complex as indicated on Exhibit C located on Scranton Avenue during the thirty-day period surrounding the fair week each year for overflow parking.~~
- 4.4.2 Fair will provide insurance pursuant to Section 7 of this Agreement for times that the Fair is utilizing the Sports Complex for overflow parking.
- 4.4.3 City will prepare and record parcel maps for Parcels 1 and 2 as shown on Exhibit A-1 and A-2.
- 4.4.4 Fair agrees to grant City access to drill a water well(s) as may be deemed necessary by the City. Location(s) of water well(s) will be mutually agreed upon by City and Fair and shall be situated so as not to interfere with Fair operations.

### **PART V MAINTENANCE, REPAIR, AND UPKEEP**

#### **5.1 Licensee's Responsibilities**

Maintenance, repair, and upkeep of the grounds and buildings on Parcel 1 will be solely the responsibility of the Fair. All portions of Parcel 1 shall be kept free and clear of weeds and debris until developed.

#### **5.2 Licensor's Responsibilities**

Maintenance, repair, and upkeep of the grounds and buildings on Parcels 2 and 3 will be solely the responsibility of the City. All portions of Parcels 2 and 3 shall be kept free and clear of weeds and debris until developed.

### **PART VI UTILITIES**

#### **6.1 Licensee's Responsibilities**

Fair shall be responsible for and will pay for all utilities and services furnished to the Property identified on Exhibit A-1, including gas, electricity, telephone, water, trash collection, and all related connection charges.

#### **6.2 Licensor's Responsibilities**

City shall be responsible for and will pay for all utilities and services furnished to the Properties identified on Exhibit A-2 and A-3, including gas, electricity, telephone, water, trash collection, and all related connection charges.

## **PART VII INSURANCE**

### **7.1 Licensee's Insurance**

The Fair, at its own expense, shall procure and maintain, throughout the term of this License, public liability insurance including bodily injury and property damage insuring the Fair and the City with minimum coverage as follows:

- ~~\$1,000,000 for personal injury for each person~~
- \$1,000,000 for personal injury or death of two or more persons in each accident or event.

The policy must contain, or be endorsed to contain, the following:

#### City of Porterville

The City of Porterville, its officers, employees, agents and subtenants must be covered as additional insured as respects liability arising out of activities performed by or on behalf of Lessee, and premises owned, occupied or used by Lessee. The coverage must contain no special limitations on the scope of protection afforded to the City, its officers, employees, or agents.

The Fair shall also procure and maintain, at its expense, throughout the term of this License, insurance against loss or damage to any structures constituting any part of the demised Premises, by fire and lightning, with extended coverage insurance.

The Fair will provide the City with a certificate or certificates of coverage showing the policy or policies are issued by insurers permitted to conduct business in the State of California.

The policy must not be suspended, voided, canceled, or reduced in coverage or in limits, except after 30 days prior written notice has been given to the City.

## **PART VIII TERMINATION FOR CAUSE**

### **8.1 Cause.**

Either party may terminate this Agreement for cause without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement. Cause for the purpose of this Agreement exists if a party:

- (a) is adjudged a bankruptcy; or
- (b) becomes insolvent or has a receiver appointed; or
- (c) makes a general assignment for the benefit of creditors; or

- (d) suffers any judgment which remains unsatisfied for 90 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement; or
- (e) materially breaches this Agreement.

## **8.2 Notice to Defaulting Party.**

For any of the above occurrences except item (e), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated only after the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 90 calendar days of delivery of a written notice specifying the nature of the breach. If the breach is not remedied within that 90-day period, the non-defaulting party may terminate this Agreement by delivering a further written notice specifying the date of the termination. If the nature of breach is such that it cannot be cured within the 90-day period, the defaulting party may deliver a written proposal to the non-defaulting party within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent will not be unreasonably withheld, the defaulting party will immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate after delivering a written notice specifying the date of termination.

## **8.3 Delivery of Notices**

Notices given under Section 8.2 will be deemed delivered as provided in Section 9 below.

## **8.4 Ownership of Improvements**

Upon termination of this Agreement, City shall have the option of purchasing any structures, fixtures, signs, or other improvements made upon the site by Fair over the term of this Agreement. City agrees to reimburse Fair for those improvements being purchased by City an amount determined to be the appraised value at the termination period, less the original financial assistance provided to Fair as stated in Section 4.1 of this Agreement. Fair shall be responsible for the removal of all structures, fixtures, signs, and other improvements not acquired by City and shall restore the premises to the same condition as that existing prior to the erection or installation of improvements. Should the Fair fail or refuse to remove improvements, City may do so at Fair's sole cost and expense.

## **8.5 Obligations Surviving Termination**

Termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

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## PART IX NOTIFICATIONS

9.1 All notices or other communications required or permitted hereunder shall be in writing, and may be personally delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To City:                      City of Porterville  
                                    291 N. Main Street  
                                    Porterville, CA 93257  
                                    Attn: City Clerk

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To Fair:                      Tulare County Junior Livestock Show and  
                                    Community Fair  
                                    P.O. Box 369  
                                    Porterville, CA 93258  
                                    Attn: President

subject to the right of a party to designate a different address for itself by notice similarly given. Any notice so given by United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail as above provided. Any notice not so given by registered or certified mail shall be deemed given upon receipt of the same by the party to whom the same is given.

## PART X AIRPORT DISCLOSURE STATEMENT

10.1 **Notice of Airport in Vicinity:** The subject property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Fair may wish to consider what airport annoyances, if any, are associated with the property before completing this transaction and determine whether they are acceptable.

10.2 **Notice of Intent to Record Restrictive Covenant:** It is the intent of the City of Porterville to record a Restrictive Covenant upon all City-owned property within the Airport Development Area concurrent with this Agreement. A draft of said Covenant is shown as Exhibit D.

## PART XI MISCELLANEOUS PROVISIONS

### 11.1 **Quiet Enjoyment**

Upon payment of the license fees and the performance of all the terms, covenants, and conditions by the Fair to be performed as herein provided, the Fair will be allowed to

peaceably and quietly hold and enjoy the premises during the term of this license, or any extended term thereof.

#### **11.2 Surrender**

The Fair will peaceably surrender use of the Premises upon the expiration or other termination of this License, and will return the Premises to the City in as good a condition as when received, reasonable wear and tear and damage from the elements excepted, except for so much of said Premises as may be injured or destroyed by fire earthquake or other casualty not the fault of the Fair.

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#### **11.3 Addenda**

This Agreement may be modified, amended, or terminated at any time by mutual consent in writing of the parties hereto in the form of an Addendum to the Agreement.

#### **11.4 Entire Agreement Represented**

This Agreement represents the entire understanding between the City and the Fair as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified, waived, or repealed without the written consent of both parties.

#### **11.5 Headings**

Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

#### **11.6 Interpretation**

This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

#### **11.7 No Third Party Beneficiaries**

Unless specifically set forth, the parties to this Agreement do not intend to provide any third party with any benefit or enforceable legal or equitable right or remedy.

#### **11.8 Governing Law**

This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement will be brought in Tulare County California. The City waives the removal provisions of California Code of Civil Procedure Section 394.

#### **11.9 Waivers**

The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.



#### **11.10 Exhibits and Recitals**

All Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

#### **11.11 Conflict with Laws or Regulations; Severability**

This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulations governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases, the remainder of the Agreement will continue in full force and effect. If either party, exercising its sole discretion, elects to defend this Agreement against a third party suit alleging any invalidity in this Agreement, they must do so at their own expense.

**11.11.1 Legal Fees** In the event that an action shall be instituted by either party hereto for the enforcement of any of its rights or remedies in or under this Agreement, the party in whose favor judgment shall be rendered therein shall be entitled to recover from the other party all costs and expenses incurred by said prevailing party in said action, including reasonable attorney's fees as fixed by the court therein.

#### **11.12 Further Assurances**

Each party will execute any additional documents and will perform any further acts which may be reasonably required to affect the purposes of this Agreement. The Fair will, on request by the City, execute appropriate estoppels certificates and attornments in favor of any trust deed holders or encumbrances.

#### **11.13 Assurances of Non-discrimination**

The Fair will not discriminate in employment or the performance of the Work or in the provision of services called for under this Agreement on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

The Fair herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this License is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein licensed nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein licensed.

**11.14 Licensor's Right to Enter to Inspect and Post**

The Fair will permit the City and its agents to enter upon the Premises at all reasonable times for the purpose of posting notices of non-responsibility for alterations or additions made by the Fair, or for the purpose of inspecting the Premises.

**11.15 Brokers**

All negotiations relative to this Agreement have been carried out directly by representatives of the City and the Fair without the participation of brokers, and each party represents to the other that there are no unpaid broker's fees in connection with this Agreement.

**11.16 Successors and Assigns**

This Agreement is binding on and will inure to benefit the successors and assigns of the parties, but nothing in this section shall be construed as consent by the City to any sublicense or assignment by the Fair if such consent is otherwise required by the terms of this Agreement.

**11.17 Representations of Authority**

Each party executing this Agreement represents and warrants to the other parties that the party has full power and authority to execute and deliver this Agreement in the manner contemplated hereby and that this Agreement is binding upon the party in accordance with its terms.

**11.18 Venue**

If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. Fair hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

**11.19 Counsel**

The parties represent and warrant that this Agreement has been freely negotiated and has been reviewed by each party's respective legal counsel.

**11.20 Duplicate Originals**

This Agreement will be executed in duplicate originals.

**11.21 Time is of the Essence**

Time is of the essence for this Agreement.

**PART XII  
REPRESENTATIONS AND WARRANTIES OF CITY**

City hereby makes the following representations and warranties to and agreements with Fair, which are true as of the date hereof, which shall be true as of the date of the License, which are not intended to replace or limit in any manner any express or implied warranty provided under the applicable law and which, except to the extent they relate to events or

circumstances occurring or arising after the License, shall survive the License. Fair shall be entitled to rely upon said representations and warranties notwithstanding Fair's inspections and investigations:

12.1 As of the date of License, City has complied or will comply with all applicable federal, state or local laws, regulations, ordinances or orders and has completed all proceedings or other actions necessary to complete the License and all of the transactions contemplated by this Agreement and the Annual License Fee reflects the fair market License value of the Property as of the date of this Agreement. There are no unrecorded liens or encumbrances affecting the Property and no person or entity has any right, title or interest in or to the Property other than City.

12.2 City has not received notice of, nor does City have any knowledge of, any pending or threatened action of governmental proceeding in eminent domain, zoning change or other proposed change, nor does City know of any fact which might give rise to any such proceeding, nor does City know of any other type of existing or intended use of any adjacent or nearby real property which might adversely affect the use of the Property for Fair purposes.

12.3 There are not presently pending any assessments by any governmental entity or public utility (other than for annual ad valorem real property taxes) of any nature with respect to the Property or any part of the Property. No property tax with respect to the Property is delinquent, and all requirements of all insurance policies with respect to the Property have been, and are being, fully complied with.

12.4 As of the date of the License, there shall be no easements, licenses, leases or tenancies of any type on the Property or any portion of the Property except those approved by Fair in accordance with this Agreement.

12.5 There are no encroachments upon the Property or any portion of the Property or any easement, appurtenance or other interest in the Property except those existing utilities above and below ground surface that are to remain in service. No improvements located on the Property encroach upon any property adjacent to the Property or upon any easement, building setback line, appurtenance or other interest in real property except as shown on the Preliminary Title Report, dated July 7, 2009, and shown as Exhibit E.

12.6 There are no liens or encumbrances against the Property for work performed or commenced or material supplied with respect to the Property, nor can there be claimed against the Property any such lien.

12.7 There is no suit or arbitration, bond issuance or proposal for bond issuance, proposals for public improvement assessment, pay-back agreement, paving agreement, road expansion or improvement agreement, utility moratorium, use moratorium, improvement moratorium, license fee increase moratorium, or legal, administrative or other proceeding or governmental investigation or requirement, formal or informal, existing or pending or threatened which affects the Property or which adversely affects

Fair's ability to develop the Property for Fair purposes, or which imposes any other charge or expense upon, or relating to, the Property which has not been disclosed to Fair in writing prior to the date of this Agreement, or, in the case of any such requirement, fully complied with.

12.8 City has no knowledge, nor has City received notice of any environmental rule, order or regulation which would adversely affect the commercial development on the Property .

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~~12.9 This Agreement is a valid obligation of City and is binding upon City in accordance with its terms.~~

12.10 This Agreement, when executed by City, shall have been duly and properly executed and neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute:

(i) a default or an event which with notice or the passage of time or both would constitute a default under, or a violation or breach of, any indenture, license, lease, franchise, mortgage, deed of trust or other instrument or agreement to which City is a party or by which City, or City's property, including without limitation, the Property, may be bound, or

(ii) an event which would permit any party to any agreement or instrument affecting the Property or affecting City's ability to perform its obligations under this Agreement to terminate it, or permit the holder of any indebtedness to accelerate its maturity, or

(iii) a violation of any statute, order, rule or regulation applicable to City or any portion of the Property.

12.11 After the date of this Agreement, City shall not undertake any work on the Property which may result in the creation of a mechanic's lien on the Property or any portion of this Property.

12.12 City has no knowledge of any adverse geological or soil condition affecting the Property.

12.13 No portion of the Property lies within a flood plain designated by the federal, state or local government.

### **PART XIII FIRST RIGHT OF REFUSAL**

13.1 In the event the City obtains the release of land from purview of the Federal Aviation Administration and desires to sell the released land, Fair shall have the First Right of Refusal for Parcel 1 and Parcel 2.

The purchase price shall be established by the fair market value of the land at the time of the transaction as set forth in an appraisal obtained by the City from a licensed appraiser.

If at the time of offer of land for sale, the Fair is no longer operating upon Parcel 1, this First Right of Refusal shall automatically terminate.

In the event the City makes an offer to sell the property, and the Fair accepts said offer, then the parties shall open an escrow (the "Option Escrow") with the Escrow Holder. The Escrow shall close fifteen days after the date of the exercise of the Option (the "Option Closing Date"). Prior to the Option Closing Date, City shall deposit a fully executed and acknowledged Grant Deed conveying the Property to the Fair. If the Option Escrow is in a position to close on the Option Closing Date (or as soon thereafter as is possible but in no event later than 30 days following the option Closing Date), Escrow Holder shall deliver to Fair the Grant Deed by depositing the same with the County Recorder of the County of Tulare, California, with instructions to record the same and thereafter to mail the same to Fair and shall deliver to City funds in the amount as agreed upon as the fair market value of the property. City shall bear the fee for recordation of the Grant Deed, one-half of the Escrow Holder's fee and any additional charges customarily charged to sellers in Tulare County. Fair shall bear the documentary transfer tax required, one-half of Escrow Holder's fee and any additional costs and charges customarily charged to buyers in Tulare County.

[illegible]


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

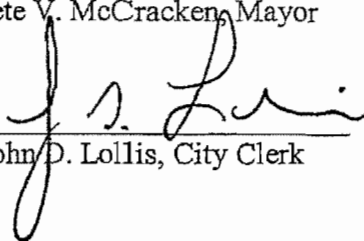
APPROVED AS TO FORM:

CITY:

  
Julia Lew  
City Attorney


CITY OF PORTERVILLE  
a Municipal Corporation

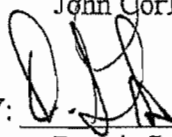
BY:   
Pete V. McCracken, Mayor

BY:   
John D. Lollis, City Clerk

FAIR:

Tulare County Junior Livestock  
Show and Community Fair

BY:   
John Corkins, President

BY:   
Dennis Sexton,  
First Vice President

SUBJECT: AWARD OF CONTRACT – OAK AVENUE TRANSPORTATION ENHANCEMENT (TE) PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: On November 18, 2014, staff received six (6) bids for the Oak Avenue Transportation Enhancement (TE) Project. The proposed project consists of enhancing sidewalk along the south side of Oak Avenue between Main Street and the Rails to Trails Parkway east of Fourth Street. The project includes red brick stamped concrete sidewalk pattern, street trees, benches, trash receptacles and nostalgic street lights that match the Main Street downtown theme and an artistic mural.

The bids are as follows:

	<u>Contractor</u>	<u>Amount</u>
1.	Hobbs Construction Fresno, CA	\$397,809
2.	Dawson-Mauldin Construction Huntington Beach, CA	\$451,288
3.	JT2 Inc. DBA Todd Co Visalia, CA	\$451,629
4.	DOD Construction Bakersfield, CA	\$460,429
5.	Breneman Inc. Walnut Creek, CA	\$495,150
6.	Lee's Paving Visalia, CA	\$589,435

The Engineer's Estimate of Probable Cost presented to City Council on October 7, 2014, was \$445,078.71. Costs associated with SCE street lights and the Subway building mural were included in the estimate and will or have been paid by the City. These costs have been removed from the Engineer's Estimate previously presented to Council and as a result, the Engineer's Estimate for the installation of sidewalk, street trees, benches and nostalgic street lights is \$352,942. With this adjustment, the low bid is 11.28% higher than the Engineer's Estimate.

Dir

Ba

Appropriated/Funded

ME

CM

J

Item No.

19

An additional \$39,780.90 is needed for the construction contingency (10%) and an additional \$29,835.60 (7.5%) is needed for construction management, construction staking, quality control, and inspection services for a total estimated project cost of \$467,425.50. Again, this amount excludes street lights and the mural. The project is partially funded by a Transportation Enhancement Grant in the amount of \$224,000. The City must award the contract and present grant acceptance documents to Caltrans by December 13, 2014.

The Transportation Enhancement Funds combined with the fiscal year 2014/2015 allotment of Measure R and Local Transportation Funds finances 90% of the project. An additional \$44,867 is needed to fully fund the project should the Council choose to move forward with the project. Unused Local Transportation Funds are available to cover the \$44,867 request.

RECOMMENDATION: That City Council:

- 1A. Award the Oak Avenue Transportation Enhancement (TE) Project to Hobbs Construction in the amount of \$397,809;
  - B. Authorize a 10% contingency to cover unforeseen construction costs;
  - C. Authorize 7.5% for construction management, construction staking, quality control and inspection;
  - D. Direct the Finance Director to re-appropriate \$44,867 of unused Local Transportation Fund funds to this project; OR
2. Reject all bids per past Council practice and direct the Public Works Director to notify TCAG and Caltrans that the City will not be accepting the Transportation Enhancement Grant.

ATTACHMENT: October 7, 2014, Engineer's Estimate of Probable Costs  
Locator Map

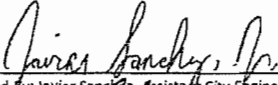
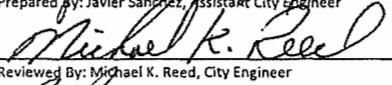
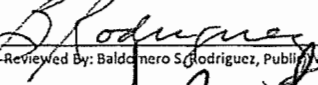
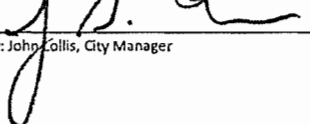


Exhibit 12-A (Equivalent)  
Preliminary Estimate of Cost

CITY OF PORTERVILLE  
OAK AVENUE TE GRANT PROJECT

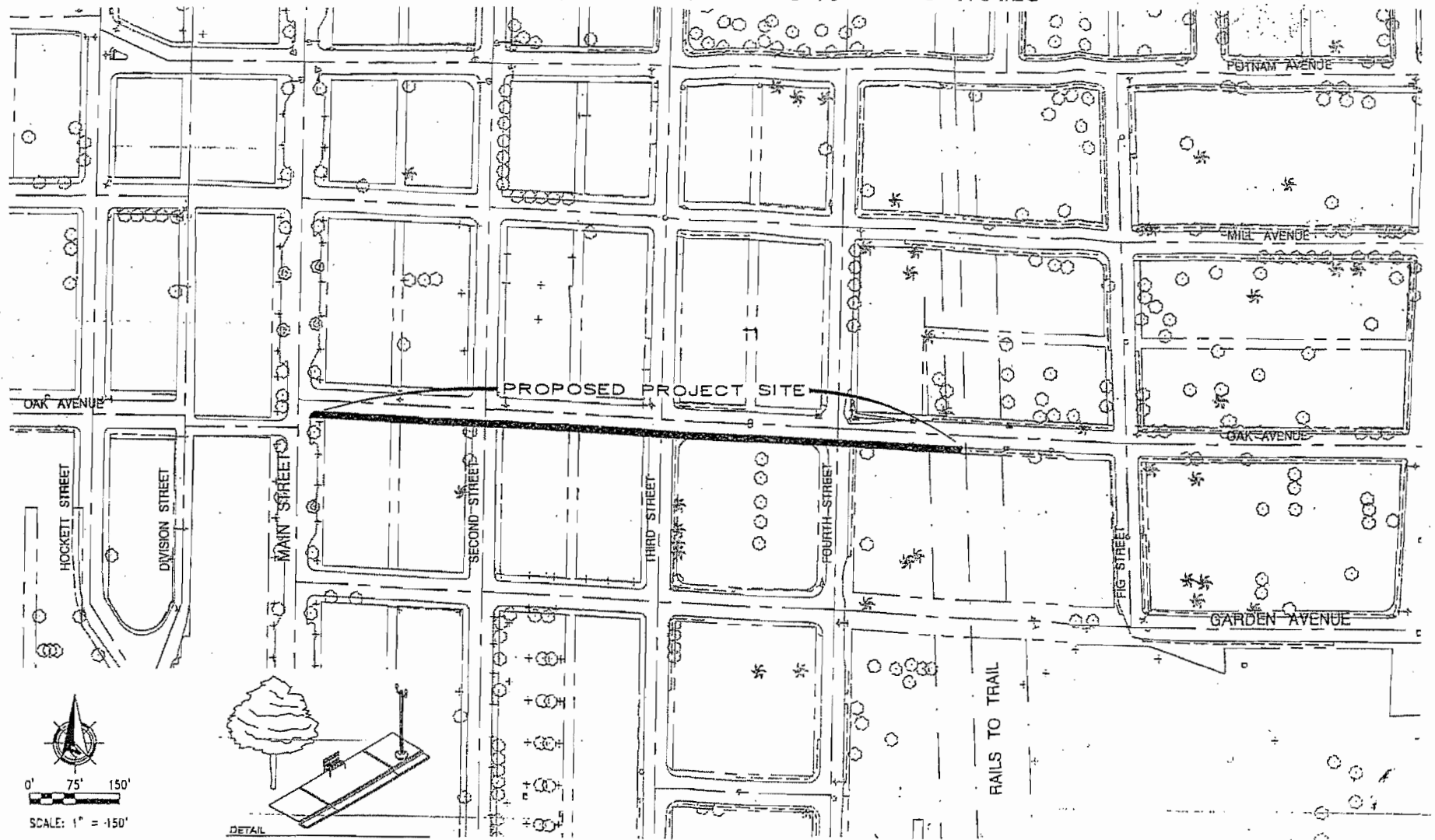
PART 'A' - TE Portion					
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	Mobilization and Demobilization	1	LS	\$20,000.00	\$20,000.00
2	Traffic & Pedestrian Control	1	LS	\$5,000.00	\$5,000.00
3	Maintain Storm Water Pollution Prevention Plan (SWPPP) and Construction Site Measures	1	LS	\$3,000.00	\$3,000.00
4	Clearing, Grubbing & Demolition	1	LS	\$15,000.00	\$15,000.00
5	Earthwork, Grading, & Compaction	1	LS	\$5,000.00	\$5,000.00
6	Signing, Striping, & Pavement Markings	1	LS	\$1,200.00	\$1,200.00
7	Furnish & Install 6' Bench	8	EA	\$1,200.00	\$9,600.00
8	Furnish & Install Trash Receptacle	8	EA	\$1,000.00	\$8,000.00
9	Furnish & Install 4" Thick Concrete (includes standard sidewalk, concrete band)	1017	SF	\$6.00	\$6,102.00
10	Furnish & Install 6" Thick Concrete (sidewalk behind drive approaches)	440	SF	\$8.00	\$3,520.00
11	Furnish & Install 4" Thick Colored Stamped Sidewalk	4340	SF	\$12.00	\$52,080.00
12	Furnish & Install Drive Approach (includes curb & gutter)	645	SF	\$8.00	\$5,160.00
13	Furnish & Install Drive Approach per Modified City Std. C-20X Commercial/Office Drive Approach	830	SF	\$8.00	\$6,640.00
14	Furnish & Install 10'R ADA Ramp (includes truncated domes)	2	EA	\$1,500.00	\$3,000.00
15	Furnish & Install Hot Mix Asphalt Concrete	11	TONS	\$90.00	\$990.00
16	Furnish & Install Class 2 Aggregate Base	11	CY	\$45.00	\$495.00
17	Furnish & Install Detectable Warning Surface	3	EA	\$600.00	\$1,800.00
18	Pavement Patching	84	SF	\$10.00	\$840.00
19	Furnish & Install Vee Gutter	5	LF	\$25.00	\$125.00
20	Furnish & Install Cross Gutter	82	SF	\$10.00	\$820.00
21	Furnish & Install 6" Wide Retaining Curb	218	LF	\$15.00	\$3,270.00
22	Adjust Water Meter to Grade	3	EA	\$800.00	\$2,400.00
23	Furnish & Install Tree Well (includes concrete, rebar, grate, & tree guard)	22	EA	\$3,750.00	\$82,500.00
24	Furnish & Install 1-1/2" Water Service (includes pavement resurfacing)	4	EA	\$1,500.00	\$6,000.00
25	Furnish & Install 1-1/2" Water Meter	4	EA	\$2,750.00	\$11,000.00
26	Furnish & Install 1-1/2" Gate Valve	4	EA	\$350.00	\$1,400.00
27	Furnish & Install Lighting System/Electrical	1	LS	\$80,000.00	\$80,000.00
28	Furnish & Install Conduits, Handholes, Pull Boxes and Appurtenances for Decorative Street Lights per SCE Plans	1	LS	\$10,000.00	\$10,000.00
29	Furnish & Install Landscaping & Irrigation	1	LS	\$8,000.00	\$8,000.00
30	Extra Cost for SCE Decorative Street Lights Cost	1	LS	\$32,377.61	\$32,377.61
TE SUBTOTAL					\$385,319.61
10% CONTINGENCY					\$38,531.96
CONSTRUCTION MANAGEMENT					\$33,908.13
TE TOTAL					\$457,759.70

PART 'B' - City Portion					
31	SCE cost for Standard Street lights	1	LS	\$34,759.10	\$34,759.10
32	Mural	1	LS	\$25,000.00	\$25,000.00
CITY SUBTOTAL					\$59,759.10
10% CONTINGENCY					\$5,975.91
CONSTRUCTION MANAGEMENT					\$5,258.80
CITY TOTAL					\$70,993.81
Combination SUBTOTAL					\$445,078.71
10% CONTINGENCY					\$44,507.87
CONSTRUCTION MANAGEMENT					\$39,166.93
Combination TOTAL					\$528,753.51

  
 Prepared By: Javier Sanchez, Jr., Assistant City Engineer  
  
 Reviewed By: Michael K. Reed, City Engineer  
  
 Reviewed By: Baldomero S. Rodriguez, Public Works Director  
  
 Reviewed By: John Collins, City Manager

09/23/2014  
 Date  
 9/23/2014  
 Date  
 9/23/14  
 Date  
 10/01/14  
 Date

# OAK AVENUE, MAIN STREET TO RAILS TO TRAILS



**CITY OF PORTERVILLE**  
ENGINEERING DIVISION

404 W. MAIN ST., PORTERVILLE, CALIFORNIA 95257 509 782-7402

DESIGN BY	KX
DRAWN BY	AV
CHECKED BY	BR
DATE	01-13-11

CITY ENGINEER	DATE
PROJECT WORKS DIRECTOR	A.C.C. DATE

REVISION NO.	DATE
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PROPOSED T.E. GRANT PROJECT

SHEET  
1  
OF  
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