

DECEMBER 4, 2013
CITY COUNCIL CHAMBERS
3:30 P.M. Closed Session; 4:30 P.M. Regular Session
201 N. Broadway, Escondido, CA 92025

MAYOR	**Sam Abed**
DEPUTY MAYOR	**Olga Diaz**
COUNCIL MEMBERS	**Ed Gallo** **John Masson** **Michael Morasco**
CITY MANAGER	**Clay Phillips**
CITY CLERK	**Diane Halverson**
CITY ATTORNEY	**Jeffrey Epp**
DIRECTOR OF COMMUNITY DEVELOPMENT	**Barbara Redlitz**
DIRECTOR OF PUBLIC WORKS	**Ed Domingue**

ELECTRONIC MEDIA:
Electronic media which members of the public wish to be used during any public comment period should be submitted to the City Clerk's Office at least 24 hours prior to the Council meeting at which it is to be shown.

The electronic media will be subject to a virus scan and must be compatible with the City's existing system. The media must be labeled with the name of the speaker, the comment period during which the media is to be played and contact information for the person presenting the media.

The time necessary to present any electronic media is considered part of the maximum time limit provided to speakers. City staff will queue the electronic information when the public member is called upon to speak. Materials shown to the Council during the meeting are part of the public record and may be retained by the Clerk.

The City of Escondido is not responsible for the content of any material presented, and the presentation and content of electronic media shall be subject to the same responsibilities regarding decorum and presentation as are applicable to live presentations.



December 4, 2013
3:30 P.M. Meeting

Escondido City Council

CALL TO ORDER

ROLL CALL: Diaz, Gallo, Masson, Morasco, Abed

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.) Speakers are limited to only one opportunity to address the Council under Oral Communications.

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

I. CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Government Code 54956.9(d)(1))

a. Case Name: ***Palomar Community College District V. City Of Escondido, Et Al.***
Case No: 37-2013-00031457-CU-BC-NC

b. Case Name: ***City of Escondido, et al. v. Ana J. Matosantos, et al.*** Sacramento County Superior Court Case
Case No: 34-2013-00140530

c. Case Name: ***Gonzalez v. Juan Alva, et al.***
Case No: 11-CV-2846-W (WVG)

ADJOURNMENT



December 4, 2013
4:30 P.M. Meeting

Escondido City Council

CALL TO ORDER

MOMENT OF REFLECTION:
City Council agendas allow an opportunity for a moment of silence and reflection at the beginning of the evening meeting. The City does not participate in the selection of speakers for this portion of the agenda, and does not endorse or sanction any remarks made by individuals during this time. If you wish to be recognized during this portion of the agenda, please notify the City Clerk in advance.

FLAG SALUTE

ROLL CALL: Diaz, Gallo, Masson, Morasco, Abed

PRESENTATIONS: Rotary Club of Escondido - Community Grant Award

PROCLAMATIONS: Retirement of Tony Smock

ORAL COMMUNICATIONS

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CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: Regular Minutes of November 6, 2013**

4. **FIREFIGHTERS' ASSOCIATION BARGAINING UNIT CONTRACT -**
Request Council approve a successor Firefighters' Association Safety and Non-Safety Bargaining Unit Contract.

Staff Recommendation: **Approval (Human Resources Department: Sheryl Bennett)**

RESOLUTION NO. 2013-155

5. **CITY OF ESCONDIDO PERSONNEL RULES AND REGULATIONS -**
Request Council approve adopting City of Escondido Personnel Rules and Regulations.

Staff Recommendation: **Approval (Human Resources: Sheryl Bennett)**

RESOLUTION NO. 2013-149

6. **LIBRARY ADULT LITERACY SERVICES PROGRAM AND BUDGET ADJUSTMENT -**
Request Council approve a budget adjustment in the amount of $27,811 received from the California State Library Literacy Grant to the Library's 2013-14 Fiscal Year Operating Budget to fund the Adult Literacy Project Account.

Staff Recommendation: **Approval (Library and Community Services: Loretta McKinney)**

7. **APPROVAL OF MICROSOFT LICENSING ENTERPRISE AGREEMENT -**
Request Council authorize the Director of Information Systems to enter into a three year agreement with CompuCom Systems Inc. to provide Microsoft Software Assurance via a Microsoft Licensing Enterprise Agreement.

Staff Recommendation: **Approval (Information Systems Department: Mark Becker)**

RESOLUTION NO. 2013-163

8. **BID AWARD FOR THE CORROSION CONTROL SYSTEM FOR THE ESCONDIDO SEWER OUTFALL -**
Request Council authorize the Mayor and City Clerk to execute a Public Improvement Agreement with American Construction & Supply, Inc. in the amount of $230,335 for the Corrosion Control System for the Escondido Sewer Outfall.

Staff Recommendation: **Approval (Utilities Department: Christopher McKinney)**

RESOLUTION NO. 2013-161

9. **DESIGNATION OF ENFORCEMENT AUTHORITY FOR THE ESCONDIDO CAMPAIGN CONTROL ORDINANCE -**
Request Council approve designating George Eiser III, Esq. and the law firm of Meyers Nave as the enforcement authority for the Escondido Campaign Control Ordinance for the 2014 Municipal Election, as required by the Escondido Municipal Code Section 2-115.5(c).

Staff Recommendation: **Approval (City Attorney's Office: Jeffrey Epp)**

RESOLUTION NO. 2013-143

10. **AMENDMENT TO CONTRACT WITH ESCONDIDO DISPOSAL (EDI) FOR ANNUAL CONSUMER PRICE INDEX (CPI) INCREASE TO SOLID WASTE AND RECYCLING RATES AND FEES FOR RESIDENTIAL COLLECTIONS -**
Request Council approve revising the rates for Residential Solid Waste and Recycling Services effective January 1, 2014, a 0.9032 percent increase would apply to all residential collection services.

Staff Recommendation: **Approval (Public Works/Recycling: Ed Domingue)**

RESOLUTION NO. 2013-165

CONSENT – RESOLUTIONS AND ORDINANCES (COUNCIL/SUCCESSOR AGENCY/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/Successor Agency/RRB at a previous City Council/Successor Agency/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

11. **CLARIFICATION OF ZONING CODE AMENDMENT TO REGULATE COTTAGE FOOD OPERATIONS (AZ 13-0004) -**
This item was approved on November 20, 2013 with a vote of 5/0.

ORDINANCE NO. 2013-07(RR) (Adoption and Second Reading)

PUBLIC HEARINGS

12. **CONDUCT PUBLIC HEARING AND ADOPT VOTING DISTRICTS AS RECOMMENDED BY THE INDEPENDENT DISTRICTING COMMISSION -**
Pursuant to the Consent Decree in Gomez v. City of Escondido [Case No. 37-2011-00060480], the Independent Districting Commission has completed its work and presents proposed districts for the four City Council positions.

Staff Recommendation: **Approval (City Attorney's Office: Jeffrey Epp and City Clerk's Office: Diane Halverson)**

ORDINANCE NO. 2013-17 (Introduction and First Reading)

13. **ADOPTION OF THE 2013 CALIFORNIA FIRE CODE, MOST CURRENT VERSION OF COUNTY OF SAN DIEGO CONSOLIDATED FIRE CODE AND LOCAL AMENDMENTS -**
Request Council approve modifying the City of Escondido Municipal Code to reflect the 2013 California Fire Code (CFC), the most current version of the County of San Diego Consolidated Fire Code and proposed local amendments.

Staff Recommendation: **Approval (Fire Department: Herb Griffin)**

ORDINANCE NO. 2013-13 (Introduction and First Reading)

14. **ADOPTION OF THE 2013 CALIFORNIA BUILDING, RESIDENTIAL, PLUMBING, ELECTRICAL, MECHANICAL AND GREEN BUILDING STANDARDS CODES AND LOCAL AMENDMENTS -**

Request Council approve amending the City of Escondido Municipal Code to reflect the 2013 California Building, Residential, Plumbing, Electrical, Mechanical and Green Building Standards Codes and proposed local amendments.

Staff Recommendation: **Approval (Director of Community Development/Planning: Barbara Redlitz)**

ORDINANCE NO. 2013-11 (Introduction and First Reading)

15. **ZONING CODE AMENDMENT (ENVIRONMENTAL QUALITY REGULATIONS) AND CLIMATE ACTION PLAN (CASE NOS. AZ 13-0003 AND PHG 09-0020) -**

Request Council approve amendments to Article 47 "Environmental Quality Regulations" (EQR) and the Environmental Determination (Notice of Exemption); and approve the Escondido Climate Action Plan (E-CAP) and proposed CEQA Screening Tables as well as the previously certified EIR and associated CEQA findings of Significant Effect, Statement of Overriding Considerations and Mitigation Monitoring Program.

Staff Recommendation: **Approval (Community Development/Planning: Barbara Redlitz)**

a. RESOLUTION NO. 2013-153 b. ORDINANCE NO. 2013-12 (Introduction and First Reading)

16. **PROPOSED DEVELOPMENT AGREEMENT FOR TRACT 894 (PHG 13-0027) -**

Request Council approve a Development Agreement with a five-year term to authorize construction of the previously approved 11-lot residential subdivision within the North Broadway Deficiency Area.

Staff Recommendation: **Approval (Community Development/Planning: Barbara Redlitz)**

ORDINANCE NO. 2013-14 (Introduction and First Reading)

17. **PROPOSED DEVELOPMENT AGREEMENT AND FINDING OF SUBSTANTIAL CONFORMANCE FOR TRACT 889 (PHG 13-0028) -**

Request Council approve a Development Agreement with a five-year term to authorize construction of the previously approved 16-lot, TR 889 residential subdivision within the North Broadway Deficiency Area.

Staff Recommendation: **Approval (Community Development/Planning: Barbara Redlitz)**

ORDINANCE NO. 2013-15 (Introduction and First Reading)

FUTURE AGENDA

18. **FUTURE AGENDA -**

The purpose of this item is to identify issues presently known to staff or which members of the Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions,

brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

COUNCIL MEMBERS SUBCOMMITTEE REPORTS

CITY MANAGER'S UPDATE/BRIEFING

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development.

- **CITY MANAGER'S UPDATE**

ORAL COMMUNICATIONS

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ADJOURNMENT

UPCOMING MEETING SCHEDULE				
Date	**Day**	**Time**	**Meeting Type**	**Location**
December 11	Wednesday	3:30 & 4:30 p.m.	Council Meeting	Council Chambers
December 18	-	-	No Meeting	-
December 25	-	-	No Meeting	-
January 1	-	-	No Meeting	-

TO ADDRESS THE COUNCIL

The public may address the City Council on any agenda item. Please complete a Speaker's form and give it to the City Clerk. Submission of Speaker forms prior to the discussion of an item is highly encouraged. Comments are generally limited to 3 minutes.

If you wish to speak concerning an item not on the agenda, you may do so under "Oral Communications." Please complete a Speaker's form as noted above.

Nomination forms for Community Awards are available at the Escondido City Clerk's Office or at http://www.escondido.org/city-clerks-office.aspx

Handouts for the City Council should be given to the City Clerk. To address the Council, use the podium in the center of the Chambers, STATE YOUR NAME FOR THE RECORD and speak directly into the microphone.

AGENDA, STAFF REPORTS AND BACK-UP MATERIALS ARE AVAILABLE:

- Online at http://www.escondido.org/meeting-agendas.aspx
- In the City Clerk's Office at City Hall
- In the Library (239 S. Kalmia) during regular business hours and
- Placed in the Council Chambers (See: City Clerk/Minutes Clerk) immediately before and during the Council meeting.

AVAILABILITY OF SUPPLEMENTAL MATERIALS AFTER AGENDA POSTING: Any supplemental writings or documents provided to the City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's Office located at 201 N. Broadway during normal business hours, or in the Council Chambers while the meeting is in session.

LIVE BROADCAST

Council meetings are broadcast live on Cox Cable Channel 19 and U-verse Channel 99 – Escondido Gov TV. They can also be viewed the following Sunday and Monday evenings at 6:00 p.m. on those same channels. The Council meetings are also available live via the Internet by accessing the City's website at www.escondido.org, and clicking the "Live Streaming –City Council Meeting now in progress" button on the home page.

Please turn off all cellular phones and pagers while the meeting is in session.

The City Council is scheduled to meet the first four Wednesdays of the month at 3:30 in Closed Session and 4:30 in Open Session.
(Verify schedule with City Clerk's Office)
Members of the Council also sit as the Successor Agency to the CDC, Escondido Joint Powers Financing Authority and the Mobilehome Rent Review Board.

CITY HALL HOURS OF OPERATION
Monday-Friday 8:00 a.m. to 5:00 p.m.

If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 839-4641. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

Listening devices are available for the hearing impaired – please see the City Clerk.

CITY OF ESCONDIDO

November 6, 2013
3:30 P.M. Meeting Minutes

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 3:30 p.m. on Wednesday, November 6, 2013 in the Council Chambers at City Hall with Mayor Abed presiding.

ATTENDANCE

The following members were present: Deputy Mayor Olga Diaz, Councilmember Ed Gallo, Councilmember John Masson, Councilmember Michael Morasco, and Mayor Sam Abed. Quorum present.

ORAL COMMUNICATIONS

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

MOTION: Moved by Councilmember Masson and seconded by Councilmember Morasco to recess to Closed Session. Motion carried unanimously.

I. CONFERENCE WITH LEGAL COUNSEL--PENDING LITIGATION (Government Code 54956.9(d)(1))

II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)

a.	Property:	525 N. Quince Street
	City Negotiator	Debra Lundy, Real Property Manager
	Negotiating parties	David McMahon Construction, LLC.
	Under negotiation	Price and Terms of Agreement
b.	Property:	1925 and 2005 Harmony Grove Road
	City Negotiator	Debra Lundy, Real Property Manager
	Negotiating parties	Berghuis Freerk Family Trust; Harmony Grove Property Company, LLC
	Under negotiation	Price and Terms of Agreement
c.	Property:	3400 Valley Center Road
	City Negotiator	Debra Lundy, Real Property Manager
	Negotiating parties	Charros de Escondido
	Under negotiation	Price and Terms of Agreement

ADJOURNMENT

Mayor Abed adjourned the meeting at 4:15 p.m.

_____ _____

MAYOR CITY CLERK

_____

MINUTES CLERK

CITY OF ESCONDIDO

November 6, 2013
4:30 P.M. Meeting Minutes

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 4:30 p.m. on Wednesday, November 6, 2013 in the Council Chambers at City hall with Mayor Abed presiding.

MOMENT OF REFLECTION

FLAG SALUTE

Mayor Abed led the flag salute.

ATTENDANCE

The following members were present: Deputy Mayor Olga Diaz, Councilmember Ed Gallo, Councilmember John Masson, Councilmember Michael Morasco, and Mayor Sam Abed. Quorum present.

Also present were: Clay Phillips, City Manager; Jeffrey Epp, City Attorney; Barbara Redlitz, Community Development Director, Ed Domingue, Public Works Director; Diane Halverson, City Clerk; and Liane Uhl, Minutes Clerk.

ORAL COMMUNICATIONS

None

CONSENT CALENDAR

Mayor Abed removed item 7 and Councilmember Gallo removed items 5 and 11 from the Consent Calendar for discussion.

MOTION: Moved by Councilmember Morasco and seconded by Councilmember Diaz that the following Consent Calendar items be approved with the exception of items 5, 7 and 11. Motion carried unanimously.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: Regular Meeting of October 16, 2013**

4. **SALE OF 620 NORTH ASH STREET TO 620 ASH, LLC -** Request Council authorize the Real Property Manager and City Clerk to execute documents necessary to complete the sale of commercial real property 620 N. Ash Street and close escrow. (File No. 0600-10 [A-2382])

   Staff Recommendation: **Approval (Public Works/Engineering: Ed Domingue)**

   RESOLUTION NO. 2013-151

5. **BID AWARD FOR THE FISCAL YEAR 2013-2014 STREET REHABILITATION PROJECT -** Request Council authorize the Mayor and City Clerk to execute an agreement with the lowest responsive and responsible bidder. (File No. 0600-10 [A-3098])

   Staff Recommendation: **Approval (Public Works/Engineering: Ed Domingue)**

   RESOLUTION NO. 2013-158

Councilmember Gallo asked that a list of the streets be placed on the City's web site.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Diaz to authorize the Mayor and City Clerk to execute an agreement with the lowest responsive and responsible bidder and adopt Resolution No. 2013-158. Motion carried unanimously.

6. **ANNEXATION OF TRACT 888 INTO LANDSCAPE MAINTENANCE DISTRICT AND BUDGET ADJUSTMENT -** Request Council approve the request of Hallmark Communities Inc., the owner of property described as Tract 888 located on Citrus Avenue between Washington Avenue and East Valley Parkway, to annex their property into the City of Escondido Landscape Maintenance District (LMD); and approve establishing a budget in the amount of $3,500 for Fiscal Year 2013/2014 for LMD Zone 38. (File No. 0800-10 Tract 888)

   Staff Recommendation: **Approval (Public Works/Engineering: Ed Domingue)**

   RESOLUTION NO. 2013-134

7. **RECYCLED WATER EASTERLY MAIN EXTENSION PROJECT AND MITIGATED NEGATIVE DECLARATION (ENV 13-0007) -** Request Council approve the proposed Recycled Water Easterly Main Extension Project and approve adopting the Mitigated Declaration (MND) issued for the project along with the Mitigation Monitoring Report. (File No. 1340-70)

   Staff Recommendation: **Approval (Community Development/Planning: Barbara Redlitz)**

   RESOLUTION NO. 2013-131

Ali Zafar, Escondido, expressed concern with the sewer manhole cover near his home.

Edward Grangetto, Escondido, urged Council to approve the project.

MOTION: Moved by Councilmember Morasco and seconded by Councilmember Diaz to approve the proposed Recycled Water Easterly Main Extension Project, approve adopting the Mitigated Declaration (MND) issued for the project along with the Mitigation Monitoring Report and adopt Resolution No. 2013-131. Motion carried unanimously.

8. **FISCAL YEAR 2013 STATE HOMELAND SECURITY GRANT PROGRAM (SHSGP) GRANT ACCEPTANCE** - Request Council accept $100,237 in Federal Grant funding from the Department of Homeland Security (DHS) for the Fiscal Year 2013 State Homeland Security Grant Program; and authorize the Fire Chief to execute, on behalf of the City, all documents required for the management of this grant; and approve the necessary budget adjustment to establish new projects for tracking of the grant funds. (File No. 0480-70)

Staff Recommendation: **Approval (Fire Department: Michael Lowry)**

9. **2013-2014 CITY COUNCIL ACTION PLAN** - Request Council approve adopting the 2013-14 City Council Action Plan. (File No. 0610-95)

Staff Recommendation: **Approval (City Manager's Office: Joyce Masterson)**

10. **POLICE OFFICERS' ASSOCIATION SWORN BARGAINING UNIT CONTRACT** - Request Council approve a successor Police Officers' Association Sworn Bargaining Unit Contract. (File No. 0740-30)

Staff Recommendation: **Approval (Human Resources: Sheryl Bennett)**

RESOLUTION NO. 2013-154

CONSENT – RESOLUTIONS AND ORDINANCES (COUNCIL/SUCCESSOR AGENCY/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/Successor Agency/RRB at a previous City Council/Successor Agency/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

11. **AMENDMENT TO THE ZONING CODE TO ALLOW EMERGENCY SHELTERS AS A PERMITTED LAND USE IN A PORTION OF THE M-1 ZONE (AZ 13-0006)** - Approved on October 23, 2013 with a vote of 4/0/1, Gallo Absent. (File No. 0810-20)

ORDINANCE NO. 2013-09R (Adoption and Second Reading)

Councilmember Gallo indicated he would abstain from this item.

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Morasco to approve an amendment to the Zoning Code to allow Emergency Shelters as a permitted land use in a portion of the M-1 Zone (AZ-13-0006) and adopt Ordinance No. 2013-09R. Ayes: Abed, Diaz, Masson and Morasco. Noes: None. Abstain: Gallo. Motion carried.

PUBLIC HEARINGS

12. **RECOMMENDATIONS FOR ALLOCATION OF FEDERAL HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM FUNDS** - Request Council consider staff recommendations related to responses to the Request for Proposals approved by the City Council on August 21, 2013 and released August 22, 2013; and authorize the Mayor and City Clerk to execute, on behalf of the City, the necessary loan documents and affordable housing agreements. (File No. 0875-55)

Staff Recommendation: **Approval (Community Development/Housing: Barbara Redlitz)**

RESOLUTION NO. 2013-138

Karen Youel, Housing Department, gave the staff report and presented a series of slides.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way.

Lori Holt Pfeiler, Habitat for Humanity Executive Director, urged Council to approve the project.

Chris Megison, Solutions for Change CEO, and Ginger Hitzke, Hitzke Development Company, thanked Council for their consideration of the project.

Mayor Abed asked if anyone else wanted to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Masson to authorize the Mayor and City Clerk to execute, on behalf of the City, the necessary loan documents and affordable housing agreements for allocation of Federal Home Investment Partnerships (HOME) Program Funds and adopt Resolution No. 2013-138. Motion carried unanimously.

13. **LOCAL REGISTER AND MILLS ACT CONTRACT REQUEST (HP 13-0002) -** Request Council approve the addition of the property located at 2858 Oak Hill Drive to the Local Register of Historic Places and enter into a Mills Act Contract. (File No. 0880-10)

Staff Recommendation: **Approval (Community Development/Planning: Barbara Redlitz)**

RESOLUTION NO. 2013-148

Barbara Redlitz, Community Development Director, gave the staff report and presented a series of slides.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Morasco to approve the addition of the property located at 2858 Oak Hill Drive to the Local Register of Historic Places and enter into a Mills Act Contract and adopt Resolution No. 2013-148. Motion carried unanimously.

14. **MODIFICATION OF THE MASTER DEVELPOMENT PLAN FOR LEXUS ESCONDIDO (CASE NO.: PHG 12-0001 / ENV 12-0006) -** Request Council approve a Business Enhancement Zone request to modify the Master Development Plan and previous conditions of approval to add rooftop events and concerts as permitted uses; establish a cabaret permit for amplified music and dancing; establish a higher daytime noise level standard at property lines, allow on-site self-parking and/or valet parking for events; and allow a second monument sign and up to ten feather flag signs along Auto Park Way. (File No. 0800-40 PHG 12-0001/ENV 12-0006)

Staff Recommendation: **Approval (Community Development/Planning: Barbara Redlitz)**

ORDINANCE NO. 2013-05R (Introduction and First Reading)

Barbara Redlitz, Community Development Director, gave the staff report and presented a series of slides.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way.

Dick Daniels, Applicant's Representative, introduced Judy Jones Cone, Lexus Escondido Owner, Deborah Scott, Cohn Restaurant Group Partner, and Drew Davis, Lexus Center General Manager, who gave a presentation on the proposed modification.

Judy Jones Cone, Lexus Escondido Owner, indicated her vision was that the Lexus Center would be a destination for entertainment in Escondido.

Deborah Scott, Cohn Restaurant Group Partner, stated the entertainment factor at the Lexus Center was bringing people to Escondido.

Drew Davis, Lexus Center General Manager, indicated the noise level would not exceed the standards set in the General Plan.

Paul Majchrzak, Escondido, stated he supported live music at the Lexus Center and urged Council to support the modification.

Nanci Reeder, Escondido, voiced concern with the noise issue if the modification is approved.

John Miller, Escondido, expressed concern with traffic issues and indicated he did not support a higher noise level from live music.

Cassie Lieurance, Escondido, stated the dealership should not have feather flags.

Diane MacPherson, Escondido, indicated she could hear the noise from all of the events that were held and requested that Council not raise the noise levels.

Pamela Stahl, Escondido, stated the noise levels should remain where they are and not be raised.

Margaret Liles, Escondido, indicated she did not agree with raising the noise levels.

Earl Otte, Escondido, urged Council not to allow music events at the Lexus Dealership.

Samantha Otte, Escondido, asked Council not to allow the cabaret permit.

Everett Delano, Attorney, identified restrictions for the Lexus Dealership if the modification is approved.

Sara Slade, Escondido, stated she did not agree with raising the noise levels.

Robert Morris, Escondido, suggested there should be fewer events than was proposed.

Deveraux Jackson, Business Owner, indicated he supported the Lexus Dealership's request for additional events.

Fred Baranowski, Escondido Chamber of Commerce Board Member, stated the Chamber of Commerce supported the Lexus Dealership's request.

Richard Powers, Escondido, indicated he was in support of the modification request for the Lexus Dealership.

Jonathan Brothers, Acoustical Study Consultant, indicated his business had recorded the noise levels at the Lexus Center and they were within the range of acceptable standards.

Kevin Clark, Escondido, stated he supported having more events at the Lexus Dealership.

Richard Gattis, Attorney, urged Council to support the proposed modification.

Mayor Abed asked if anyone else wanted to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Mayor Abed and seconded by Councilmember Morasco to approve the Master Development Plan modification excluding the feather flags and limiting the events with higher decibel levels to five nights a week and introduce Ordinance No. 2013-05R. Ayes: Abed, Gallo, Masson and Morasco. Noes: Diaz. Absent: None. Motion carried.

FUTURE AGENDA

15. **FUTURE AGENDA -** The purpose of this item is to identify issues presently known to staff or which members of the Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

    Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

COUNCIL MEMBERS SUBCOMMITTEE REPORTS

Councilmember Gallo indicated the North County Transit District was looking at continuing to allow alcohol on the Coaster and that the San Diego County Water Authority reported that the reserved water supply was increasing.

Councilmember Diaz stated the San Dieguito Joint Powers Authority had met to discuss the wetlands that had been turned into a parking lot. She indicated the Escondido Creek Watershed Alliance would be meeting next week and she requested that a School Subcommittee meeting be scheduled.

Councilmember Morasco stated the Utilities Subcommittee had met and had received information on the water processing limitations and restrictions for breweries and wineries in the City.

Mayor Abed indicated that the SANDAG had a Regional Planning meeting; had added a Parking Management Plan and the Regional Energy Strategy was working on a solar plan.

CITY MANAGER'S UPDATE/BRIEFING

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development.

- City Manager's Update

ORAL COMMUNICATIONS

JC, presented a video on his laptop.

ADJOURNMENT

Mayor Abed adjourned the meeting at 8:05 p.m.

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MAYOR CITY CLERK

_____

MINUTES CLERK

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 4
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Sheryl Bennett, Director of Human Resources

SUBJECT: Memorandum of Understanding between the City of Escondido and the Firefighters' Association – Safety and Non-Safety Personnel.

RECOMMENDATION:

City Council adopt Resolution No. 2013-155, approving the execution of a Memorandum of Understanding between the City of Escondido and the Firefighters' Association for a three-year term commencing January 1, 2014 through December 31, 2016.

It is also requested that City Council approve a budget adjustment appropriating $108,380 to cover increased contract costs. The Fiscal Year 2013-14 General Fund Operating Budget did not allocate funds for contract increases, but it is anticipated that budgetary saving at year end will cover these increased costs.

FISCAL ANALYSIS:

Cost to the General Fund for this three-year contract:

FY 2013-14	$108,380
FY 2014-15	$456,340
FY 2015-16	$285,020
FY 2016-17	$144,260
Total contract cost:	$994,000

Funds to cover this expense have been built into the General Fund multi-year Financial Plan.

PREVIOUS ACTION:

On August 22, 2012, the City Council voted to adopt the amended Memorandum of Understanding between the Escondido Firefighters' Association – Safety and Non-Safety Personnel, and the City of Escondido, for a two-year term that expired on December 31, 2013.

BACKGROUND:

City staff has met with the Escondido Firefighters' Association – Safety and Non-Safety Bargaining Unit, regarding terms and conditions of Employment that expired on December 31, 2013. The attached resolution outlines changes to working conditions and compensation that have been agreed to during this negotiation process. Tentative agreement on issues before the negotiating group was reached on October 23, 2013. Members of the Bargaining Unit have voted in support of the agreement.

Respectfully submitted,

Sheryl Bennett
Director of Human Resources

Agenda Item No.: 4
Date: December 4, 2013

RESOLUTION NO. 2013-155

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING WITH THE ESCONDIDO FIREFIGHTERS' ASSOCIATION–SAFETY AND NON-SAFETY PERSONNEL

JANUARY 1, 2014 – DECEMBER 31, 2016

WHEREAS, negotiating teams from the City of Escondido and the Escondido Firefighters' Association have been duly appointed and have been conducting meet-and-confer sessions with respect to matters affecting both parties; and

WHEREAS, a successor Memorandum of Understanding ("MOU") by the City of Escondido ("City") and the Escondido Firefighters' Association ("Association") is necessary as a result of meeting and conferring in good faith concerning wages, hours, and other terms and conditions of employment; and

WHEREAS, it is the intent of the underlying MOU to provide for continuation of the harmonious relationship between the City and the Association; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the execution of a MOU and certain other modifications.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. The City's negotiating team is authorized to execute, on behalf of the City, the MOU with a term from January 1, 2014 through December 31, 2016, to include the terms as set forth in Exhibit "A" attached to this resolution and incorporated by this reference.

City of Escondido
Escondido Firefighters' Association – Safety and Non-Safety Personnel
Memorandum of Understanding
January 1, 2014 – December 31, 2016

1. **Term:** January 1, 2014 – December 31, 2016. None of the terms are retroactive. All changes take effect upon the agreed effective date after City Council adoption of the Memorandum of Understanding (MOU).

2. **Article IX, Wages and Classifications, Section 2:**

   A. Effective the pay period closest to and including January 1, 2014, the salary range for Fire Safety classifications shall be increased by 2.0%.

      Effective the pay period closest to and including July 1, 2014, the salary range for Fire Safety classifications shall be increased by 2.0%.

      Effective the pay period closest to and including January 1, 2015, the salary range Fire Safety represented classifications shall be increased by 2.5%.

      Effective the pay period closest to and including January 1, 2016, the salary range for Fire Safety classifications shall be increased by 2.5%.

   B. Effective the pay period closest to and including January 1, 2015, the salary range for Fire Non- Safety classifications shall be increased by 2.0%.

      Effective the pay period closest to and including January 1, 2016, the salary range for Fire Non- Safety classifications shall be increased by 2.0%.

3. **Article IX, Wages and Classifications, Section 7, Mentor/Preceptor Pay:**

   Inclusion of Paramedic Non-Safety classification as follows:

   Mentors and/or preceptors in the paramedic program shall be granted One Thousand Dollars ($1,000.00) for each Firefighter/Paramedic trainee, and Three Hundred Dollars ($300.00) for each Paramedic Non-Safety trainee assigned to the individual as approved and/or required by the City, paid upon completion of the training assignment.

4. **Article IX, Wages and Classifications, Section 8, Bilingual Pay:**

   Inclusion of Paramedic Non-Safety classification as follows:

   For Fire Safety and Non-Safety Personnel: The City agrees to pay Two Hundred Dollars ($200.00) per month for verbal bilingual skills. An additional Seventy Five Dollars ($75.00) per month shall be paid for written bilingual skills.

   The City reserves the right to establish eligible languages based upon a demonstrated need within the community and the criteria for eligibility for the skill pay and shall verify through testing procedures developed by the City, that employees are qualified and eligible. Certification testing requires approval by the Fire Chief.

5. **MOU Language Clean Up:**

The following items will be updated in the MOU:

- Article XI – Employee Benefit Plan – Add Public Employees' Pension Reform Act (Tier III) language.
- Removal of Article XXXIII – Personnel Rules and Regulations Committee
- Incorporate language into the MOU to specific sections that relate to the Non-Safety Paramedic Unit.
- Certification and Education Incentive Pay – Article XXVIII – Course requirements for Technical Rescue Certification, Acting Engineer Certification, Acting Captain Certification, and Wildland Certification will be updated by the Fire Chief and FFA as needed during the term of the MOU. The title of Acting Duty Chief Certification (Captains Only) will be retitled to Acting Battalion Chief Certification (Captains Only).

6. **Article XI, Employee Benefit Programs, Section 2D1, Healthcare Premiums and Employee Participation:**

Incorporation of the 2014 Medical and Dental rates into the MOU, and retaining the same employee participation in medical coverage premiums cost sharing formula for years 2015 and 2016, subject to Article XXXII MOU Reopener – Healthcare Reform.

7. **Article XV, Association Time Bank:**

Addition of language to the MOU that formalizes new law effective January 1, 2014, via Assembly Bill 1181, which amends the MMBA to require employers to provide paid time off to a reasonable number of employees for the following:

Rename Article XV from Association Time Bank to Association Time. Section 1 will become Association Time Bank, and Section 2 will be Association Release Time.

Article XV, Section 2 (NEW) - Association Release Time. Designated members of the FFA shall have paid release time for the following activities in the capacity of representing the FFA and/or its membership:

1. Formally meeting and conferring with City representatives on matters within the scope of representation. The City shall release five members of the FFA negotiating team one-half hour prior to the commencement of formal meet-and-confer sessions and permit them to continue preparation for the next session one-half hour following the conclusion of a formal meet-and-confer session. Release time will also be provided for grievance or disciplinary representation as stated above. Release time will include individuals designated by the FFA, and is based on receiving prior approval of the member's supervisor.

2. Testifying or appearing as the designated representative of the FFA in conferences, hearings, or other proceedings before the Public Employment Relations Board, or agent thereof, in matters relating to a charge filed by the employee organization against the City or by the City against the FFA.

3. Testifying or appearing as the designated representative of the FFA in matters before the Personnel Board of Review.

The Association must provide reasonable notice to the City for the time off.

8. Article XXXII, MOU Reopener – Healthcare Reform:

Revised language to existing Article:

At such time as regulations are issued implementing the Affordable Care Act (ACA), the City and Escondido FFA will meet and confer to review the impact of such regulations on the benefits plans then in force. If modifications to the benefits, eligibility for coverage, employer or employee contribution to the cost of insurance or any other provisions of the benefit plans covered by this MOU will be modified or may be affected by the ACA during the term of this agreement, it is agreed that the City and Escondido FFA will reopen the contract to meet and confer and determine how such mandated changes will be implemented, and to possibly address other health plan options.

9. Other MOU Provisions:

All other provisions in the January 1, 2012 – December 30, 2013 MOU remain in effect and in addition to the revised language as set forth in this Exhibit.

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 5
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Sheryl Bennett, Human Resources Director

SUBJECT: City of Escondido Personnel Rules and Regulations

RECOMMENDATION:

City Council approve Resolution No. 2013-149, adopting City of Escondido Personnel Rules and Regulations.

FISCAL ANALYSIS:

None

PREVIOUS ACTION:

The City of Escondido Personnel Rules and Regulations (Rules) were originally adopted by the City Council in September 1977. The Rules have been amended several times by Resolution Nos. 77-65, 79-188, 80-55, 86-295, 87-295, and 91-152.

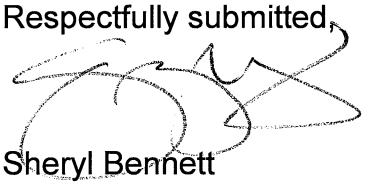
BACKGROUND:

Escondido Municipal Code (EMC) Section 19-21 states that the City Council, after hearing, shall adopt, amend or repeal rules governing the classified service. Personnel rules established and approved by the City Council have the full force and effect of law. See EMC section 19-22. The Rules were originally adopted in September 1977 and have been amended from time to time. However, the last significant amendments occurred in 1987. The Rules govern the City's procedures regarding personnel matters including the classification plan, compensation, hiring, promotions, employee leave, personnel evaluations, and discipline and grievance procedures.

City staff has completed a comprehensive review of the Rules to ensure compliance with existing law and current employment practices. As a result of this review, City staff identified several necessary changes to the Rules. City staff presented its proposed changes to representatives from Teamsters Local 911, Escondido City Employees' Association, Firefighters' Association, and Police Officers' Association, in an effort to ensure agreement to the Rules. City staff and the employee groups held six meetings from January to June 2013 to review and discuss proposed changes to the Rules. All employee groups were provided with sufficient opportunity to review changes and provide feedback.

As a result of meeting and conferring in good faith, all employee representatives have approved the Rules attached in Resolution No. 2013-149. Due to the significant number of changes and the need for reorganization of the Rules, staff proposes that the City Council adopt the new Rules in their entirety to supersede the existing Rules by approving Resolution No. 2013-149.

Respectfully submitted,



Sheryl Bennett
Director of Human Resources

Agenda Item No.: 5
Date: December 4, 2013

RESOLUTION NO. 2013-149

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ADOPTING CITY OF ESCONDIDO PERSONNEL RULES AND REGULATIONS

WHEREAS, Section 48001 of the California Government Code grants the City Council the authority to approve Personnel Rules and Regulations and Escondido Municipal Code Section 19-21 states that the City Council, after hearing, shall adopt, amend or repeal rules governing classified service; and

WHEREAS, the City of Escondido's ("City") current Personnel Rules and Regulations were originally adopted in September 1977 and have since been amended by Resolution Nos. 77-65, 79-188, 80-55, 86-295, 87-295, and 91-152; and

WHEREAS, the City now deems it in the best interest of the City to replace the existing Personnel Rules and Regulations with new Personnel Rules and Regulations to ensure compliance with existing law and current employment practices; and

WHEREAS, the City's negotiating staff met with Teamsters Local 911, Escondido City Employees' Association, Firefighters' Association, and Police Officers' Association representatives, and conducted informational meetings with respect to the revised Personnel Rules and Regulations; and

WHEREAS, six meetings were held with City staff and employee representatives to review and discuss the proposed changes to the Personnel Rules and Regulations; and

WHEREAS, after meeting and conferring in good faith, the City and Teamsters Local 911, Escondido City Employees' Association, Firefighters' Association, and Police

Officers' Association have reached agreement regarding the Personnel Rules and Regulations attached hereto as Exhibit "A" and incorporated by this reference; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to replace the existing Personnel Rules and Regulations with the Personnel Rules and Regulations attached as Exhibit "A"; and

WHEREAS, pursuant to Escondido Municipal Code Section 19-22, Personnel Rules established and approved by the City Council shall have the force and effect of law.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the City Council adopts the City of Escondido Personnel Rules and Regulations as set forth in Exhibit "A".

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RULE 1

GENERAL PROVISIONS

SECTION 1. Equal Employment Opportunity: The policy of the City is to provide equal employment opportunity without discrimination based on race, color, sex, age, ancestry, national origin, political affiliation, marital status, religious creed, medical condition, disability, sexual orientation, religion, or denial of Family and Medical Care leave, except where a bonafide occupational qualification so dictates.

SECTION 2. Violation of Rules: Violation of the provisions of these rules may be grounds for disciplinary action.

SECTION 3. Amendment and Revision of Rules: The City Manager or his/her designee may amend and revise the personnel rules as may be necessary. Any amendments and revisions to these rules that affect the wages, hours and working conditions of employees represented by an employee organization or union, will be provided to the affected employee organization or union prior to any proposed amendment or revision being finalized, subject to the provisions of the Meyers-Milias-Brown Act.

SECTION 4. Application: The personnel rules and regulations apply to all employees of the City unless a specific rule or regulation indicates otherwise.

SECTION 5. Effect of Collective Bargaining Agreements: If a provision of the personnel policies is in conflict with a provision of applicable collective bargaining agreement negotiated between the City and a recognized employee organization or union, to the extent of such conflict, the provision of the collective bargaining agreement shall be controlling.

SECTION 6. No Contract Created: The rules do not create any contract of employment, express or implied, or any rights in the nature of a contract.

RULE 2

DEFINITION OF TERMS

The following terms, apply throughout these rules unless the context requires another meaning:

1. "Advancement": A salary increase within the limits of a pay range established for a class.
2. "Anniversary Date": The date recurring yearly upon an employee's most recent regular appointment.
3. "Appointing Authority": The City Manager, and his/her designee, has the final authority to appoint or remove persons from positions in the City Service.
4. "City Manager": The City Manager is the chief executive officer of the City and as used herein, includes any assistant, Department Head, or other managerial employee to whom the City Manager may from time to time explicitly or implicitly delegate the authorities conferred by the Municipal Code or these Rules and Regulations.
5. "Class": All positions sufficiently similar in duties, authority and responsibility, to permit grouping under a common title.
6. "Classification Plan": Classes of positions defined by title and class specifications.

7. "Classified Service": All positions of employment in the service of the City, except those specifically excluded as "Unclassified", or "Grant Funded Personnel". Classified Service includes those authorized and classified positions to which appointments are made through a competitive process governed by merit system requirements and in which an employee can achieve regular status in the classification.

8. "Compensation Plan": The schedule of ranges and salary rates which applies to each class in the classification plan.

9. "Days": Days means working days unless otherwise stated.

10. "Demotion": The voluntary or involuntary reduction of an employee from a position in one class to a position in another class for which the maximum rate of pay is lower.

11. "Disciplinary Action": Action taken by the City Manager, or his/her designee, against an employee for disciplinary cause to include any or all of the following: discharge, demotion, suspension, salary reduction, written reprimand.

12. "Eligible": A person who successfully passed all initial examination requirements and whose name is on an employment list for a period of not more than three months unless the Director of Human Resources at the request of the Department Head extends it to a maximum of two years.

13. "Employment List":

(a) Open Employment List: A list of names of persons who have taken an open-competitive examination for a class in the service and have qualified.

(b) Promotional Employment List: A list of names of persons who have taken a promotional examination for a class in the service and have qualified.

(c) Closed-Competitive List: A list of names of persons who have met the qualifications of the classification and have taken an examination. Admission to the examination is extended to regular, provisional, probationary, temporary full-time and temporary part-time employees, and volunteers. In order to take the examination, employees and volunteers must have a total of 520 paid or unpaid hours of service with the City within the preceding 24 months.

(d) Lateral Entry List: A list of names of persons who are qualified through a lateral entry examination.

14. "Examination":

(a) Open-Competitive Examination: An examination for a particular class or position within a class which is open to all persons meeting the qualifications for the class.

(b) Promotional Examination: An examination for a particular class or position within a class, admission to the examination being

limited to regular employees in the service who meet the qualifications for the class.

(c) Continuous Examination: An open recruitment examination which is administered periodically and as a result of which names are placed on an employment list, in order of final scores, and remain on the list for a period of not more than three months, unless the Director of Human Resources or Department Head extends it to a maximum of two years.

(d) Closed-Competitive Examination: An examination where admission is extended to regular, provisional, probationary, temporary full-time, and temporary part-time employees, and volunteers who meet the qualifications for the classification. In order to take the examination, employees and volunteers must have a total of 520 paid or unpaid hours of service with the City within the preceding 24 months.

(e) Lateral Entry Examination: Employees of other recognized public agencies with regular status and who meet the minimum requirements of the position.

15. "Director of Human Resources": Head of Human Resources Department and as used herein includes any department employee to whom the Director of Human Resources may explicitly or implicitly delegate authority.

16. "Interim Appointed Employee": An employee appointed from an appropriate eligibility list to a temporary or temporarily vacated position. Interim appointed employees may be terminated from the position without cause or appeal.

17. "Part-Time Employee": An employee who works less than a full schedule. Part-time employees are unclassified unless designated as classified by the Director of Human Resources. Part-time unclassified employees are referred to as temporary part-time. Part-time unclassified employees do not acquire regular status and may be terminated without cause or right of appeal.

18. "Position": A specific office or employment, whether occupied or vacant, carrying certain responsibilities and requiring performance of certain duties by an individual, either full-time or part-time.

19. "Probationary Employee": An employee in classified service who is in a working test period during which the employee is required to demonstrate their fitness for the duties to which they are appointed by actual performance of the duties of the position. Probationary employees do not have regular status and may be terminated without cause or right of appeal.

20. "Grant Funded Personnel": Employees who are hired entirely or in part by state or federal government funding. These employees are unclassified and can be removed when the funding source is eliminated or reduced.

21. "Promotion": The movement of an employee from an incumbent position in one class to a position in another class having a higher maximum rate of pay after successfully competing in the examination process when applicable.

22. "Progression": The process by which an employee moves from the entry level position to the higher level position in a tiered classification that is flexibly staffed.

23. "Provisionally Appointed Employee": An employee who possesses the minimum qualifications established for a particular classification and who has been temporarily appointed to a position in that class in the absence of viable candidates on an eligibility list. Provisionally appointed employees may be terminated without cause or right to appeal.

24. "Regular Employee": These positions are authorized by the City Council and may be budgeted as either full or part-time in the classified service and can gain regular status upon successful completion of the required probationary period.

25. "Reinstatement": The reemployment within one year without examination of a former regular employee who has resigned in good standing.

26. "Reemployment": The rehiring of a former regular or probationary employee who was laid off.

27. "Salary Schedule": The schedule setting forth the pay to be made to an employee based on their meritorious performance and service in the classification.

28. "Suspension": The temporary separation from the service of an employee without pay, for disciplinary purposes.

29. "Temporary Employment": The appointment of a provisional, seasonal or interim employee. Temporary employees may be removed from the temporary appointment or employment without cause or right of appeal.

30. "Transfer": A change of an employee from one position to another position in the same class or in a comparable class.

31. "Unclassified Service": The unclassified service includes temporary, interim, provisional, seasonal, most part-time employees, grant funded personnel, contract employees, and employees in the classifications designated by City Council resolution. Employees in the unclassified service are at-will and may be removed without cause or right of appeal.

32. "Volunteer": A person who volunteers their time to the City. Volunteers are not employees of the City. Volunteers do not acquire regular status and may be terminated without cause or right of appeal.

33. "Y-rate": The salary of an employee whose position is downgraded or reclassified to a classification with a lower salary schedule, and

whose salary rate is above the maximum of the new salary schedule, shall be frozen at their current salary rate until the salary schedule of the new classification is equal to or exceeds the employee's frozen salary, at which time the employee shall be assimilated into the salary schedule of the lower class.

RULE 3

BOARD OF REVIEW

SECTION 1. Composition of the Board of Review: The Board of Review is created by City Ordinance and is comprised of seven members appointed by the City Council. See Escondido Municipal Code Chapter 19. The Board of Review decides appeals brought by regular status employees of the City as set forth more fully in Rule 28.

SECTION 2. Meeting: The Board of Review will hold meetings at the time and place within the City as will be designated by resolution of the Board. By resolution the Board will set forth procedures for adjourning, calling and scheduling regular and special meetings of the Board. A majority of the members of the Board constitutes a quorum for the transaction of business. Meetings shall be conducted in accordance with such rules and procedures as may be adopted by the Board of Review. Rules for disciplinary hearings are set forth in Rule 28.

SECTION 3. Public Hearings: Hearings conducted by the Board of Review shall be public and are subject to the "Ralph M. Brown Act", Government Code §§ 54950, et seq. Hearings involving the discipline of employees shall be private or public at the employee's request. If an employee wants a public hearing, this request must be made in the request for appeal to the Director of Human Resources.

RULE 4

CLASSIFICATION PLAN

SECTION 1. Preparation of Plan: With approval of the City Manager, the Director of Human Resources, after consulting with heads of departments, will prepare and maintain a classification plan for each classification. The classification plan will consist of classes of positions defined by class specification, including the title. Under the classification plan all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class, and the same schedules of compensation will apply to all positions in the same class.

SECTION 2. Adoption, Amendment, and Revision of Plan: The classification plan may be amended by the Director of Human Resources with the approval of the City Manager.

SECTION 3. Allocation of Positions: The Director of Human Resources will allocate every position in the service to one of the classes established by the plan.

SECTION 4. New Classifications: When a new classification is created, the Director of Human Resources will notify the City Manager. No person shall be appointed or employed to fill any position within the classification until the classification plan has been amended to add the new classification.

SECTION 5. Class Title: The class title will be the title of each position in the class and will be used for personnel records. Working titles may be used within a department and for recruitment purposes.

SECTION 6. Class Specifications: Class specifications are descriptive and not restrictive. Descriptions should not be construed as a declaration that the duties and

responsibilities will not be changed nor that the appointing authority may not temporarily assign different duties and responsibilities.

SECTION 7. Reclassification: The gradual and significant accretion in duties and responsibilities over time such that the classification has changed materially necessitating a reclassification. After a classification analysis has been conducted for the position authorized for an approved study, the Director of Human Resources will allocate the position to a more appropriate class, upon approval of the City Manager. Classification studies can result in the following:

a. Upgrading: A change in the title of the position accompanied by an assignment of the position to a higher salary range.

b. Downgrading: A change in the title of the position accompanied by an assignment of the position to a classification with a lower salary range.

c. Other: Study recommendations may result in the reclassification of the position, though the salary range remains unchanged.

Reclassifications will not be used for the purpose of avoiding restrictions concerning demotions and promotions.

RULE 5

GENERAL COMPENSATION POLICIES

SECTION 1. Compensation Plan: The City Council will adopt a salary schedule which sets forth the salary range of each classification and the steps within the range.

SECTION 2. Salary Upon Initial Hire: A probationary or regular employee will be placed on the first step of the salary range of the classification into which the employee is

hired. An employee may be appointed to a higher step upon recommendation of the Department Head and approval of the City Manager if there was difficulty in filling the position or the employee is exceptionally well qualified.

SECTION 3. Salary Upon Reclassification to a Higher Class: An employee whose position is reclassified from one class to a class with a higher salary range will receive the entrance rate of the new salary range or a minimum of 5%, whichever is greater, provided that no employee is advanced above the final step of the higher base salary range.

Section 4. Salary Upon Reclassification to a Lower Class: An employee whose position is reclassified from one class to a class with a lower salary range will be placed in the range of the lower class at the step equal to or immediately above their current salary rate unless their current salary rate exceeds the maximum salary rate in the lower class. If such is the case, they will remain at their current salary until the maximum salary rate in the lower class is equal to or greater than their current salary, at which time they shall be assimilated into the salary schedule of the lower class (Y-rate).

SECTION 5. Salary Upon Promotion: An employee who is promoted to a higher classification will receive the entrance rate of the new salary range or a minimum of 5%, whichever is greater, provided that no employee is advanced above the final step of the higher base salary range.

Section 6. Salary Upon Demotion: In the event an employee is demoted, the Director of Human Resources will, with the approval of the City Manager, place the employee at a step within the salary range of the class to which they have been demoted.

Section 7. Salary Upon Transfer: An employee transferred from a position in one class to a position in a comparable class with a lower salary will be retained at their

current salary, or "Y" rated, until the rate is equal to or greater than the current salary, at which time the employee will be placed on the salary schedule for the comparable class.

Section 8. Merit Increase: An employee is eligible for a merit increase at the end of six months from hire, at the end of twelve months and annually thereafter until the employee reaches the top salary step in his/her classification. Merit increases will only be given if the employee has satisfactory or better performance on the performance evaluation, is recommended for an increase by the Department Head and the recommendation is approved by the City Manager.

SECTION 9. Progression in Dual Classification: An employees who is in a flexibly staffed classification (levels I and II, or levels I, II and III) will move from a lower level to the next level upon completion of service and qualification of performance as required by the City. Upon progression from a lower level to the next level the employee will move to a step which gives them at least a 5% salary increase.

SECTION 10. Salary of Temporary Employees: Temporary employees will be placed at any salary step within the range for the class, as defined by the Part-time Employees Pay Plan.

Part-time temporary interim, provisional, seasonal employees will be paid hourly and are not eligible for paid benefits except for PARS or PERS Retirement Benefits.

SECTION 11. Special Advancement: The City Manager, at his/her discretion, may grant salary advancement to any step in the salary range not to exceed the salary maximum for that range when warranted by superior performance of the employee.

SECTION 12. Overtime Provisions:

A. Eligibility: All non exempt employees are entitled to overtime as described below.

B. Exempt Employees: An exempt employee is an employee whose duties exempt them from overtime as defined by the Fair Labor Standards Act, except as otherwise approved by the City. Specific Management classes are eligible to receive additional compensation as stated below:

Fire Battalion Chiefs – Straight time for hours worked in excess of 56 hours (shift) or 80 hours (days) per work period.

Police Lieutenants – Time and one-half for hours worked in excess of 40 hours in a 7 day work period. Police Lieutenants do not receive Management leave.

C. Overtime-Non-Exempt: All eligible employees will be paid overtime at the rate of time and one-half their regular rate of pay, including any special pay which is a part of their regular rate (e.g., shift premium) in accordance with paragraphs D, E, and F below.

D. Overtime-Hours: Overtime will be paid after eight hours worked in a day, exclusive of meal time, or 40 hours worked in a week, unless the regular workday is in excess of eight hours. In such case, overtime will be paid for all hours worked after the regular work-day hours or after 40 hours in a week. For employees assigned to a 9/80 work schedule, overtime is defined as authorized time worked in excess of

40 hours in seven consecutive 24 hour periods beginning at 12:01 p.m. on Friday and ending at 12:00 p.m. (noon) on the following Friday. Fire safety employees shall be compensated for overtime as specified in their respective Memorandum of Understanding.

E. Overtime-Hours Worked: Holidays, vacation and sick leave are hours worked for the purpose of computing overtime.

F. Overtime-Recordkeeping: Overtime will be recorded and paid on the basis of 15 minute increments; for each full 15-minute period worked, the employee will be compensated for one quarter hour of overtime. Overtime shall be rounded to the nearest quarter-hour increments (i.e., 20 minutes of overtime is one-quarter hour and 25 minutes of overtime is one-half hour.)

G. Overtime-Callback: A minimum of three hours pay (two hours for Fire Safety employees) at the rate of time and one-half shall be paid for each incident of callback overtime for all eligible employees. Non-Management supervisory employees who are otherwise exempt from overtime are eligible for callback overtime. Callback overtime is unscheduled overtime as opposed to early start or extended day. Holidays, Saturdays, and Sundays and/or attendance at regularly scheduled meetings and other activities such as City Council meetings, Planning Commission meetings, etc., are not to be considered callback overtime.

H. Overtime Authorization: Overtime, other than callback overtime, when worked, will be compensated either by time and one-half off or time and one-half pay as set forth herein. All overtime must be requested by the supervisor and approved by the Department Head, or designee. Overtime worked without authorization is grounds for discipline.

I. Compensatory Time Off: Overtime may be compensated by time off at the rate of time and one-half the hours worked. The compensatory time off is subject to the needs of the service and may not be taken without prior approval by the employee's supervisor on an approved form, nor shall it be taken in increments of less than one-quarter hour. Compensatory time balances may not exceed 80 hours, but may be maintained on an indefinite basis. When the maximum balance is reached, cash payment for overtime will be automatic.

J. Overtime-Commission Service: Clerical employees providing secretarial service to City commissions after normal work hours will be compensated at time and one-half their regular rate of pay.

K. Overtime-Holidays: All employees whose regularly scheduled workday or work shift falls on a holiday and who work such a holiday shall receive compensation as follows:

1. Time and one-half for time worked, and, at the employee's option:

a. Compensatory time off on a straight-time basis subject to the needs of the service and the prior approval of the employee's supervisor; or

b. Straight-time pay for time worked.

SECTION 13. Out-of-Class Assignment: An out-of-class assignment is a temporary assignment of a regular employee to an authorized classification at a higher level of pay which requires the employee to perform the duties of the higher classification. Employees directed to continuously perform the duties in a vacant higher level classification shall be entitled to a salary rate increase at five percent (5%) above their regular rate of pay, or the minimum salary of the out-of-class classification, whichever is greater, commencing after five consecutive work days in the out-of-class assignment, and for a period of no longer than six months at any one time. Compensation will be retroactive to the first day of the out-of-class assignment.

Once the initial out-of-class assignment terminates, the five consecutive workday waiting period will be waived for any additional out-of-class assignments that occur within six months provided that the employee is working in the same out-of-class classification regardless of work area assignment.

All out-of-class pay will be approved, provided that:

1. The Department Head shall state in writing to the Human Resources Department that the employee meets the minimum requirements of the higher level position and is held responsible to perform all of the duties normally associated with the higher level position without limitation as to difficulty or complexity of assignments and that the

employee shall be required to meet standards for satisfactory performance normally required at the higher level position. Benefits of the higher classification are not available and the employee will continue to receive the benefits of the employee's regular position.

2. Such assignment shall be temporary and will terminate when the position is filled, when the incumbent employee is returned to work, or when the temporary assignment is discontinued. Duration of the out-of-class assignment shall not exceed six months at any one time, unless an extension is approved by the City Manager.

3. A vacant position is defined as an authorized regular position for which funds have been appropriated and which may be:

   a. A vacant position due to attrition and for which a recruitment process may be initiated;

   b. A position from which the incumbent is on extended leave of absence; or

   c. A new position authorized by the City Council for which the recruitment process may be initiated.

SECTION 14. Temporary Assignment Pay: Temporary Assignment Pay allows for temporary increases in pay beyond an employee's base rate of pay when duties performed by the employee support such additional pay for specific periods of time.

Increases in pay may be granted to recognize the temporary assignment requiring a greater level of skill. "Temporary assignment" shall mean a period of six months or less. Requests for temporary assignment compensation may be initiated by the Department

Head or designee. Employees directed to continuously perform higher level duties shall be entitled to a salary rate increase at 5% above their regular rate of pay. All temporary assignment pay will be approved, provided that:

1. The Department Head shall state in writing to the Human Resources Department that the employee is performing duties requiring a higher level of skill and outside the scope of their current classification.
2. Such assignment shall be temporary and will not exceed six months, unless an extension is approved by the Department Head.
3. Temporary Assignment Pay shall be granted when employees are assigned higher level duties due to position vacancies, special assignments, or when duties performed by the employee support such additional pay.
4. Such increases in pay will not affect an employee's merit increases pursuant to Section 7.

RULE 6

APPLICATIONS AND APPLICANTS

SECTION 1. Announcement: All examinations for positions in the classified service will be publicized by posting announcements in City Hall on official bulletin boards, electronic mail, and by such other methods as the Director of Human Resources deems advisable. The announcements will specify the title and pay of the position for which the examination is announced; the position specifications, including: the nature of the work of the position; the manner of making applications; and other pertinent information, including

a statement that the City is an equal opportunity employer and does not discriminate on the basis of protected status.

SECTION 2. Application Forms: Applications must be made available as prescribed on the examination announcement. All applications must be signed by the person applying.

SECTION 3. Disqualification: The Director of Human Resources will reject any application which indicates on its face that the applicant 1) does not possess the minimum qualifications required for the position; or 2) for any cause which in the judgment of the Director of Human Resources would render the applicant unsuitable for the position, including failing a prior background investigation, a prior termination from City employment, a resignation in lieu of termination from City employment, or significant disciplinary action.

SECTION 4. Nepotism Prohibited: The Director of Human Resources will disqualify any applicant who is applying for a position where the applicant would be supervised by or work in the same department with an officer, (elected or appointed) Department Head or supervisor to whom they are related by blood, marriage or domestic partnership. This rule does not apply to seasonal employment where the applicant is not supervised by an officer, Department Head or supervisor to whom he or she is related by blood, marriage or domestic partnership.

SECTION 5. Rejection of Application: When an application is rejected notice will be sent or delivered to the applicant by the Director of Human Resources, or designee.

SECTION 6. Appeal: If the applicant is rejected the applicant can appeal the rejection to the Director of Human Resources within five (5) working days of the date of

the notice. The Director will affirm the rejection or reinstate the application. If an applicant is disqualified for criminal conduct the applicant may appeal to the Board of Review within ten (10) days of notice as set forth in Municipal Code Section 19-29.

RULE 7

EXAMINATIONS

SECTION 1. Nature and Types of Examinations: The selection techniques used in the examination process for classified positions will be impartial, of a practical nature and relate to those subjects which, in the opinion of the Director of Human Resources measure the relative capabilities of the persons examined to execute the duties and responsibilities of the class to which they seek to be appointed. Examinations may consist of achievement and aptitude tests, written tests, personal interviews, performance tests, physical agility tests, evaluation of daily work performance, work samples, medical tests, or any combination of these or other tests.

The Director of Human Resources with the approval of the City Manager, may waive one or more of the tests in the selection process for applicants whose qualifications fulfill the requirements for which that specific test or tests is to be given. The terms and conditions of such waiver shall be clearly stated on the job announcement and waived for all applicants meeting the specified terms and conditions.

SECTION 2. Open-Competitive Examination: Open-competitive examinations will be given for all positions to be filled in the classified service unless the Director of Human Resources and the City Manager determine that an internal promotional examination or closed competitive examination will be given.

SECTION 3. Promotional Examination: Promotional examinations may be conducted whenever, in the opinion of the Director of Human Resources and with the approval of the City Manager, the needs of the classified service require it. Promotional examinations may include any of the selection techniques mentioned in Section 1 of this rule, or any combination of them. Only regular employees who meet the requirements set forth in the promotional examination announcement may compete.

SECTION 4. Continuous Examination: Open-competitive examinations may be administered periodically for a single class in the classified service as the needs of the personnel system require. No person may take this examination, however, more often than every three months from date of examination. Names will be placed on employment lists, and shall remain on such lists for three months, unless a longer period is deemed necessary by the Director of Human Resources but in any event no longer than two years.

SECTION 5. Closed-Competitive: Regular, provisional, probationary, temporary full-time and temporary part-time employees and volunteers who have a total of 520 paid or unpaid hours of service with the City in the preceding 24 months and who meet the requirements set forth in the examination announcement, may compete in closed-competitive examinations.

SECTION 6. Lateral Entry Examination: Lateral entry examinations may be conducted for positions in the classified service when deemed appropriate by the Director of Human Resources and City Manager. These examinations are open to employees of other recognized public agencies with regular status who have performed satisfactory service in a comparable classification. Candidates may also be required to meet specific experience, certification and license requirements. Classifications for which lateral entry

examinations are appropriate shall be limited to those approved by the Director of Human Resources and which have continuous recruitment needs and/or demonstrated recruitment difficulties.

SECTION 7. Conduct of Examination: The City Council may authorize the City Manager to contract with any competent agency or individual for the preparing and/or administering of examinations. In the absence of such a contract, the Director of Human Resources will see that such duties are performed.

SECTION 8. Scoring Examinations and Qualifying Scores: The Human Resources Department will utilize professionally accepted principles and methods in the development of the procedures for scoring, setting passing points, scaling, converting and combining scores, and weighing examination components, as necessary, to ensure that final scores meet acceptable standards of validity and reliability. Veterans' preference points may be added to a candidate's final test score per City policy.

SECTION 9. Notification of Examination Results and Review of Papers: Each candidate in an examination will be given written notice of the results thereof, and if successful, of their rank on the employment list. Candidates will not be told their position on the eligibility lists until the testing selection process is completed.

A. The candidates must personally meet with the Director of Human Resources or designee to review testing results.

B. Review of the material must be at a mutually agreeable time and the candidate must make an advance appointment with Human Resources for the review.

C. All testing materials are confidential property of the City and may not be removed from the Human Resources Office.

SECTION 10. Right of Appeal: Any applicant or candidate who believes that they have been discriminated against because of any non-merit factor in any portion of the examination process, may appeal in writing to the Director of Human Resources. Based upon the appeal submitted, the Director of Human Resources may adjust the status of such applicant or candidate which may affect the relative status of any other applicant or candidate.

SECTION 11. Reasonable Accommodations and Testing: Should an otherwise qualified applicant for a position who is disabled within the definition of the state or federal law request reasonable accommodation for any part of the examination process, the Director of Human Resources may modify the examination process for the applicant.

The request can be made to the employee's supervisor, Department Head or Human Resources. An individual who requests accommodations may be asked to provide a statement from a physician or other health care professional explaining the individual's functional limitations.

A person who is not satisfied with the accommodations provided may seek advice from the City of Escondido's Americans with Disabilities Act Coordinator.

SECTION 12. Examination Process for Unclassified Employees: Unclassified employees will or will not participate in the examination process at the discretion of the Director of Human Resources.

SECTION 13. Background Investigation: Candidates for City employment may be subject to appropriate investigation including but not limited to:

1) Employment history and work performance investigation;

2) Personal and character investigation including credit history;

3) Department of Justice Fingerprinting;

4) Search of record of convictions and for some classifications search of record of arrest(s);

5) Post offer physical or psychological test including a drug and alcohol screen;

6) Verification of education or license if required for the job;

7) Post employment proof of citizenship or legal right to work in the United States.

RULE 8

EMPLOYMENT LISTS

SECTION 1. Employment Lists: As soon as possible after the completion of an examination, the Director of Human Resources will prepare and keep available an employment list consisting of the names of candidates who qualified in the examination.

SECTION 2. Duration of Lists: Employment lists, remain in effect for three months and may be abolished or extended at any time by action of the Director of Human Resources or by request of the Department Head. In no event will an employment list remain in effect for more than two years.

Names placed on open-competitive lists created as a result of continuous examinations shall be merged with any others already on the list in order of final scores and shall remain on the list for not more than three months, unless the list is extended.

SECTION 3. Reemployment Lists: The names of probationary and regular employees who have been laid off will be placed on appropriate reemployment lists by class in order of seniority (total continuous cumulative time served in probationary and regular status) and given the first opportunity to return to regular employment. Names remain on the reemployment list for a period of one year, unless sooner reemployed.

When a reemployment list is to be used to fill vacancies, the Director of Human Resources will certify from the top of such list the number of names equal to the number of vacancies to be filled, and the City Manager will appoint such persons to fill the vacancies.

SECTION 4. Removal of Names From List: The name of any person appearing on an employment or reemployment list will be removed by the Director of Human Resources if the eligible requests in writing that their name be removed, if they fail to respond to a notice of certification mailed to their last known address, when the list expires as specified in these rules, or for any cause which in the judgment of the Director of Human Resources would render the individual unsuitable for the position, including failing a prior background investigation, prior termination of City employment for misconduct, or significant disciplinary action. The names of persons on promotional employment lists who resign from the service shall automatically be dropped from such lists.

SECTION 5. Waivers: Eligibles may waive their right to certification or appointment without suffering any loss of status on the employment list by so doing.

Except, however, when a candidate has waived certification three times, their name shall automatically be dropped from the list.

SECTION 6. Abolishing of List: The City Manager may abolish an employment list or reemployment list for any reason of unsuitability of examination. The reason for abolishing a reemployment list shall be specifically set forth in a memorandum to the City Manager from the Director of Human Resources.

RULE 9

METHOD OF FILLING VACANCIES

SECTION 1. Appointment: All vacancies in the classified service shall be filled by transfer, demotion, reemployment, reinstatement, or from eligibles certified by the Director of Human Resources or designee from an appropriate employment list. With the consent of the Department Head and the Director of Human Resources, employment lists for a higher grade class may be used to fill a lower grade class in the same job family, where no employment list exists for the lower grade classification. Direct appointment may be made to vacancies in the unclassified service by the City Manager or appropriate Department Head. This includes appointments of seasonal, interim and provisional employees, as well as temporary part-time employees.

SECTION 2. Notice to Director of Human Resources: Whenever a vacancy in the service is to be filled, notification will be given to the Director of Human Resources. If there is no reemployment list available for the class, the City Manager shall have the right to decide whether to fill the vacancy by reinstatement, transfer, demotion, appointment from a promotional employment list, or appointment from an open employment list or by direct appointment.

SECTION 3. Certification of Eligibles: When a vacancy is to be filled by appointment from a promotional employment list, an open competitive employment list, lateral entry list, or a closed competitive list, the Director of Human Resources or designee shall certify all eligibles in the highest ranks in which eligibles are available, and they will be listed alphabetically (except police sworn and fire safety eligibles will be listed alphabetically in rank order). Rank orders are as follows: 95% to 100% (first rank), 90% to 94.9% (second rank), 85% to 89.9% (third rank), 80% to 84.9% (fourth rank), 75% to 79.9% (fifth. rank), and 70% to 74.9% (sixth rank). Whenever there are less than nine names, plus the number of vacancies to be filled in the rank to be certified, the Department Head may request the next rank to be certified. Whenever there are more than nine names, plus the number of vacancies to be filled in the rank or ranks to be certified, the Department Head may request a list certified down to the highest percentage score within the rank which will provide no less than nine names, plus the number of vacancies to be filled. When a department requests that names be recertified from an existing eligibility list, department staff will be required to reinterview all applicants on a recertified eligibility list only if more than six months has lapsed. Whenever there are fewer than five names of individuals willing to accept appointment on a promotional, closed competitive, lateral entry list, or on an open competitive employment list, the City Manager may make an appointment from among such eligibles or may request the Director of Human Resources to establish a new list. When so requested, the Director of Human Resources will hold a new examination and establish a new employment list. A Department Head may select from a valid certification list for a period of three months, after which recertification is necessary unless the list is extended.

SECTION 4: Selective Certification: Whenever the possession of a skill, knowledge or ability, including bilingual ability, will enhance efficiency or promote better public service, the Director of Human Resources, or designee may restrict certification of eligibles within a specific employment list to those persons who possess such skill, knowledge or ability. The Director of Human Resources or designee shall be responsible for evaluating each request for selective certification. The Department Head will submit written justification for any request for selective certification. Every reasonable effort will be made to ensure that no circumvention of merit system principles of these rules will occur if the request is approved.

SECTION 5: Veterans' Preference: If two or more candidates are identically qualified for a position the City Manager will select the candidate who is a veteran.

SECTION 6. Appointment Process: After interview and investigation, the City Manager will make appointments from among those certified. The persons accepting appointment shall present themselves to the Director of Human Resources or their designated representative, for processing on or before the date of appointment. If the applicant accepts the appointment and presents himself/herself for duty as prescribed, the applicant will be deemed appointed; otherwise, they shall be deemed to have declined the appointment.

SECTION 7. Types of Appointments:

A. Regular Appointment: A regular appointment may be made by the City Manager from the appropriate employment list. No regular appointment shall be completed until after the candidate has successfully passed the probationary period. A regular employee is

eligible to receive benefits and typically works 80 hours in a pay period.

B. Provisional Appointment: In the absence of a viable employment list for the classification, a provisional appointment may be made by the City Manager of a person meeting the minimum qualifications for the position. An employment list will be established within six months for any position filled by provisional appointment. The City Manager may extend the period for any provisional appointment for not more than 30 days at a time, not to exceed 12 months, in aggregate. No special credit shall be allowed in meeting any qualifications or in the giving of any test for service rendered under a provisional appointment.

C. Interim Appointment: An interim appointment from the appropriate employment list may be made to a position which is temporary or which has been vacated temporarily. Such appointment shall not exceed six months except that the City Manager may extend the period of any interim appointment for not more than 30 days by any one action not to exceed in aggregate 12 months.

D. Appointment Upon Progression In Flexibly Staffed Positions: Progression is the process by which an employee moves from the entry level I to the higher level II in a I/II dual classification, or a I, II and III classification (flexibly staffed). Employees hired at the entry I level of a I/II, or I/II/III flexibly classification progress to the higher level if:

- They meet the minimum requirements of the higher position;
- They successfully complete any special certifications, licenses and/or department criteria set for the higher position;
- In the opinion of the Department Head and the Director of Human Resources, or designee, the employee's performance warrants progression to the higher level.

If a progressive series includes a trainee position in the classification, the trainee will serve in a probationary status and will have twelve to eighteen months to complete the competency test required by the department. If he/she cannot successfully pass the competency test within the maximum eighteen months allowed, employment will be terminated.

a. If an employee is hired as a trainee, he/she serves twelve to eighteen months as a probationary employee. When he/she is progressed to the I level and further to the II or III level he/she will not serve probation in those positions. If there is no trainee position, the employee serves a normal probation at the I level and does not serve probation again at the II or III level.

b. In the flexibly staffed positions, a minimum amount of time is required at the lower level before an employee may be progressed to the higher level. They also must meet special

certifications or requirements of the higher level position. If an employee completes all the requirements and has served the required amount of time in the lower position he/she may be progressed.

E. Underfill Appointment: Appointments to regular positions made from an appropriate employment list of a lower classification for either training or budgetary purposes. If such appointment is a trainee underfill, the employee must qualify for the higher classification or be terminated. The employee shall be required to qualify by one or more of the following:

1. Additional experience
2. Additional education
3. Possession of specific certificates or licenses
4. Probationary period progress report
5. Successful completion of an appropriate examination
6. Any other departmental requirements in order to successfully perform the duties of the higher classification

If the appointment is a budgetary underfill, the incumbent shall remain at the lower level classification and shall not be assigned to perform higher level duties.

F. Temporary Part-time Appointment: A temporary appointment from the appropriate employment list to cover needs including, but not limited to, emergency workloads of limited duration to provide employment

relief and coverage. Temporary Part-time employees serve at the pleasure of their appointing authority, do not acquire regular status, and may be terminated without cause or right to appeal.

RULE 10

PROBATIONARY PERIOD

SECTION 1. Objective of Probationary Period: The probationary period is to be regarded as a part of the testing process and will be utilized for closely observing the employee's work and for securing the most effective adjustment of a new classified employee to their position.

SECTION 2. Length:

A. All employees in the classified service appointed or promoted to a regular position must successfully complete a probationary period.

1. Any classified employee included in the Supervisory Unit, Administrative/Clerical/Engineering Unit or Maintenance and Operations Unit who is appointed to a probationary position must serve a probationary period of 1,560 actual hours worked, excluding any leave time.

2. All other employees, except as specified in Section 2B, including experienced Police Officers appointed under the Lateral employment program, Fire Department Safety Personnel, and Public Safety Dispatchers, must serve a 12-month probationary period of actual and continuous service.

B. Police employees appointed to the position of Police Officer who have not qualified for the lateral employment program must serve a probationary period of 18 months of actual and continuous service.

SECTION 3. Extension of Probationary Period: At the discretion of the City Manager, the probationary period may be extended for up to an additional six months. Such extensions shall be set forth in writing. A copy of this extension notice shall be provided to the employee and to the Human Resources Department no later than five (5) days prior to the initial expiration date.

SECTION 4. Rejection of Probationer: During the probationary period, an employee may be rejected without cause at any time by the City Manager, or designee. Rejection shall not be the result of or influenced in any manner by consideration of race, color, sex, age, ancestry, national origin, political or religious affiliation, disability, marital status, medical condition, sexual orientation, or any other basis protected by federal, state or local law, except where a bona fide occupational qualification so dictates. Notification of rejection in writing will be served on the probationer, and a copy filed with the Director of Human Resources.

SECTION 5. Rejection Following Promotion: Any employee rejected during the probationary period following a promotional appointment, will be reinstated to the position from which they were promoted unless discharged for cause, and they are discharged in conformance with these rules. When reinstated to the former position, the employee cannot displace an employee whose total City service is greater.

SECTION 6. Credit for Interim and Provisional Appointments: Continuous active service under an interim and provisional appointment may be counted toward completion of the probationary period.

SECTION 7. Absence: Periods of absence will extend the probationary period by the number of hours absent from work.

RULE 11

HOURS OF WORK

SECTION 1. Normal Hours of Work: For non-safety employees the normal work week is five consecutive work days with two days off. The normal work day is eight consecutive hours within a 24 hour period. Shift work employees will be granted reasonable advance notice of changes in scheduled shifts. Notwithstanding the above, when public or operational necessity or efficiency of service is deemed by the City to require other than the normal work week, work day or work schedule it will be prescribed by the City. Whenever there is a change in the existing work week, work hours, or work schedule (except regularly scheduled shift changes) the City will advise the affected employee(s) of the reasons therefore. Nothing in this section provides for or implies any additional compensation or benefit for work other than normal work week, work day or work schedule.

SECTION 2. Rest Periods: Non-safety employees will normally be provided rest periods at the rate of 15 minutes for each four hours worked. Except under unusual circumstances, rest periods will not be taken during the first or last hour of the work day. Notwithstanding the above, when public or operational necessity or efficiency of services is deemed by the City to require the employee to work, the employee may not receive a

rest period, or less than a 15 minute rest period. Rest periods are paid time. Nothing in this section provides for or implies any additional compensation or benefit if a rest period is not received.

SECTION 3. Attendance: Except as the City Manager requires to the contrary, all offices of the City shall be open for business from 8:00 a.m. until 5:00 p.m. on all days except Saturdays, Sundays and the designated holidays.

All departments will keep daily attendance records of employees which will be reported to the Payroll Division in the form and on the dates specified.

Full-time employees except as rules or Memorandums of Understanding provide to the contrary, work at least 40 hours per week. An employee shall work according to the schedule set by their supervisor and/or Department Head.

All employees shall be on duty at the times required by the department with respect to hours and days.

RULE 12

HOLIDAYS

SECTION 1. Holidays: Unless an applicable Memorandum of Understanding provides otherwise, all employees, except as modified in Section 2, are entitled to the following fixed holidays:

CONSTITUTED HOLIDAYS

New Year's Day

Martin Luther King, Jr. Day

President's Day

Memorial Day

Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

After Thanksgiving

Christmas Day

When a holiday falls on a Sunday, it is observed on the Monday immediately following. When a holiday falls on a Saturday, it shall be observed on the preceding Friday.

SECTION 2. Eligibility for Holiday Pay: All employees, except seasonal, temporary part-time employees, and 24-hour shift safety employees of the Fire Department, shall be entitled to the constituted holidays as stated in Section 1. To receive holiday pay for a constituted holiday, employees must be in an active status on the date the holiday is observed, and in a paid status during the pay period. Newly hired employees will be eligible for constituted holidays occurring after their date of hire. Employees on an approved reduced work schedule shall have their holiday pay prorated accordingly.

RULE 13

VACATION

SECTION 1. Eligibility for Annual Vacation Leave: All employees other than seasonal and temporary part-time employees are entitled to vacation leave with pay.

SECTION 2. Earned Vacation: Unless an applicable Memorandum of Understanding provides otherwise each eligible employee accrues annual prorated vacation from the date of hire at the rate applicable to their employment status as follows:

0 - 5 years of service = 3.68 hours a pay period for 26.0893 pay periods.

6 - 10 years of service = 5.21 hours a pay period for 26.0893 pay periods.

11 - 15 years of service = 6.75 hours a pay period for 26.0893 pay periods.

16 years & over = 8.280 hours a pay period for 26.0893 pay periods.

Management and unclassified clerical and technical employees also receive 24 hours of vacation each July 1 and 4 hours each October 1. The 24 hours can be cashed out in December and July of each year.

SECTION 3. Vacation Periods: Vacation may be taken the first day following the completion of six months, except safety personnel who may not take vacation until the first day following 12 months of employment. Probationary employees may use vacation hours that have been accrued and reflected on their pay statements with approval from their supervisor. Vacation may never be used in units of less than one hour, except fire safety (56 hour) personnel may never use vacation in units of less than four hours.

A. Vacation Use: An employee may take vacation as determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the City. Prior approval is required except in the case of an emergency. In such circumstances the Department Head or designee must be notified of need for previously unapproved vacation.

B. Carryover of Vacation: If an employee cannot take all of their accrued vacation within an accrual year, the balance may be carried forward to the next year.

C. Maximum Accrual: Unless an appropriate Memorandum of Understanding provides otherwise, all employees, except Management, cannot accrue more than two (2) times their annual accrual. Management employees cannot accrue more than three (3) times their annual accrual. When an employee reaches the accrual maximum, the employee ceases accruing vacation.

D. No legal holiday that falls during an employee's vacation may be charged against the employee as vacation, and the leave shall be extended accordingly.

E. Employees who terminate will be paid in a lump sum for all accrued vacation leave earned prior to the effective date of termination.

F. Vacation for part-time regular employees is pro-rated.

RULE 14

SICK LEAVE

SECTION 1. Sick Leave-Use: Sick leave with pay is granted to all employees except seasonal and temporary part-time employees. Sick leave will not be considered as a right which employees may use at their discretion, but shall be allowed only in case of personal or family illness, injury, disability, Maternity/Paternity leave, or Bereavement leave. An employee's annual sick leave accrual may be used for the illness or injury of a parent, child, spouse or domestic partner. In no event shall an employee be granted sick leave time to oversee children who are not ill (baby-sitting).

SECTION 2. Sick Leave Notification: In order to receive compensation while absent on sick leave, the employee must notify their immediate superior or their

Department Head prior to or within two hours after the time set for beginning their daily duties, or as may be specified by the Department Head. If an employee has applied for sick leave use for four or more consecutive scheduled working days, the Department Head may require a physician's certification. The City Manager may, however, require such certification or evidence the City deems necessary regarding sick leave use at any time. "Evidence" as used in the prior sentence includes but is not limited to:

A. A prognosis from the treating physician as to the convalescent period, if any.

B. Specific physical restrictions, if any, which bear on the employee's ability to perform his/her usual and customary duties or modified work assignments.

C. A second opinion on the employee's condition from a physician or physicians of the City's choice (and at City expense) based upon independent medical evaluation(s) and/or review of the employee's physician's report.

SECTION 3. Sick Leave-Accrual Rate: Unless an applicable Memorandum of Understanding provides otherwise, sick leave is granted from the date of hire at the rate of one workday for each calendar month of service. Unused sick leave will be accumulated indefinitely.

SECTION 4. Bereavement Leave: Employees may use all currently benefited annual sick leave accruals for situations when an employee's presence is required elsewhere due to bereavement for members of the employee's immediate family or individuals whose relationship to the employee is that of a dependent or near dependent,

member of the immediate household, domestic partner, or a person who is of significance to the employee. Exceptions to exceed the authorized hours are subject to consideration by the City Manager or a case-by-case basis.

SECTION 5. Sick and Vacation Leave Usage for Industrial Accidents: Any employee absent on account of injury or illness arising out of and occurring in the course of City employment is eligible for the same benefits and on the same basis as non-industrially injured or ill employees as provided under Rule 21, Section 4.

SECTION 6. No Sick Leave Payout on Termination: Employees who terminate for any reason, including retirement, will not receive cash payment for accrued sick leave. If an employee is laid off, sick leave may be restored to the employee in whole or in part by the City Manager upon reemployment.

SECTION 7. Sick Leave-Illness During Authorized Vacation: Employees who are on authorized vacation and become ill, or injured may use sick leave, provided a doctor's certificate is presented to the Director of Human Resources.

SECTION 8. Sick Leave Conversion: Unless an applicable Memorandum of Understanding provides otherwise, once annually classified employees who have 120 hours sick leave accumulated may convert sick leave above that amount to vacation at a ratio of 2 to 1, two hours of sick leave equals one hour of vacation. Employees will be limited to the same maximum accrual rate as regular vacation accrual.

RULE 15

FAMILY MEDICAL LEAVE

SECTION 1. Statement of Policy: To the extent not already provided for under current leave policies and provisions, the City will provide Family and Medical Care Leave

for eligible employees as required by the Family Medical Leave Act and California Family Rights Act.

RULE 16

MILITARY LEAVE

SECTION 1. Military Leave: Military leave will be granted in accordance with the provision of federal and state law. All employees and/or their spouses entitled to military leave must give the City Manager an opportunity within the limits of military regulations to determine when such leave shall be taken.

Upon verification of military orders, employees who are members of the military reserve or National Guard who have been called to active duty during national security, after the standard Military Leave Policy, shall receive the difference between the amount the employee would have received from their regular City gross biweekly wage (not including overtime) and the amount the employee receives from the military.

SECTION 2. Compensation: Every employee ordered to take Military Leave would have been required to work for and be paid by the City at the same time Military Leave is ordered, shall receive their salary or compensation as an employee of the City in accordance with the provisions of federal and state law.

RULE 17

JURY AND WITNESS LEAVE

SECTION 1. Jury Duty: Any employee who is called or required to serve as a trial juror is entitled to be absent from their duties with the City during the period of such service or while necessarily being present in court as a result of such call. The employee, except seasonal and temporary part-time employees will be paid their full salary and any

payment received by them from the court for such duty. Employees must provide to their supervisor the next work day after release from jury duty, their court date and time-stamped attendance card, with a copy of the call to jury duty and/or other documentary evidence of service as required by the City.

A. Employees are required to notify their supervisor on a daily basis regarding jury duty hours, including jury duty release time. If an employee or officer is released from jury duty with two (2) hours or more remaining in the workday, the employee or officer must contact their supervisor. The supervisor may inform the employee if they are needed to return to work or if they are released for the day. This is based on the needs of the City.

B. Where Courts have call-in procedures to determine days and hours of service, employees must take advantage of these procedures. If an employee is not told to report or told to call in the next day, the employee must come to work and make the call from the City, unless the employee receives prior approval from the Department Head or designee to call from home.

SECTION. 2. Witness Leave: Any employee, except seasonal and part-time employees, who is subpoenaed or otherwise ordered or required to appear as a witness is entitled to leave with pay unless the employee is a party or an expert witness. The employee will be paid the difference between their full salary and any payment received by them, except travel and subsistence pay. Employees shall provide their supervisor and

the Human Resources Department with a copy of the subpoena and/or other documentary evidence of service as required by the City.

RULE 18

PREGNANCY

SECTION 1. Pregnancy Leave:

1. Any female employee will be entitled to take an unpaid leave on account of pregnancy, child birth or related medical conditions for the period of disability allowed by pregnancy disability, family medical and/or California family rights leaves. The employee will be entitled to utilize any accrued sick leave, vacation time or other authorized accrued paid leave during this period of time. Other benefits are provided as stated under Rule 21, Section 4, or as provided under disability provisions.

2. Any employee who plans to take a leave on account of pregnancy, child birth or related condition should submit in writing to her Department Head a statement of her intent to take leave, including a physician's statement indicating her last advisable or probable date to remain at work and a statement of her intended date to return to work. Notice must be given not less than thirty (30) days prior to the intended commencement date of the leave, if the leave is foreseeable. When the need for leave does not allow for thirty (30) days notice, notice should be given as soon as practicable.

RULE 19

VOTING LEAVE

SECTION 1. Voting Leave: Employees whose work schedule prevents them from voting at a statewide election, may take up to two (2) hours off with pay at the beginning or end of the workday. If the time off is required, the employee must have prior approval from the employee's Department Head at least two (2) days prior to the Statewide election.

RULE 20

ADMINISTRATIVE LEAVE

Section 1. Administrative Leave: Administrative leave is leave with pay provided at the sole discretion of the City. Employees placed on administrative leave will be relieved of their regular duties during the period of leave. Employees placed on administrative leave will remain at their residence or elsewhere at the instruction of the Department Head during their regular work hours. Employees placed on administrative leave will report to their Department Head daily or as otherwise instructed by their Department Head during the period of the leave. Administrative leave is not discipline and does not entitle the employee to any right of appeal.

RULE 21

LEAVE OF ABSENCE WITHOUT PAY

SECTION 1. Eligibility: Other than seasonal or temporary part-time employees the City Manager may grant a leave of absence without pay, seniority, or benefits to an employee not to exceed six months or if for educational purposes related to City employment not to exceed one year.

SECTION 2. Process: The employee will make written request setting forth the reason for the request and the requested dates of leave.

SECTION 3. Reinstatement: The employee will be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave to report at the expiration of the leave, or within a reasonable time after notice to return to duty, will be cause for discharge.

SECTION 4. Short Term Leave: Employees in good standing may with supervisory permission and five days prior notice, take time off without pay without having to exhaust current leave balances. No employee shall exceed ten working days off without pay, or two shifts without pay for Fire Safety employees, within a calendar month.

Employees on family medical leave for their own serious illness or injury are required to file for disability benefits and abide by the City's family leave certification process.

Employees eligible for disability benefits will continue to accrue vacation, sick leave and holiday pay during the employee's eligible family leave period and for three months thereafter, not to exceed six months from the date of disability. Employees may use accrued leave benefits up to 80% or 100% to supplement their disability benefits.

The City will pay the City's portion of medical, dental, life and dependent life insurances for disabled employees up to a maximum of twelve months upon receipt of written medical certification. During this time, the employee is required to continue to pay his/her share of the benefits. In the event the employee does not pay his/her share of benefits or benefits have exhausted under this Section, the City will extend COBRA benefits in accordance with State and Federal COBRA laws.

SECTION 5. Status Upon Return: When an employee is in a leave of absence without pay status due to having exhausted all accrued sick leave and vacation credit, their revised hire date or date of promotion for purposes of merit increases, sick leave and vacation credit, will be the number of calendar days absent added to their former hire or promotion date, whenever such leave exceeds five consecutive working days.

SECTION 6. Benefits While on Leave: During a leave of absence without pay an employee does not earn or accrue any paid benefits except under the short-term leave stated in Section 4 or as provided within the disability rules. During Maternity/Paternity/Adoption Leave, employees are eligible for leave without pay as provided under the Federal and California State Laws. All employees who meet the qualifying criteria under the laws are eligible for family and medical leave for disability or baby bonding leave. Employees may use accumulated paid leave (floating holiday, vacation, compensation time) and up to the maximum annual accrual (108 hours) of sick leave while off on leave.

In the case of adoption and paternity leave, employees are eligible for up to a maximum of six months leave time.

RULE 22

TRANSFER, PROMOTION, DEMOTION, REINSTATEMENT AND REEMPLOYMENT

SECTION 1. Transfer: No person shall be transferred to a position for which they do not possess the minimum qualifications. An employee may be transferred by the City Manager at any time from one position to another position in a comparable class. For transfer purposes, a comparable class is one which involves the performance of similar duties and requires substantially the same basic qualifications. A comparable class need not have the same maximum salary, however, no employee shall have their salary reduced as a result of a transfer.

If the transfer involves a change from one department to another, both Department Heads must consent to the transfer unless the City Manager orders the transfer for purposes of economy or efficiency. Transfers are not to be used to circumvent a promotion, demotion, advancement or reduction, each of which may be accomplished only as provided in these rules.

SECTION 2. Promotion: All vacancies in the classified service will be filled by open-competitive examination. The Director of Human Resources can determine that a promotional or closed-competitive examination should be given.

SECTION 3. Demotion: The City Manager may demote an employee for disciplinary reasons as part of a reduction in force or upon request of the employee. If there is a reduction in force a classified employee shall have the right to be demoted to a position formerly held with regular status if the demotion does not require the layoff or demotion of any employee in the lower class whose seniority is greater than the demoted employee. Upon request of the employee, and with the consent of the City Manager,

demotion may be made to a vacant position. No employee will be demoted to a position for which they do not possess the minimum qualifications. Written notice of the demotion shall be given the employee before or within three days after the effective date of the demotion, and a copy filed with the Director of Human Resources.

SECTION 4. Reinstatement: With the approval of the City Manager, an employee other than seasonal or temporary part-time employees who resigned with a good record may be reinstated within one year of the effective date of resignation to a vacant position in the same or comparable class. Upon reinstatement, the former employee is considered as an original applicant and, therefore, will be subject to the requirements of the position, specifically including a pre-employment medical and/or psychological examination. A former employee need not participate in qualifying examinations for the position unless the Director of Human Resources with the approval of the City Manager, deems it advisable. Employees reinstated will begin seniority and benefits at the time of reinstatement equal to a new employee. Employees may also be reinstated to the same salary step of the same class they had at the time of their separation.

SECTION 5. Reemployment: Regular status employees who are laid off pursuant to a reduction in force shall be entitled to reemployment in the inverse order of layoff within one year of layoff if the City Manager certifies that their prior service was satisfactory. Sick leave balances prior to separation may be restored to employees, in whole or in part, by the City Manager upon reemployment.

SECTION 6. Implementation: Transfer, promotion, demotion, reinstatement, and reemployment shall be done with the prior approval of the Director of Human Resources and will be implemented by the Human Resources Department.

RULE 23

SEPARATION

SECTION 1. Discharge: Employees may be discharged at any time by the City Manager. Department Heads or the City Manager may discharge any probationary employee over whom they exercise authority and direction without cause. The Director of Human Resources shall be notified prior to any termination. Any regular classified employee who has been discharged is entitled to the rights set forth in Rule 27.

SECTION 2. Layoff: The City Manager may lay off an employee in the classified service whenever such action is advisable in the interest of economy or because the necessity for such position no longer exists. Ten (10) working days before the effective date of layoff, the City Manager must notify the Director of Human Resources of the intended action with reasons therefore.

A. Order of Layoff: Unless an applicable Memorandum of Understanding provides otherwise, layoffs will then be done in the following order: (1) Employees with provisional status; (2) Employees with probationary status; (3) Employees with regular status, in inverse order of seniority.

B. Seniority Defined: Seniority is continuous service as a regular employee to the City minus all leaves of absence without pay. If the seniority of two or more employees is equal, the decision to lay off will be based on the last performance rating, provided such rating has been on file at least thirty (30) days and no more than twelve (12) months prior to lay off.

C. Transfer as a Result of Layoff: If as a result of layoff an employee with more seniority is transferred to another department, the employee must satisfactorily perform the duties of the new department or be subject to discipline.

D. Demotion in Lieu of Layoff: Upon request of the employee, an employee may be allowed to demote to a lower position if he/she previously held regular status in the City position. The employee cannot displace an employee with higher seniority. All employees who are demoted under this paragraph will be paid at the rate of pay for the lower position.

SECTION 3. Resignation: An employee wishing to leave the Classified Service in good standing must file with the Department Head a written resignation stating the effective date and reasons for leaving at least two weeks before leaving, unless such time limit is waived by the Department Head and approved by the City Manager. A statement as to the resigned employee's service performance and other pertinent information shall be forwarded to the Director of Human Resources. Failure to give notice as required by this rule shall be cause for denying future employment by the City. A resignation is final when received by the Department Head and may not be rescinded.

SECTION 4. Job Abandonment: An employee is deemed to have resigned if the employee is absent for five (5) consecutive workdays without prior authorization and without notification during the period of absence. On the third working day of unauthorized absence, the supervisor shall send a certified overnight letter to the employee's last known address informing the employee that if the employee fails to report

to work within two (2) workdays, or receive authorization for such absence, the employee will be deemed to have resigned. Employees separated from employment for job abandonment will be reinstated with such charge removed from the employee's record upon presentation of justification for absence such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification. Employees have no right to appeal if deemed to have resigned as a result of job abandonment.

RULE 24

EMPLOYEE PERFORMANCE EVALUATION

SECTION 1. Performance Evaluation: Performance evaluation is continuously required in order that ongoing evaluation may be made of an employee's work performance. Evaluations are helpful not only to supervisors, Department Heads and the City Manager in constantly reviewing an employee's productivity, their attitude, work relationships, and their growth on the job, but also to the employees who, in striving to do their best, should know if in fact they are doing a satisfactory job or what corrective actions they should take to do a good job.

Reports of performance evaluation should be prepared at least annually, based on the employee's anniversary date.

If departmental or divisional evaluation of an employee's performance falls below established City standards for recommending the merit step increment, the employee will be provided reasonable advance notice by his/her Department Head that he/she is not scheduled for a pay adjustment. A regular full-time employee or regular part-time employee who is failing to meet the established performance standards will be counseled by department/division head and given three (3) months to improve performance before

the merit increase is due. A record of the counseling will be retained, one copy sent to Human Resources and a copy presented to the employee.

Reports of performance evaluation shall be signed by the employee, appropriate supervisor and Department Head or division head, with a copy to be retained by the employee. The second copy shall be retained by the department concerned. The original will be filed with the Human Resources Department to become a permanent part of the employee's file. Special performance evaluations may be prepared at any time at the discretion of the Department Head.

Formal performance evaluations may be appealed by an employee to the Department Head without prejudice. Review of the performance evaluation is not subject to the complaint or grievance procedure.

RULE 25

PERSONNEL RECORDS

SECTION 1. General: The City maintains a personnel file for each employee. An employee's personnel file should contain only material that is necessary and relevant to the administration of the City's personnel program. Personnel files are the property of the City and access to the information they contain is restricted.

SECTION 2. Notifying City of Changes in Personnel Information: Each employee is responsible to promptly notify the Director of Human Resources or Department Head of any changes in relevant personnel information including:

1. Mailing address;
2. Telephone number;
3. Persons to be contacted in case of emergency; and

4. Number and names of dependants.

SECTION 3. Medical Information:

A. Separate Confidential Files: All medical information about an employee or applicant is kept separately and is treated as confidential, in accordance with the law.

B. Information in Medical Files: The City will not obtain medical information about an employee or applicant except in compliance with the law. To enable the City to obtain certain medical information, the employee or the applicant may need to sign an Authorization for Release of Employee Medical Information.

C. Access to Medical Information: Access to employee or applicant medical information will be strictly limited to only those with a legitimate need to have such information for City business reasons. In the case of an employee with a disability, Managers and Supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

SECTION 4. References and Release of Information in Personnel Files:

A. Public Information: Upon request, the City will release to the public information about its employees as required by the California Public Records Act or other applicable laws. The City will not disclose personnel information that it considers would constitute an unwarranted invasion of personal privacy unless pursuant to a court order or lawful subpoena.

B. Reference Checks: All requests from outside the City for reference checks or verification of employment concerning any current or former employee must be referred to the Director of Human Resources. Information will be released only if the employee signs an Authorization for Release of Employment Information on the form provided by the Director of Human Resources. Without such authorization, the following limited information will be verified:

1. Date of employment;

2. Classification; and

3. Salary upon departure.

Managers and Supervisors should not provide information in response to requests for reference checks or verification of employment, unless specifically approved by the Director of Human Resources or the City Attorney.

C. Employee Access to Personnel File:

1. Inspection of File: An employee may inspect his or her own personnel file at reasonable times and at reasonable intervals. An employee who wishes to review his or her file should contact the Human Resources Department to arrange an appointment. The review must be done in the presence of an employee who maintains the personnel file.

2. Copies: Upon request an employee is entitled to receive a copy of any employment - related document he or she has

signed. An employee who wishes to receive such a copy should contact the Human Resources Department.

RULE 26

DISCIPLINARY ACTION

SECTION 1. Kinds of Disciplinary Action: The following disciplinary action may be taken against any regular full-time or regular part-time employee by the appointing authority.

A. Written Reprimand: Written statement of employee misconduct or performance problem.

B. Suspension: An involuntary absence without pay.

C. Salary Reduction: A reduction in pay from the employee's current step within a pay range to any lower step within that same range.

D. Demotion: Reduction from a position in one classification to a position in another classification having a lower salary range. (Demotions resulting from employee's inability to perform required duties in a promotional position during the probationary period, organizational changes, and demotions in lieu of layoff, are not disciplinary.)

E. Dismissal: Discharge from the City Service.

SECTION 2. Cause for Disciplinary Action: The following is a nonexclusive list of the more common causes for disciplinary action.

1. Any action inconsistent with City rules or regulations.

2. Inefficiency, incompetence, or neglect in the performance of duty.

3. Willful or negligent disobedience or insubordination, or failure to obey any lawful order or direction given by the employee's supervisor.

4. Dishonesty, deception, intentional misrepresentation, or theft.

5. Possessing, using or being under the influence of prescribed medication or non-prescribed drugs or alcohol while on duty or being impaired by prescribed medication or non-prescribed drugs or alcohol while on duty.

6. Falsification of an employment application, or other City document, or fraud in securing an appointment.

7. Outside employment inconsistent or in conflict with the employee's duties as a City employee.

8. Disorderly or immoral conduct.

9. Discourteous treatment of the public, the supervisor or fellow employees.

10. Conviction of a crime related to the position held.

11. Absence without approved leave.

12. Abuse of sick leave.

13. Excessive tardiness or absenteeism.

14. Improper or unauthorized use of City property or damage or waste of public property or funds through negligent or willful misconduct.

15. Actions incompatible with or inimical to the public service.

16. Failure to follow safe working practices or failure to report an injury promptly.

17. Improper political activity, campaigning while on duty or in a City uniform on or off duty, or use of City resources.

18. Working overtime without authorization.

19. Possession of weapons on City property unless authorized.

20. Mental or physical impairment which renders the employee unable to perform the essential functions of the job, with or without reasonable accommodation, or which presents a direct threat to the health or safety of self or others.

RULE 27

DISCIPLINARY ACTION PROCEDURES

SECTION 1. Application: The procedure set forth applies to regular full-time and regular part-time employees in the classified service.

SECTION 2. Written Reprimand: An employee who receives a written reprimand may respond in writing within ten (10) days. The employee's response will be attached to the written reprimand when it is placed in the employee's personnel file. This is the only remedy available to an employee who receives a written reprimand unless the employee is protected by the Public Safety Officer's Procedural Bill of Rights Act, Govt. Code Section 3300, et seq., or the Firefighters Procedural Bill of Rights Act, Govt. Code Section 3250, et seq. Those specified employees are entitled to an administrative appeal to the Department Head.

SECTION 3. Pre-Disciplinary Action Procedures: Suspension, Salary Reduction, Demotion or Discharge:

A. Notice of Proposed Disciplinary Action: A proposed notice of disciplinary action for a suspension, salary reduction, demotion or discharge against a full-time or part-time employee with regular status shall contain the following information:

1. The disciplinary action intended;
2. The specific charges upon which the action is based;
3. A factual summary of the acts or omissions which support the charge;
4. A copy of all written materials, reports or documents upon which the discipline is based;
5. Notice of the employee's right to respond to the charge either orally or in writing to the appropriate manager;
6. The date, time and person before whom the employee may respond to in no less than five (5) working days; and
7. Notice that failure to respond in the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

B. Response by Employee: The employee shall have the right to respond to the Department Head or designee orally or in writing. The employee shall have a right to be represented at any meeting set by the Department Head or designee to hear the employee's response. The employee's response will be considered before final action is taken.

C. Final Notice: After the response or the expiration of the employee's time to respond to the notice of proposed disciplinary action, the designated authority shall: (1) dismiss the notice and take no disciplinary action against the employee or (2) modify the intended disciplinary action or (3) uphold the intended disciplinary action.

The designated authority shall prepare and serve upon the employee a final notice of disciplinary action. The final notice of disciplinary action shall include the following:

1. The disciplinary action taken;
2. The effective date of the disciplinary action taken;
3. Specific charges upon which the action is based;
4. A facture summary of the facts upon which the charges are based;
5. The written materials report and documents upon which the disciplinary action is based; and
6. The employee's right to an administrative review or appeal.

SECTION 4. Emergency Suspension: If an employee's conduct presents an immediate threat to the health and safety of the employee or others, or the operations of the City, the employee may be suspended without compliance with the provisions of Section 3. However, as soon as possible after suspension, the employee will be given notice as set forth therein.

RULE 28

ADMINISTRATIVE REVIEW AND APPEAL TO BOARD OF REVIEW

SECTION 1. Administrative Review: Any regular full-time or regular part-time employee has a right to an administrative review of a suspension in excess of one (1) day, salary reduction, demotion, or discharge. [Employees receiving a suspension of one (1) day are entitled to pre-disciplinary procedures set forth in Rule 27 which includes the right to respond to the Department Head or designee orally or in writing.] The administrative review set forth in this Rule, shall be conducted by the City Manager or designee prior to the effective date of the disciplinary action, unless unusual circumstances justify an effective date which makes prior review infeasible. In this event, the review shall be conducted within a reasonable period of time after the effective date of the disciplinary action. An Administrative Review shall not affect any rights the employee may have to a hearing before the City Board of Review or under provisions of the Complaint and Grievance Procedure.

The administrative review is an informal proceeding where the employee will be given an opportunity to present his or her case. It does not involve the examination or cross examination of witnesses. It occurs prior to the imposition of discipline. The decision of the City Manager or designee is final and the discipline is imposed.

SECTION 2. Right of Appeal: Any regular full-time or regular part-time employee shall have the right to appeal to the Board of Review any of the following disciplinary actions after notification of final disciplinary action:

A. Suspension in excess of five working days

B. Salary Reduction

C. Demotion

D. Dismissal

SECTION 3. Method of Appeal: Appeals shall be in writing, signed by the employee, and filed with the Director of Human Resources within ten (10) working days from receipt of final action. The Director will within ten (10) working days after receipt of the appeal, inform each member of the Board of Review, the City Manager and interested persons of the appeal. The appeal shall be a written statement, addressed to the Board of Review, setting forth the matter appealed from and a statement of the action desired by the employee and whether or not they are requesting an open or closed hearing. Any Notice of Appeal that does not include an explanation of the matter appealed, a statement of action desired, and whether or not it is to be an open or closed hearing, shall not be honored by the City as a Request for Appeal. The formality of a legal pleading is not required. This section does not apply to those employees protected by the Firefighters Procedural Bill of Rights Act, Govt. Code Section 3250, et seq., who are entitled to an administrative appeal under the Administrative Procedure Act, Govt. Code Section 11500, et seq., as set forth in the respective Memorandum of Understanding.

SECTION 4. Schedule of Hearing: Upon the filing of an appeal, the Director of Human Resources shall set a date for a hearing on the appeal not less than ten (10) working days, and no more than thirty (30) working days from the date of filing. The Director of Human Resources shall notify all interested parties of the date, time and place of the hearing. An extension may be granted if mutually agreed upon by both parties.

SECTION 5. Pre-Hearing Procedure:

A. Subpoenas: The Board of Review is authorized to direct the City Clerk to issue subpoenas at the request of either party prior to the commencement of the hearing. After the commencement of the hearing, subpoenas shall be issued by the Board only for good cause. The Director of Human Resources will prepare subpoenas for all witnesses, however, they will only serve subpoenas for current City employees. It will be the responsibility of the employee and the City to serve subpoenas on individuals who are not currently employed by the City. It will be the responsibility of the employee and the City to submit the names of current City employees to be subpoenaed at least five (5) working days before the date of the hearing in which they are requesting the witnesses to appear.

B. Exhibits and Witness Lists: Five (5) working days prior to the date set for the hearing, each party shall serve upon the other party and submit to the Human Resources Office, a list of all witnesses and a list and copy of all exhibits. An original and nine (9) copies of the exhibits shall be presented to the Human Resources Office in 3 hole notebooks which are tabbed down the side with the exhibit number or bound at the top with tabs at the bottom. The employer's exhibits shall be designated by number. The employee's exhibits shall be designated by alphabetical letter. Neither party will be permitted to call during the hearing, a witness not identified pursuant to this

section nor use any exhibit not provided pursuant to this section unless that party can show that they could not reasonably have anticipated the prior need for such witness or such exhibit.

C. Submission to the Board of Review: Five (5) working days prior to the date set for the hearing, the Human Resources Office shall present each member of the Board of Review with a copy of the jurisdictional documents. Those documents include the notice of intent to take disciplinary action, the final notice of disciplinary action and the employee's appeal. The Board shall not be provided with copies of the exhibits.

SECTION 6. Hearing:

A. Record of Proceedings and Costs: All disciplinary appeal hearings may, at the discretion of either party or the Board, be recorded by a court reporter. Any hearing which does not utilize a court reporter, will be recorded by audio tapes. If a court reporter is requested by either party, that party shall pay the cost of the court reporter.

B. Conduct of the Hearing:

1. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses but hearings shall be conducted in a manner most conducive to determination of the truth.

2. Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely

in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.

3. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence that shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

4. The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.

5. Irrelevant and unduly repetitious evidence may be excluded.

6. The Board of Review shall determine relevancy, weight and credibility of testimony and evidence. Decisions made by the Board of Review shall not be invalidated by any informality in the proceedings.

7. During examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

C. Burden of Proof: In a disciplinary appeal the City has the burden of proof by preponderance of the evidence.

D. Proceed with Hearing or Request for Continuance: Each side should be asked if it is ready to proceed. If either side is not ready and wishes a continuance, good cause must be stated.

E. Testimony under Oath: All witnesses shall be sworn in for the record prior to offering testimony at the hearing. The chairperson will request the witnesses to raise their right hand and respond to the following:

"Do you swear that the testimony you are about to give at this hearing is the truth, the whole truth and nothing but the truth?"

F. Presentation of the Case: The hearing shall proceed in the following order unless the Board of Review, for special reason, directs otherwise:

1. The party imposing discipline (Department) shall be permitted to make an opening statement.
2. The appealing party (employee) shall be permitted to make an opening statement.
3. The party imposing disciplinary action (Department) shall produce their evidence.
4. The party appealing from such disciplinary action (employee) may then offer their evidence.
5. The party imposing discipline (Department) followed by the appealing party (employee) may offer rebutting evidence.

G. Closing Arguments: Shall be permitted at the discretion of the Board of Review. The party with the burden of proof, (Department), shall have the right to go first and to close the hearing by making the last argument. The Board may place a time limit on closing arguments.

The Board or the parties may request the submission of written briefs. After the request for submittal of written briefs, the Board will determine whether to allow the parties to submit written briefs and determine the number of pages of said briefs.

H. Procedure for the Parties: The party representing the Department and the party representing the Employee will address their remarks, including objections, to the Chair of the Board of Review. Objections may be ruled upon summarily or argument may be permitted. The Chair reserves the right to terminate argument at any time and issue a ruling regarding an objection or any other matter, and thereafter the representative shall continue with the presentation of their case.

I. Right to Control Proceedings: While the parties are generally free to present their case in the order that they prefer, the Chair reserves the right to control the proceedings, including, but not limited to, altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses.

J. Hearing Demeanor and Behavior: All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or members of the Board of Administrative Appeals.

K. Deliberation Upon the Case: The Board may chose to either deliberate the case in public or adjourn to closed session to

deliberate. The Board should consider all oral and documentary evidence, the credibility of witnesses, and other appropriate factors in reaching their decision. The Board may deliberate at the close of the hearing or at a later fixed date and time.

L. Written Findings, Conclusion and Order: The Board of Review shall render their findings, conclusions and recommendations as soon after the conclusion of the hearing as possible, and in no event, later than twenty (20) working days after concluding the hearing, unless otherwise stipulated to by the parties. A finding must be made by the Board on each material issue.

The Board of Review may recommend the sustaining or rejecting of any or all of the charges filed against the employee. The Board may recommend sustaining, rejecting or modifying the disciplinary action invoked against the employee. Any member of the Board may submit a minority or supplemental finding.

SECTION 7. Post Hearing Procedure:

A. The decision of the Board of Review shall be final unless reviewed by the City Council in accordance with the following procedures:

1. The City Council, upon its own motion made within 20 working days of issuance of the decision by the Board, may review the decision. In such case the expense of the transcript of the hearing before the Board shall be borne by the City.

2. Either party may appeal the decision of the Board to the City Council within ten (10) working days of issuance of the decision by the Board. Such appeal shall be in writing and delivered in person or by United States Postal Service to the City Clerk of the City of Escondido. In the event of such appeal, the cost of the transcript shall be borne by the party making the appeal. If both parties appeal, each party shall pay one-half of the cost of the transcript.

B. Notwithstanding the provisions of paragraph (B)(2) of this section, the City Council may, after the receipt of an appeal from either party, in its sole discretion and by majority vote, decline to review the decision of the Board of Review. In that event the decision of the Board of Review shall be final.

C. The City Council may elect to review the matter based upon the transcript and documentary evidence, or to conduct a new hearing, at the Council's discretion.

In the event of City Council review of a Board of Review decision, the City Council shall consider the matter within thirty (30) days of receipt of the transcript. The City Council may continue such consideration from time to time, but in any event shall take action to approve, modify or disapprove the findings and decision of the Board within sixty (60) days of such appeal or Council motion to review. The

time limits for Council consideration of the matter may be waived by agreement of the parties.

D. The decision of the Council shall be final.

SECTION 8. Judicial Review:

A. Petition for Writ of Mandate: Judicial review of any decision of the Board of Review or City Council may be had pursuant to Section 1094.5 of the California Code of Civil Procedure only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

B. 90 Days from Final Decision: Pursuant to Code of Civil Procedure 1094.6 any such petition shall be filed not later than the ninetieth (90th) day following the date on which a final decision is issued by the Board of Review or the City Council.

RULE 29

TRAINING AND ORIENTATION OF EMPLOYEES

SECTION 1. Responsibility for Training: Responsibility for developing training programs for employees shall be assumed jointly by the Director of Human Resources and Department Heads. Such training programs may include, demonstrations, assignments of reading matter or improve the effectiveness and broaden the knowledge of municipal officers and employees in the performance of their respective duties. Every employee should be given an opportunity to participate in and complete training courses. Training courses should be work-related. The courses of instruction will be made

available periodically to all City employees requesting such training, when the applicants have presented basic qualifications or proven aptitude for the course of instruction.

SECTION 2. Credit for Training: Participation in and successful completion of special training courses may be considered by Department Heads in ranking recommendations for employee advancements and promotions. Certificates of completion may be filed in the personnel file of each employee.

SECTION 3. Orientation of Employees: The Human Resources Department will advise new employees at time of hire of departmental and City policies, procedures and benefits. It will be the responsibility of each employee to be familiar with the Personnel Rules and Regulations. Copies of said rules are distributed to each new employee during the orientation process and maintained by each department.

RULE 30

COMPLAINT AND GRIEVANCE PROCEDURE

SECTION 1. Complaint and Grievance Procedures - Purpose: The purpose of this procedure is to provide a just and equitable method for the resolution of grievances or complaints without prejudice, coercion or reprisal.

SECTION 2. Definitions:

A. A complaint is defined as an allegation by an employee that has been treated improperly.

B. A grievance is an allegation, submitted on the City grievance form, by an employee that the City has violated, misinterpreted or misapplied a specific provision of written City personnel rules and regulations or administrative directives for which there is no other specific method of

review provided by City rules. Exclusions from the grievance procedures are as follows:

Grievance Procedure Exclusion:

1. The procedure is not to be used for the purpose of resolving complaints, requests or changes in wages, hours and working conditions.
2. The procedure is not to be used to challenge the content of employee evaluations or performance reviews.
3. The procedure is not to be used to challenge the decision to reclassify, layoff, deny reinstatement, or deny a step or merit increase to an employee.
4. This procedure is not to be used in cases of oral reprimand, written reprimand, reduction in pay, demotion, suspension, or termination.
5. This procedure is not to be used to challenge violation of law or past practice.
6. This procedure is not to be used to challenge examinations or appointment to positions.

C. An employee includes any employee in the classified service.

D. The day shall mean calendar days.

E. Representative is a person who, at the request of the employee or Management, is invited to participate in grievance conferences.

F. Organizational grievance is defined as an expressed written claim by the employee organization that the City has violated, misinterpreted or misapplied a provision in a current memorandum of understanding which concerns items or procedures relating to the relationship of the City and the employee organization as a corporate body and not the City and employee or groups of employees.

SECTION 3. General Provisions:

A. No retribution or prejudice shall be suffered by employees making use of the grievance or complaint procedures; provided, however, no act or behavior which would otherwise subject an employee to discipline shall exclude the employee from discipline simply on the basis that a complaint or grievance is filed pertaining to that act or behavior.

B. The time limits established herein must be strictly followed. However, they may be extended by mutual written agreement.

C. If Management, at any step of the procedure, fails to respond within the prescribed time limit specified, the employee may process their grievance or complaint to the next step.

D. If the employee, at any step of the procedure, fails to appeal the decision on a grievance or complaint within the prescribed time limit specified, such decision shall be deemed accepted and will not be subject to further appeal or consideration.

E. By mutual written agreement, a grievance may revert to a prior level for reconsideration.

F. The employee shall be present at all steps of the grievance or complaint procedure or the grievance will be deemed withdrawn.

G. All communications, notices and papers required to be in writing will be served personally or by the United States Postal Service.

H. Management shall inform an employee of any limitation on the authority of the Management representative to fully resolve the grievance.

SECTION 4. Representation Rights:

A. The employee has the right to the assistance of a union/association representative of their choice in the investigation, preparation and presentation of a grievance.

1. Representation may occur at any stage of the grievance procedure; provided, however, that prior to calling for representation at step one of the procedure the employee shall discuss their grievance with the supervisor. Upon conclusion of the discussion, the employee may request a continuation, of the informal grievance process (step one), to a mutually agreeable time within five days, to have the assistance of a union/association representative.

2. If the employee elects another employee as their union/ association representative, such representative shall not be released during working hours without the approval of their supervisor.

3. The supervisor will grant a reasonable amount of time off, provided such would not unreasonably interfere with or delay City work.

B Grievance conferences between Management and the employee will normally be conducted during regular working hours at a mutually convenient time.

C. The investigation of a grievance during working hours by an employee and their representative, if any, will be in accordance with the following:

1. Prior to entering any job site; the representative shall obtain the approval of the job site supervisor.

2. There shall be no solicitation of grievances or employee organization membership.

3. The investigation shall be conducted in a reasonable amount of time and expeditiously with due regard for the work requirements of the City.

4. Where the investigation commences prior to the end of the regular workday and continues beyond the close of the regular workday, time spent after the close of the regular workday will be on the employee(s) own time.

5. Entry will not be permitted if it would unreasonably interfere with or delay City work.

6. All safety regulations relating to the presence or conduct of persons at the job site will be complied with.

D. The name of the representative of the employee or Management shall be given to the other party not less than 48 hours prior to any grievance conference.

SECTION 5. Complaint Procedure:

A. Step One:

1. The employee shall inform their supervisor of their complaint within ten (10) days after the employee knew, or in the exercise of reasonable diligence should have known, of the events giving rise to the complaint. Failure to complete this procedure will bar further consideration of the complaint.

2. The supervisor shall, within five (5) days after receipt of the complaint, have a discussion with the employee concerning the complaint.

3. The supervisor shall, within five (5) days of the discussion, render a verbal, decision to the employee.

B. Step Two:

1. Within five (5) days from receipt of the verbal decision from the supervisor, the employee, if they wish to appeal the decision, shall notify the Department Head of their intent to appeal the decision. Failure to complete this procedure will bar further consideration of the complaint.

2. The Department Head or their designated representative shall, within five (5) days of the notification as required above, have a discussion with the employee concerning the complaint.

3. The Department Head or their designated representative shall, within five (5) days of the discussion, render a verbal decision to the employee.

C. Step Three:

1. Within five (5) days from the receipt of the verbal decision from the Department Head, the employee, if they wish to appeal the decision, shall notify the City Manager of their intent to appeal the decision. Failure to complete this procedure will bar further consideration of the complaint.

2. The City Manager or his/her designated representative shall, within five (5) days of the notification as required above, have a discussion with the employee concerning the complaint.

3. The City Manager or his/her designated representative shall, within five (5) days of the discussion, render a verbal decision to the employee.

D. Nothing in this section shall prohibit more expeditious handling of the complaint.

SECTION 6. Grievance Procedure:

A. Step One – Informal Grievance:

1. The employee shall inform their supervisor of their grievance within ten (10) days after the employee knew, or in the exercise of reasonable diligence should have known, of the events giving rise to the grievance. Failure to complete this procedure will bar further consideration of the grievance.

2. The supervisor shall, within five (5) days after receipt of the grievance, have a discussion with the employee concerning the grievance.

3. The supervisor shall, within five (5) days of the discussion render a verbal decision to the employee.

B. Step Two – Formal Grievance:

1. Within ten (10) days from the receipt of the verbal decision from the supervisor, the employee, if they wish to appeal the decision shall submit a formal written grievance to their supervisor. The grievance shall be submitted on forms provided by the City's Human Resources Department. Failure to complete this procedure will bar further consideration of the grievance.

2. The supervisor shall, within five (5) days of receipt of the grievance, schedule a grievance conference at, a mutually agreeable time. A representative of the employee and/or

Management may attend this conference in accordance with Section 4 of this procedure.

3. The supervisor shall, within five (5) days of the grievance conference, render a written decision to the employee with a copy of the original grievance.

C. Step Three – Appeal:

1. Within five (5) days from receipt of the written decision from the supervisor, the employee, if they wish to appeal the decision, shall submit an appeal to the Department Head. The appeal shall be submitted on forms provided by the City's Human Resources Department and include the supervisor's response, if any. Failure to complete this procedure will bar further consideration of the grievance.

2. The Department Head or their designee shall, within five (5) days of receipt of the appeal, schedule a grievance conference at a mutually agreeable time. A representative of the employee and/or Management may attend this conference in accordance with Section 4 of this procedure.

3. The Department Head or their designee shall, within five (5) days of the grievance conference, render a written decision to the employee with a copy of the appeals documents.

D. Step Four – Administrative Appeal:

1. Within five (5) days from receipt of the written decision from the Department Head or their designee, the employee, if he/she wishes to appeal the decision, shall submit an appeal to the City Manager. The appeal shall be submitted on forms provided by the City's Human Resources Department and include the original grievance and Management's responses, if any. Failure to complete this procedure will bar further consideration of the grievance.

2. The City Manager or his/her designee shall, within seven (7) days of receipt of the appeal, schedule a grievance conference at a mutually agreeable time. A representative of the employee and/or Management may attend this conference in accordance with Section 4 of this procedure.

3. The City Manager or his/her designee shall, within seven (7) days of the grievance conference, render a written decision to the employee with a copy of all appeal documents.

4. The City Manager may, at his/her option, render a written decision based on the documents submitted for their review without the grievance conference and within the time frame set forth above. If they do so, the employee may discuss this decision with the City Manager at a mutually convenient time,

provided they request such meeting within seven (7) days of receipt of the City Manager's decision.

5. The decision of the City Manager shall be final.

E. Nothing in this section shall prohibit more expeditious handling of the grievance.

SECTION 7. Organizational Grievances:

A. In order to provide an effective mechanism whereby disagreements between the employee organization and Management concerning items or procedures relating to the relationship between the City and the employee organization may be effectively resolved, the following general grievance procedure is hereby established.

Where the employee organization has reason to believe that Management is not correctly interpreting or applying a provision of a current Memorandum of Understanding regarding an organizational issue, the employee organization may file a grievance by requesting in writing that a meeting be held with the authorized representatives of the City who have authority to make effective recommendations for the resolution of the matter. The written request must set forth in detail the facts giving rise to the general grievance and the proposed resolution sought. Within fifteen (15) days of receipt of the grievance, Management will schedule a meeting at a mutually agreeable time for the purpose of discussing and attempting to resolve the disagreement.

B. Within fifteen (15) days of this meeting, Management will submit its decision in writing to the employee organization.

C. If the employee organization is not satisfied with the decision, they may submit a request for hearing before the City Council. Such request for hearing must be submitted within fifteen (15) days of receipt of Management's decision and shall include in detail the facts giving rise to the grievance and all supporting documentation necessary for City Council consideration.

D. Management will calendar the grievance within thirty (30) days on the City Council Agenda.

E. The City Council may:

1. Refuse to hear the appeal in which case the prior written decision becomes final;

2. Make a decision on the documentation submitted; or,

3. Hold a hearing after which they shall make a decision.

F. The decision of the City Council shall be final.

RULE 31

MISCELLANEOUS PROVISIONS

SECTION 1. Membership Fees and Licenses: The City will pay the fees for any employee required to secure or maintain a certification, registration, or license for continuance of their position; except for Class C California Motor Vehicle Operator's Licenses and the initial fee of a required certification, registration or license when a condition of employment.

SECTION 2. Work Equipment and Articles: The City shall provide all tools, safety devices and equipment, and supplies and equipment necessary for the performance of job functions and duties without cost to the employee.

SECTION 3. Safety Employees – Police and Fire Service: Uniform and Safety Shoe Allowance: The City will provide a uniform and/or safety shoe allowance for employees as provided in the Memorandum of Understanding applicable to them.

SECTION 4. Health Insurance Committee: There shall continue to be a Health Insurance Committee which shall be advisory to the City Manager and City Council. The Committee shall be comprised of representatives from each employee association and an equal number of Management representatives. Management representatives shall be appointed at the discretion of the City Manager. Association representative members shall be nominated by their respective employee organizations and appointed or not appointed at the discretion of the City Manager. If a nominee(s) is/are not appointed, the nominating employee organization may resubmit additional nominees. All members of the committee may be removed by the City Manager at his/her discretion. Association representative members may be removed by the Association at their discretion. There is no fixed term of membership on the Committee.

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 6
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Loretta McKinney, Director of Library and Community Services

SUBJECT: Library Budget Adjustment: Adult Literacy Services Program

RECOMMENDATION:

It is requested that Council approve a budget adjustment in the amount of $27,811 received from the California State Library Literacy Services Grant, to the Library's 2013-2014 Fiscal Year Operating Budget to fund the Adult Literacy Project Account 401-104-409102.

FISCAL ANALYSIS:

The $27,811 grant monies will augment the Library's operating budget to provide literacy services to adults.

PREVIOUS ACTION:

None

BACKGROUND:

This grant is part of the annual allocation of funds from the California State Library's Literacy Services Program. At the time of planning for the FY 2013-2014 Operating Budget, the amount of potential funds received from the State Library had not yet been determined. Funds received will be used to pay for a part-time Literacy Department Specialist at $16,621 with the remaining funds of $11,190 to be used for the purchase of materials and equipment needed to provide this service to the Escondido community.

Respectfully submitted,

Loretta McKinney
Director of Library and Community Services

ESCONDIDO
City of Choice

CITY OF ESCONDIDO

BUDGET ADJUSTMENT REQUEST

Date of Request: November 22, 2013

Department: Library and Community Services

Division: Library

Project/Budget Manager: Loretta McKinney (Name) 4871 (Extension)

Council Date (if applicable): December 4, 2013
(attach copy of staff report)

For Finance Use Only

Log # _____

Fiscal Year _____

_____ Budget Balances
_____ General Fund Accts
_____ Revenue
_____ Interfund Transfers
_____ Fund Balance

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
CA Library Literacy Services	0000-401-409102	$27,811	
CA Library Literacy Services	4127-401-409102	$27,811	

Explanation of Request:

Escondido Public Library received an award from the California Library Literacy Services (CLLS) for a grant of $27,811 to be used solely for the Adult Literacy Program. The grant is administered by the California State Library.

APPROVALS

Loretta McKinney — 11.22.2013
Department Head — Date

Finance — 11/25/13
Date

City Manager — Date

City Clerk — Date

Distribution (after approval): Original: Finance

FM\105 (Rev.11/06)

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 7
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Mark Becker, Director of Information Systems

SUBJECT: Approval of Microsoft Licensing Enterprise Agreement

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2013-163, authorizing the Director of Information Systems to enter into a three-year agreement with CompuCom Systems Inc. to provide Microsoft Software Assurance via a Microsoft Licensing Enterprise Agreement.

FISCAL ANALYSIS:

Funding for the first year's payment of $207,314.74 is available in Information System's general fund accounts. The funding for the remaining two payments of $207,314.74 will be included in Information System's general fund budget for software.

PREVIOUS ACTION:

- December 8, 2010, Council approved a three-year agreement with Dell Inc.
- January 9, 2008, Council approved a three-year agreement with Dell Inc.
- December 15, 2004, Council approved a three-year agreement with Softchoice Corp.
- November 14, 2001, Council approved a three-year agreement with ASAP Software Express.

BACKGROUND:

The City uses Microsoft operating systems, desktop applications, and server software as part of the City network. To support this software, we maintain Microsoft Software Assurance (SA). This software assurance provides software support and upgrades to the latest Microsoft application levels.

Microsoft provides the software assurance via their Microsoft Licensing Enterprise Agreement (EA). The pricing levels are set by Microsoft based on the number of desktops used by an organization. The City currently maintains software assurance on software and operating systems for 1,151

desktops. This puts the City within Microsoft's Volume Level A pricing for organizations with 250 to 2,399 Desktops.

The County of Riverside put out a Request for Proposal for the acquisition of Microsoft software enterprise licensing and maintenance. The RFP resulted in Riverside County Enterprise Agreement number 01E73134. This agreement provides local agencies the ability to participate in cooperative purchasing for Microsoft Licensing. By participating in the agreement, the City moves from Level A pricing to Level D pricing, providing the City with additional savings. Based on Level D pricing, the City received the following three competitive quotes from qualified Microsoft resellers:

CompuCom Systems Inc.	$207,314.74
EN POINTE Technologies	$209,337.30
Dell Inc.	$227,529,60

CompuCom Systems Inc.'s quote was selected as the lowest quote. The City's Microsoft Licensing cost, based on cooperative purchasing and multiple quotes, is $207,314.74 per year for three years. The agreement with CompuCom Systems Inc. will begin January 1, 2014.

Respectfully submitted,

Mark Becker
Director of Information Systems

Agenda Item No.: 7
Date: December 4, 2013

RESOLUTION NO. 2013-163

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DIRECTOR OF INFORMATION SYSTEMS TO EXECUTE, ON BEHALF OF THE CITY, A MICROSOFT LICENSING ENTERPRISE AGREEMENT WITH COMPUCOM SYSTEMS INC TO PROVIDE MICROSOFT SOFTWARE ASSURANCE

WHEREAS, the City of Escondido has received a proposal for CompuCom Systems Inc. to provide Microsoft Software Assurance via a Microsoft Licensing Enterprise Agreement. A copy of the proposal for CompuCom Systems Inc. is attached as Exhibit "A" to this resolution and is incorporated by this reference; and

WHEREAS, CompuCom Systems Inc. is authorized to sell this Microsoft Software Assurance based on cooperative pricing under the County of Riverside Enterprise Agreement; and

WHEREAS, the Director of Information Systems recommends approval of this Microsoft Licensing Enterprise Agreement Agreement; and

WHEREAS, the City Council determines it is in the best public interest to approve the Microsoft Licensing Enterprise Agreement with CompuCom Systems Inc. for Microsoft Software Assurance;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. The above recitations are true.

2. The City Council accepts the recommendation of the Director of Information Systems.

3. That the Director of Information Systems is authorized to execute, on behalf of the City, an Agreement with CompuCom Systems Inc. to provide Microsoft Software Assurance via a Microsoft Licensing Enterprise Agreement "Agreement." A copy of the Agreement is attached and Exhibit "B" and is incorporated by this reference.

Resolution No. 2013-163
EXHIBIT A
Page 1 of 1

Exhibit "A"

CompuCom - software quote				
Quoted by Mike Hawkins, CompuCom 7171 Forest Lane, Dallas TX, 75230				
Phone 858-527-8293 michael.hawkins2@compucom.com				
	Please fax your POs to Client Assistance Center at 800-366-9994. You may call 800-400-9852, option 2, to check status on orders.			
	Quoted to:	**City of Escondido**		
		Roger Hicks		
		rhicks@ci.escondido.ca.us		
		(760) 839-4026		
Date Issued	***11/19/2013***	**EA Renewal Quote**		
		Riverside Master Agreement # : 01E73134		
		Quote Coverage Dates: 1/1/2014 - 12/31/2016		
	Important: Please provide the email address of the recipient designated to receive a CompuCom "order confirmation"			
Quantity	***Part #***	***Description***	***Unit Price***	***Ext. Price***
1,151	269-12442	Office Pro Plus (SA) - Platform Discount	$ 78.29	$ 90,111.79
1,151	FQC-02460	Windows Pro/Ent (SA) - Platform Discount	$ 28.75	$ 33,091.25
1,130	W06-01072	Core CAL (SA) User CAL - Platform Discount	$ 33.79	$ 38,182.70
1	312-02257	Exchange Server Standard Edtn (SA)	$ 104.08	$ 104.08
2	395-02504	Exchange Server Enterprise Edtn (SA)	$ 595.95	$ 1,191.90
1,130	PGI-00270	Exchange Ent CAL w Srvcs (SA) User CAL	$ 17.82	$ 20,136.60
1	076-01912	Project Standard (SA)	$ 96.11	$ 96.11
14	7NQ-00292	SQL Server Standard Edtn (SA) 2Lic CoreLic	$ 527.55	$ 7,385.70
3	228-04433	SQL Server Standard Edtn (SA)	$ 131.97	$ 395.91
9	359-00792	SQL CAL (SA) Device CAL	$ 30.72	$ 276.48
1	T9L-00223	System Center Standard (SA) 2Proc	$ 129.78	$ 129.78
1	D87-01159	Visio Pro (SA)	$ 82.22	$ 82.22
2	77D-00111	Visual Studio Pro w MSDN (SA)	$ 276.29	$ 552.58
266	6VC-01254	Windows RDS (SA) User CAL	$ 17.17	$ 4,567.22
29	P73-05898	Windows Server Standard (SA) 2Proc	$ 129.78	$ 3,763.62
8	P71-07282	Windows Server Datacenter (SA) 2Proc	$ 905.85	$ 7,246.80
	Product-total			$ 207,314.74
	Sub-Total			$ 207,314.74
0	Tax	ESD - nontaxable (download-only EA agreement option)		$ -
	Shipping			No Charge
	Total	**Your Annual Installment Payment (Year 1, 2, & 3)**		**$ 207,314.74**
		3 Year Total		$ 621,944.22

Pass-Through Warranty and Other Rights. As a reseller, end-user warranties and liabilities (with respect to any third party hardware and software products provided by CompuCom) shall be provided as a pass-through from the manufacturer of such products. All software products are subject to the license agreement of the applicable software supplier, as provided with the software packaging or in the software at time of shipment.

Microsoft Volume Licensing

Enterprise Enrollment State and Local

Enterprise Enrollment number *(Microsoft to complete)*		Proposal ID/Framework ID	
Previous Enrollment number *(Reseller to complete)*		Earliest expiring previous Enrollment end date [1]	

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) any supplemental contact information form or Previous Agreement/Enrollment form that may be required, (5) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement.

All terms used but not defined are located at http://www.microsoft.com/licensing/contracts. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective dateof the initial term. If the Enrollment is renewed, the renewal term will expire 36 full calendar months after the effective date of the renewal term. Any reference in this Enrollment to "day" will be a calendar day.

Product order. The Reseller will provide Enrolled Affiliate with Enrolled Affiliate's Product pricing and order. Prices and billing terms for all Products ordered will be determined by agreement between Enrolled Affiliate and the Reseller.The Reseller will provide Microsoft with the order separately from this Enrollment.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product List and chosen by Enrolled Affiliate under this Enrollment.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise

Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"L&SA" means a License with Software Assurance for any Product ordered.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), OR (2) a device used to access a virtual desktop infrastructure ("VDI").. Qualified Devices do not includeany device that is: (1) designated as a server and not used as a personal computer, OR (2) an Industry Device, OR (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of Enrolled Affiliate's Enterprise. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product List.

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product List, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"Transition" means the conversion of one or more License to or from another License(s). Products eligible for Transition and permitted Transitions are identified in the Product List.

"Transition Period" means the time between the Transition and the next Enrollment anniversary date for which the Transition is reported.

2. *Order requirements.*

a. **Minimum Order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.

   (i) **Enterprise Commitment.** If ordering any Enterprise Products, Enrolled Affiliate's order must include coverage for all Qualified Users or Qualified Devices, depending on the License Type, of one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services.

   (ii) **Enterprise Online Services.** If ordering Enterprise Online Services *only*, then Enrolled Affiliate must maintain at least 250 Subscription Licenses.

b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products and Services.

c. **Product Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the

applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.

d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.

e. **Adding Products.**

(i) **Adding new Products not previously ordered**. Enrolled Affiliate may add new Enterprise Products by entering into a new Enrollment or as part of a renewal. New Enterprise Online Services may be added by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

(ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products must be included in the next true-up order. Enrolled Affiliate must purchase Services and Licenses for Online Services prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product List or (2) included as part of other Licenses (e.g., Enterprise CAL).

f. **True-up requirements.**

(i) **True-up order.** Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order, including: (1) any increase in Licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reductions (if permitted). Microsoft, at its discretion, may validate the customer true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

(ii) **Enterprise Products.** Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

(iii) **Additional Products.** For Products that have been previously ordered, Enrolled Affiliate must determine the Additional Products used and order the License difference (if any).

(iv) **Online Services.** For Online Services identified as eligible for true-up orders in the Product List, Enrolled Affiliate may first reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively for the prior year based upon the month in which they were reserved.

(v) **Transitions.** Enrolled Affiliate must report all Transitions. Transitions may result in an increase in Licenses to be included on the true-up order and a reduction of Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. Associated invoices will also reflect this change. For Licenses paid upfront, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses thatwere reduced as part of the Transition.

(vi) **True-up due date.** The true-up order must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The third-year anniversary true-up order is due within 30 days prior to the Expiration Date. Enrolled Affiliate may true-up more often than at each Enrollment anniversary date except for Subscription License reductions.

(vii) **Late true-up order.** If the true-up order is not received when due:

1) Microsoft will invoice Reseller for all Reserved Licenses not previously ordered.

2) Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

(viii) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses on a prospective basis if permitted in the Product List as follows:

1) For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form. Step-up Licenses do not count towards this total count.

2) For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

(ix) **Update statement.** An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

g. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

(i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

(ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

(iii) If Enrolled Affiliate has previously ordered an Online Service as an Additional Product and wants to step-up to an Enterprise Online Service eligible for a Transition, the step-up may be reported as a Transition.

(iv) If Enrolled Affiliate Transitions a License, it may be able to further step-up the Transitioned License. If Enrolled Affiliate chooses to step-up and the step-up License is separately eligible to be Transitioned, such step-up Licenses may result in a License reduction at the Enrollment anniversary date following the step-up.

h. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

3. *Pricing.*

a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment. Price Level's will be captured in the Product Selection Form.

b. **Setting Prices.** Enrolled Affiliate's prices for each Product will be established by its Reseller. As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service will be fixed throughout the applicable initial or renewal Enrollment term. However, if Enrolled Affiliate qualifies for a different price level, Microsoft will establish a new price level for future new orders either

upon Enrolled Affiliate's request or on its own initiative. Any changes will be based upon price level rules in the Product Selection Form.

4. Payment terms.

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and on each Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. Transitions.

a. Transition requirements.

(i) Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. Enrolled Affiliate may not, however, reduce the quantity of Licenses or associated Software Assurance prior to the end of the Transition Period.

(ii) Enrolled Affiliate must order the Licenses to which it is transitioning for the year(s) following the Transition Period.

(iii) If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance must be re-ordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by Enrolled Affiliate.

(iv) If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.

(v) If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.

b. Effect of Transition on Licenses.

(i) Transition will not affect Enrolled Affiliate's rights in perpetual Licenses paid in full.

(ii) New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.

(iii) For L&SA not paid in full at the end of the Transition Period, Enrolled Affiliate will have perpetual Licenses for a proportional amount equal to the amounts paid for the Transitioned Product as of the end of the Transition Period.

(iv) For L&SA not paid in full or granted a perpetual License in accordance with the above or Subscription Licenses, all rights to Transitioned Licenses cease at the end of the Transition Period.

6. End of Enrollment term and termination.

a. General. At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

b. Renewal Option. At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing the Enrollment for one additional 36 full calendar month term or signing a new Enrollment. Microsoft must receive a Product Selection Form and renewal order prior to or at the Expiration Date. The renewal term will start on the day following the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may

make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. **If Enrolled Affiliate elects not to renew.**

(i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA.

(ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product List, the following options are available at the end of the Enrollment initial or renewal term.

1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price for Enrolled Affiliate's price level as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate does want an Extended Term, Resellermust submit a request to Microsoft. Microsoft must receive the request not less than 30 days prior to the Expiration Date.

2) **Cancellation during Extended Term.** If Enrolled Affiliate has opted for the Extended Term and later determines not to continue with the Extended Term, Resellermust submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received the notice.

(iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

(iv) **Customer Data.** Upon expiration or termination of a License for Online Services, Microsoft will keep Customer's Data in a limited function account for 90 days so that Customer may extract it. Enrolled Affiliate will reimburse Microsoft if there are any associated costs. After 90 days Microsoft will disable Enrolled Affiliate's account and will delete its Customer Data. Enrolled Affiliate agrees that, other than as described above, Microsoft has no obligation to continue to hold, export or return Enrolled Affiliate's Customer Data and that Microsoft has no liability whatsoever for deletion of Enrolled Affiliate's Customer Data pursuant to these terms.

d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement.

e. **Early termination.** Any Early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.

Enrollment Details

1. Enrolled Affiliate's Enterprise.

a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Enrolled Affiliate's organization includes .
Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

☒ Enrolled Affiliate only

☐ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

☐ Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Check only one box in this section:
☒ Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment
☐ Enrolled Affiliate's Enterprise will **not** include all new Affiliates acquired after the start of this Enrollment
If no selection is made, or if both boxes are checked, Microsoft will deem the Enterprise to include all future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at https://www.microsoft.com/licensing/servicecenter.

a. Primary contact. This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* City of Escondido
Contact name* First Roger **Last** Hicks
Contact email address* rhicks@escondido.org
Street address* 201 N. Broadway

City* Escondido
State/Province* CA
Postal code* 92025-2709
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)
Country* USA
Phone* 760-839-4026
Tax ID
** indicates required fields*

b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized for applicable Online Services to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

☒ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First **Last**
Contact email address*
Street address*
City*
State/Province*
Postal code* -
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)
Country*
Phone*
Language preference. Choose the language for notices. English
☐ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.
** indicates required fields*

c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

☒ Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First **Last**
Contact email address*
Phone*
☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.
** indicates required fields*

d. **Reseller information.** Reseller contact for this Enrollment is:

Reseller company name* CompuCom Systems, Inc
Street address (PO boxes will not be accepted)* 7171 Forest Lane
City* Dallas
State/Province* Texas
Postal code* 75230-2306
Country* United States
Contact name* Bruce Valentin
Phone* 972-856-4617
Contact email address* msadmin@compucom.com
** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* _____

Printed name* Bruce E. Valentin
Printed title* Microsoft Licensing Specialist
Date*

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*

(i) Additional notices contact
(ii) Software Assurance manager
(iii) Subscriptions manager
(iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? No

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft Licensing, GP.

Microsoft Volume Licensing

Enterprise and Enterprise Subscription Enrollment Product Selection Form – State and Local

Enrollment Number
Microsoft to complete for initial term
Reseller to complete for renewal

Step 1. Please indicate whether Enrolled Affiliate is ordering Enterprise Products or Enterprise Online Services on the initial enrollment order. Choose both if applicable.

☒ **Enterprise Products.** Choose platform option: Custom Platform

Qualified Devices: 1151 **Qualified Users:** 1130

☐ **Enterprise Online Services**[1]

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is transitioning or stepping up within enrollment term. Products for which the Enrolled Affiliate has an option to transition or step-up should be listed in Step 3.

Products[2]	Quantity
Office Professional Plus	
Office Pro Plus	1151
Office Pro Plus for Office 365	
Office 365 Plans[1]	
Office 365 (Plan E1)	
Office 365 (Plan E2)	
Office 365 (Plan E3)	
Office 365 (Plan E4)	
Client Access License (CAL). Choose 1 Option.	
☒ Core CAL, including Bridge CAL's (if applicable)	
Core CAL	1130
Core CAL Bridge for Office 365	
Core CAL Bridge for Windows Intune	
Core CAL Bridge for Office 365 and Windows Intune	
☐ Enterprise CAL (ECAL)	
ECAL	
ECAL Bridge for Office 365	
ECAL Bridge for Windows Intune	
ECAL Bridge for Office 365 and Windows Intune	
The Client Access License selection must be the same across the Enterprise. Specify whether licensing CAL per Device or User: User	
Windows Desktop	
Windows OS Upgrade	1151
Windows VDA	
Windows Intone	
Windows Intune	
Windows Intune Add-on[3]	
Other Enterprise Products	
Microsoft Desktop Optimization Pack (MDOP)[4]	

If selecting Windows Desktop or Windows Intune option, Enrolled Affiliate acknowledges the following:

a. The Windows Desktop Operating System Upgrade licenses offered through this Enrollment are not full licenses. The Enrolled Affiliate and any included Affiliates have qualifying operating system licenses for all devices on which the Windows Desktop Operating System Upgrade or Windows Intune licenses are run.

b. In order to use a third party to reimage the Windows Operating System Upgrade, Enrolled Affiliate must certify that Enrolled Affiliate has acquired qualifying operating system licenses. See the Product List for details.

Step 3. Indicate new Enterprise Products and Online Services Enrolled Affiliate has selected for optional future use where not selected on the initial enrollment order (above):

Products[2]
☐ Office Pro Plus for Office 365
☐ Office 365 (Plan E1)
☐ Office 365 (Plan E2)
☐ Office 365 (Plan E3)
☐ Office 365 (Plan E4)
☐ Enterprise CAL (ECAL) Step-up, including Bridge CALs
☐ Windows Intune
☐ Windows Intune Add-on[3]

This form must be attached to a signature form to be valid.

Microsoft Volume Licensing

Program Signature Form

MBA/MBSA number	
Agreement number	01E73134

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	
<Choose Agreement>	
<Choose Agreement>	
<Choose Agreement>	
<Choose Agreement>	
Enterprise Enrollment	X20-10631
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
Product Selection Form	X20-03622

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)* City of Escondido
Signature* _____
Printed First and Last Name* Mark Becker
Printed Title Director of Information Systems
Signature Date*
Tax ID

** indicates required field*

Microsoft Affiliate
Microsoft Licensing, GP
Signature _____
Printed First and Last Name
Printed Title
Signature Date (date Microsoft Affiliate countersigns)
Agreement Effective Date (may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

** indicates required field*

Outsourcer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

** indicates required field*

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following

address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Licensing, GP
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 8
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Christopher W. McKinney, Utilities Director

SUBJECT: Bid Award for the Corrosion Control System for the Escondido Sewer Outfall

RECOMMENDATION:

The Utilities Department requests that Council adopt Resolution No. 2013-161 authorizing the Mayor and City Clerk to execute a Public Improvement Agreement with American Construction & Supply, Inc. in the amount of $230,335 for the Corrosion Control System for the Escondido Sewer Outfall.

FISCAL ANALYSIS:

Competitive bids were opened by the City Clerk's representative on November 21, 2013, with the following results:

1)	EXARO Technologies Corp., Burlingame	$198,500.00
2)	American Construction & Supply, Inc., Corte Madera	$230,335.00
3)	Corrpro Companies, Inc., Santa Fe Springs	$234,000.00
4)	Farwest Corrosion Control Company, Gardena	$268,700.00
5)	The Richards Group, Escondido	$341,000.00

After review of the bid documents, the apparent low bidder, EXARO Technologies Corp., was found to be non-responsive for failure to fill out the bid bond in actual dollar amounts. As a result, staff recommends the EXARO Technologies Corp. bid be rejected as non-responsive and that Council award the bid to the second lowest bidder, American Construction & Supply, in the amount of $230,335.

This project is funded out of CIP line item 800299.

BACKGROUND:

The existing 14-mile long cement mortar coated steel land outfall pipeline extends from the Hale Avenue Resource Recovery Facility to the Pacific Ocean. The outfall was constructed in 1972. A cathodic protection system was installed to protect the outfall (from the San Elijo Water Reclamation Facility to El

Camino del Norte) from corrosion. The existing cathodic protection system has exceeded its service life and is in need of replacement. This project will replace the four rectifiers and corresponding deep well anode beds.

Respectfully submitted,

Christopher W. McKinney
Director of Utilities

Agenda Item No.: 8
Date: December 4, 2013

RESOLUTION NO. 2013-161

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A PUBLIC IMPROVEMENT AGREEMENT WITH AMERICAN CONSTRUCTION AND SUPPLY INCORPORATED FOR THE CONSTRUCTION OF THE CORROSION CONTROL SYSTEM FOR THE ESCONDIDO SEWER OUTFALL

WHEREAS, the Escondido City Council authorized an invitation for bids for the construction of the Corrosion Control System for the Escondido Sewer Outfall (the "Project"); and

WHEREAS, the City of Escondido opened sealed bids for the Project on November 21, 2013; and

WHEREAS, the lowest bidder EXARO Technologies Inc. has been deemed to be non-responsive for failure to fill out the bid bond in actual dollar amounts; and

WHEREAS, the Director of Utilities has determined American Construction & Supply, Inc. to be the lowest responsive and responsible bidder and recommends awarding the bid in the amount of $230,335 to American Construction & Supply, Inc.; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award this contract to American Construction & Supply, Inc.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the City Council determines the bid submitted by EXARO Technologies Inc. is non-responsive.

3. That the Mayor and City Council accepts the recommendation of the Director of Utilities and finds American Construction & Supply, Inc. to be the lowest responsive and responsible bidder.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement ("Agreement") with American Construction & Supply, Inc. A copy of the Agreement is attached as Exhibit "A" and is incorporated by this reference.

PUBLIC IMPROVEMENT AGREEMENT

This "Agreement", dated the _____ day of _____, 20_____, in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and _____ (hereinafter referred to as "CONTRACTOR").

The CITY and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. The complete contract includes all of the Project Documents described in the General Conditions, which are incorporated by reference. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. CONTRACTOR shall perform within the time set forth in Paragraph 4 of this Agreement everything required and reasonably inferred to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction of

CORROSION CONTROL SYSTEM FOR THE ESCONDIDO SEWER OUTFALL

All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications and all provisions of the complete contract as hereinabove defined. The CONTRACTOR shall be liable to the CITY for any damages and resulting costs, including consultants' costs, arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project documents. Such protest shall not be effective unless reduced to writing and filed with the CITY within **three (3) working days** of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project documents.

3. CITY shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of **Two Hundred Thirty Thousand Three Hundred Thirty Five Dollars ($230,335)**.

4. The work shall be commenced on or before the twenty-first (21st) day after receiving the CITY'S Notice to Proceed and shall be completed within **one hundred twenty (120) calendar days** from the date specified in the Notice to Proceed.

5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the LIQUIDATED DAMAGES SCHEDULE below for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due to or to become

due to CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be liable for the amount thereof. Time extensions may be granted by the CITY as provided in the General Conditions.

Liquidated damages schedule:

If the overall project is delayed **one (1) calendar day or more**, the rate shall be $365/day.

Acknowledged: _____
Initials of Principal

6. In the event CONTRACTOR for a period of **ten (10) calendar days** after receipt of written demand from CITY to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, or to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said **ten (10) calendar days**, fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the CITY to another contractor, or demanding the surety hire another contractor, or by any combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the CITY, shall be a charge against the CONTRACTOR, and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of said charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the CITY. The permissible charges for any such procurement of the completion of said work should include actual costs and fees incurred to third party individuals and entities (including, but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by CITY for the increased dedication of time of CITY employees to the Project.

7. To the fullest extent permitted by law, the CONTRACTOR agrees to and does hereby agree to fully defend, indemnify and hold the CITY, its governing board, officers, agents, Project design team members (architect and consulting engineers), consultants, attorneys, and employees harmless of and from each and every claim, assertion, action, cause of action, arbitration, suit, proceedings, or demand made, and every liability, loss, judgment, award, damage, or expense, of any nature whatsoever (including attorneys' fees, consultant costs), which may be incurred by reason of:

   (a) Asserted and/or actual liability arises from claims for and/or damages resulting from damages for:

      (1) Death or bodily injury to persons.
      (2) Injury to, loss or theft of tangible and/or intangible property/ e.g. economic loss.
      (3) Any other loss, damage or expense arising under either (1) or (2) above, sustained by the CONTRACTOR upon or in connection with the work called for in this Project, except for liability resulting from the sole active negligence, or willful misconduct of the CITY.

   (b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent

contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs on or off City property.

(c) Any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates or renewals, of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction, reconstruction, maintenance, and/or repair of the work under this Agreement.

The CONTRACTOR, at CONTRACTOR's own expense, cost, and risk shall defend any and all actions, suit, or other proceedings that may be brought or instituted against the CITY, its governing board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the CITY, its governing board, officers, agents or employees in any action, suit or other proceedings as a result thereof.

8. (a) CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, of every tier, to take out and maintain:

(1) General Liability and Property Damage Insurance as defined in the General Conditions in the amount with a combined single limit of not less that **$3,000,000 per occurrence**.

(2) Course of Construction / Builder's Risk Insurance See 5.2 of General Conditions.

(3) Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to the above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:

(A) Automotive and truck where operated in amounts as above

(B) Material hoist where used in amounts as above

(4) Workers' Compensation Insurance.

(b) Each insurance policy required above must be acceptable to the City Attorney, as follows:

(1) Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.

(2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.

(3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.

(c) In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within 14 days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.

9. Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld in retention by the CITY, then the subcontractor shall receive the identical rate of interest received by the CONTRACTOR on any retention monies withheld shall be deposited with the public agency, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. The City retains the sole discretion to approve the bank selected by the CONTRACTOR to serve as escrow agent. Upon satisfactory completion of the contract, the securities shall be returned to the CONTRACTOR. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the CONTRACTOR may request CITY to make payment of earned retentions directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments in securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the contract, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from CITY pursuant to the terms of Section 22300. If CONTRACTOR elects to receive interest on moneys withheld in retention by CITY, CONTRACTOR shall, at the request of any subcontractor, make that option available to the subcontractor regarding any monies withheld in retention by the CONTRACTOR from the subcontractor. If the CONTRACTOR elects to receive any interest on any monies withheld in retention by the Owner, then the subcontractor shall receive the identical rate of interest received by the CONTRACTOR on any retention monies withheld from the subcontractor by the CONTRACTOR, less any actual pro rata costs associated with administering and calculating that interest. In the event the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the CONTRACTOR elects to substitute securities in lieu of retention, then, by mutual consent of the CONTRACTOR and subcontractor, the subcontractor may substitute securities in exchange for the release of monies held in retention by CONTRACTOR. This shall apply only to those subcontractors performing more than five percent (5%) of the CONTRACTOR'S total bid. The CONTRACTOR shall not require any subcontractor to waive any provision of this section.

10. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.

11. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Escondido City Council.

12. CONTRACTOR shall comply with those provisions of the Labor Code requiring payment of prevailing wages, keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions, and shall file the required workers' compensation certificate before commencing work.

13. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents include in the definition set forth in the General Conditions made a part hereof.

14. CONTRACTOR shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONTRACTOR affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONTRACTOR agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of CITY by its officers thereunto authorized and by CONTRACTOR, the date and year first above written.

CITY OF ESCONDIDO
a municipal corporation
201 North Broadway
Escondido, CA 92025

By: _____
Diane Halverson, City Clerk

By: _____
Sam Abed, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

CONTRACTOR

By: _____
Signature

_____
Print Name

_____
Title

By: _____
Signature*

_____
Print Name

_____
Title

(Second signature required only for corporation)

By: _____
Signature**

_____
Print Name

_____
Title

(CORPORATE SEAL OF CONTRACTOR, if corporation)

_____
Contractor's License No.

_____
Tax ID/Social Security No.

*If CONTRACTOR is a corporation, the first signature must be by one of the following officers of the corporation: Chairman of the Board, President, or any Vice President.

**If CONTRACTOR is a corporation, the second signature must be by a different person from the first signature and must be by one of the following officers of the corporation: Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.

SECTION A-00610 - FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENT,

That _____ ("Contractor") and _____ ("Surety") are held and firmly bound unto the CITY OF ESCONDIDO ("Owner") in the sum of _____ _____ Dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has been awarded and is about to enter into a contract with Owner to perform all work required under the Bid Schedule(s) of the Owner's specifications entitled,

CORROSION CONTROL SYSTEM FOR THE ESCONDIDO SEWER OUTFALL

WHEREAS, the provisions of the Contract are incorporated by reference into this Faithful Performance Bond and shall be part of Surety's obligation hereunder.

NOW THEREFORE, if Contractor shall perform all the requirements of said contract required to be performed on his part, at the times and in the manner specified herein, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

PROVIDED, that

(1) Any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of the Contract, shall not in any way release Contractor or Surety thereunder;

(2) Any extensions of time granted under the provisions of Contract shall not release either Contractor or Surety from their respective obligations to Owner;

(3) Notice of any such alterations or extensions of the Contract is hereby waived by Surety;

(4) Any payments (including progress payments) made on behalf of Owner to Contractor after the scheduled completion of the work to be performed pursuant to the Contract shall not release either Contractor or Surety from any obligations under the Contract or this Faithful Performance Bond, or both, including any obligation to pay liquidated damages to Owner; and

(5) To the extent Owner exercises its rights pursuant to this Bond, Owner shall be entitled to demand performance by the surety and be further entitled to recover, in addition to all other remedies afforded by law, its reasonably incurred costs to complete the work,

attorneys fees and consultant costs, as well as actual costs incurred by OWNER for the increased dedication/commitment of time of OWNER employees to the Project.

SIGNED AND SEALED, this _____ day of_____, 20___.

_____	_____
Contractor	Surety
	_____
	Address
	_____
	Phone No.

(SEAL)

BY_____	_____
Signature	Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

SECTION A-00620 - LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENT,

That _____ as Contractor, and _____ as Surety, are held and firmly bound unto the CITY OF ESCONDIDO, hereinafter called Owner, in the sum of _____ dollars, for the payment of which sum well and truly to be made, we bind ourselves our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into the annexed contract with said Owner to perform all work required under the Bid Schedule(s) of the Owner's specifications entitled,

CORROSION CONTROL SYSTEM FOR THE ESCONDIDO SEWER OUTFALL

NOW THEREFORE, if said Contractor, or subcontractor, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of work contracted to be done, or for amounts due under applicable State law for any work or labor thereon, or for amounts due under the Unemployment Insurance Code, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such labor, said Surety will pay for the same in an amount not exceeding the sum specified above, and, in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any persons, companies or corporations entitled to file claims under applicable State law.

PROVIDED, that any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of said contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of the time granted under the provisions of said contract release either said Contractor or said surety, and notice of such alterations or extensions of the contract is hereby waived by said Surety.

SIGNED AND SEALED, this _____ day of_____, 20___.

_____	_____
Contractor	Surety
	_____
	Address
	_____
	Phone No.
(SEAL)	
BY_____	_____
Signature	Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

SECTION A-00630 - CITY OF ESCONDIDO BUSINESS LICENSE

In accordance with Municipal Code Section 16, the successful bidder is required to obtain a City of Escondido Business License prior to execution of contract.

The following information must be submitted to the City Clerk prior to execution of contract:

City of Escondido Business License No. _____

Expiration Date_____

Name of Licensee_____

_____

SECTION A-00660 - WORKERS' COMPENSATION INSURANCE CERTIFICATE

If self-insured for Workers' Compensation, the Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

> I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, Sections 1860 and 1861, and I will comply with such provisions before commencing the performance of the work of the contract.

Dated:_____ _____

Contractor

By: _____

Signature

SAMPLE NOTICE

(REQUIRED UNDER GENERAL CONDITIONS, ARTICLE 6.1.B)

TO THE PEOPLE ON THIS STREET:

WITHIN THE NEXT FEW DAYS, WORK WILL BE STARTED ON THE FOLLOWING PROJECT:

CORROSION CONTROL SYSTEM FOR THE ESCONDIDO SEWER OUTFALL

The work may cause some inconvenience, but will be of permanent benefit.

We shall appreciate your cooperation in the following matters:

1. Please be alert when driving or walking in the construction area.
2. Tools, materials and equipment are attractive to children. For the safety of the children, please keep them away.
3. Please report all inconvenience to the Foreman on the job, or to the City of Escondido Utilities Construction Manager, 760-839-4078. The name and phone number of the contractor are given below.

This work is being performed for the City of Escondido by:

We will endeavor to complete this work as rapidly as possible and with a minimum of inconvenience to you.

_____

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 9
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney

SUBJECT: Designation of Enforcement Authority for the Escondido Campaign Control Ordinance

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2013-143 designating George Eiser III, Esq. and the law firm of Meyers Nave as the enforcement authority for the Escondido Campaign Control Ordinance for the 2014 Municipal Election, as required by Escondido Municipal Code Section 2-115.5(c).

BACKGROUND:

Pursuant to Escondido Municipal Code Section 2-115.5(c), special counsel shall be selected as the enforcement authority for the Campaign Control Ordinance by the City Attorney and appointed by the City Council at least one hundred and eighty (180) days prior to a city election. The next regularly scheduled election will be held November 4, 2014.

Under the California Government Code and the Escondido Municipal Code, the appointed City Attorney acts under the direction of the mayor and four elected councilmembers. In election situations where candidates and incumbents compete against each other for local offices, it is best that matters related to the campaign and campaign contribution ordinance be handled by outside special counsel, and thus the requirements of Escondido Municipal Code Section 2-115(c).

I recommend that the City Council again appoint George Eiser III as the City's special counsel for enforcement of the campaign contribution ordinance based on his long time experience and knowledge in the areas of municipal law, election matters, and if necessary, prosecution of municipal offenses. Mr. Eiser was appointed to serve prior to the 2012 municipal election.

Mr. Eiser began his career with the Thousand Oaks City Attorney's Office in 1975, and with the Modesto City Attorney's Office as the Assistant City Attorney. In 1984, was appointed as the City Attorney for the City of National City where he worked until his retirement in 2010. He is now Senior of Counsel at the law firm of Meyers Nave, which is a law firm of approximately 80 lawyers specializing in public law throughout California. Mr. Eiser has a BA degree in Spanish as well as his Juris Doctorate. He is a past president of the San Diego County City Attorneys' Association.

Fortunately, while the City has been diligent in appointing special counsel for each election cycle in recent decades, only one election in the 1990's resulted in the need for any investigative activity, and that particular matter was resolved without prosecution.

Based on the above, I recommend the adoption of Resolution 2013-143 authorizing the retention of George Eiser III as special counsel to enforce the provisions of the Escondido Campaign Control Ordinance for the 2014 Municipal Election.

Respectfully submitted,

Jeffrey R. Epp
City Attorney

Agenda Item No.: 9
Date: December 4, 2013

RESOLUTION NO. 2013-143

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE RETENTION OF GEORGE EISER III AND THE FIRM OF MEYERS NAVE FOR SPECIAL COUNSEL SERVICES TO ENFORCE THE PROVISIONS OF THE ESCONDIDO CAMPAIGN CONTROL ORDINANCE FOR THE 2014 MUNICPAL ELECTION

WHEREAS, Escondido Municipal Code Section 2-110.5 (c) requires the City of Escondido to retain special counsel at least one hundred and eighty (180) days prior to a City election to enforce the Escondido Municipal Code pertaining to campaign related matters; and

WHEREAS, George Eiser III and the law firm of Meyers Nave have the highest credentials and experience, and would be well suited to serving as the City's enforcement authority; and

WHEREAS, the City Attorney recommends the retention of George Eiser III, Esquire and the firm of Meyers Nave as special counsel to enforce the provisions of the Escondido Campaign Control Ordinance for the 2014 municipal election;

NOW THEREFORE, the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the City Council accepts the recommendation of the City Attorney and authorizes the City Attorney and City Clerk to execute such documents as

necessary to retain George Eiser III, Esquire and the firm of Meyers Nave as special counsel to enforce the provisions of the Escondido Campaign Contribution Ordinance.

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 10
Date: December 4, 2013

TO: Honorable Mayor and City Council

FROM: Edward N. Domingue, Public Works Director/City Engineer

SUBJECT: Amendment to Contract with Escondido Disposal (EDI) for Annual Consumer Price Index (CPI) Increase to Solid Waste and Recycling Rates and Fees for Residential Collections

RECOMMENDATION:

City Council approve Resolution 2013-165 to revise the rates for Residential Solid Waste and Recycling Services. Effective January 1, 2014, a 0.9032 percent increase would apply to all residential collection services. No commercial rate increase is being requested at this time.

FISCAL ANALYSIS:

The increase in solid waste and recycling rates for residential accounts will result in an approximate one percent increase in the franchise fees received by the General Fund for revenues related to residential solid waste and recycling services. Residential solid waste and recycling customer rates will increase by $0.16 per month.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

The continued provision of solid waste, recycling, litter prevention, and household hazardous waste collection services and programs serves to enhance the image and appearance of the City's private and public areas as designated in the Image and Appearance section of the City Council Action Plan.

PREVIOUS ACTION:

On October 6, 1999, the Council approved a contract with Escondido Disposal, Inc., and Escondido Resource Recovery, divisions of Refuse Services, Inc., specifying rates to be charged for solid waste and recycling services. The contract established initial maximum rates paid by the ratepayers and gave the contractor the right to increase the maximum rates annually according to the change in the previous year's Consumer Price Index (CPI).

The contract specifies that if the Escondido ratepayers' effective mean rate (the rate not including AB939, Household Hazardous Waste and Franchise fees) is not within the lowest 25 percent being

charged in San Diego County, the City has the right to propose that EDI adjust its proposed rates to fall within the lowest 25 percent.

In accordance with these contract specifications, the following rate increases have been granted to EDI for basic residential and commercial collection services over the last ten years:

Date	Residential Increase	Commercial Increase
July 2003	2.1%	4.0%
July 2004	2.9%	3.4%
January 2006	1.13%	3.97%
January 2007	0%	3.38%
March 2007	2.4%	0%
January 2008	0%	1.316%
January 2009	0%	4.39%
April 2009	1.045%	0%
January 2012	1.29%	0.895%
Proposed January 2014	0.9032%	0%

Household Hazardous Waste fees and AB939 fees were established in 1994 at $0.25 and $0.21 per month, respectively. On July 1, 2003, Household Hazardous Waste fees were increased from $0.25 to $0.35 per month. On January 1, 2006, Household Hazardous Waste fees were increased from $0.35 to $0.52 per month. No increases in either the AB939 or Household Hazardous Waste Fees are being requested at this time. The franchise fee also remains at ten percent of gross receipts. These fees apply equally to both residential and commercial collections and all solid waste and recycling services.

BACKGROUND:

On August 21, 2013, the City received notification from Escondido Disposal, Inc. (EDI) regarding an increase in the solid waste and recycling rates in accordance with Section 8(c) of the Solid Waste

Disposal and Recycling Franchise Agreement. The rate increase is based on the 0.9032 percent change in the CPI between the first half of 2012 and the first half of 2013 (Exhibit 1, Attachment A). To maintain the Escondido ratepayers' effective mean rate within the lowest 25 percent in San Diego County, it was determined that the contractual CPI formula allows for a 0.9032 percent residential rate increase and no commercial rate increase, effective January 1, 2014. A direct mailing noticing the residential rate increase was mailed to all residential customers in November 2013.

Under the proposed CPI rate increase of 0.9032 percent for residential accounts, the total monthly rate for curbside trash and recycling collection will increase by $0.16 per month from $18.13 to $18.29. The residential effective mean rate (the rate not including AB939, Household Hazardous Waste and Franchise fees) for the same service is currently $15.66 and is proposed to increase to $15.80. The last residential rate increase was effective January 2012 and was 1.29 percent.

For commercial accounts, there will be no rate change. The total monthly rate for a three-yard permanent bin collected once per week will remain at $97.14 per month. The commercial effective mean rate for the same service will remain at $86.77. The last commercial rate increase was in January 2012 and was 0.895 percent.

The proposed 0.9032 percent residential rate increase for CPI will become effective January 1, 2014 and applies to all residential collection rates and services as presented in Exhibit 1, Attachment A.

Respectfully submitted,

FOR Edward N. Domingue, P.E.
Public Works Director/City Engineer

RESOLUTION NO. 2013-165

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A FIFTEENTH AMENDMENT TO THE FRANCHISE AGREEMENT WITH REFUSE SERVICES, INC. FOR THE ANNUAL CONSUMER PRICE INDEX INCREASE TO RESIDENTIAL SOLID WASTE AND RECYCLING RATES AND FEES

WHEREAS, in October 1999 the City entered into a Solid Waste Disposal and Recycling Franchise Agreement (the "Agreement") with Escondido Resource Recovery and Escondido Disposal, Inc., Divisions of Refuse Services, Inc., to provide residential, commercial and industrial trash, and recycling collection services; and

WHEREAS, Section 8(c) of the Agreement grants an annual increase in the rates not to exceed the percentage increase in the Consumer Price Index ("CPI") for the year, upon receipt of written notice of the proposed increase, no later than 60 days prior to the effective date of the proposed increase; and

WHEREAS, Escondido Disposal has requested in a letter dated and received August 22, 2013, an increase in the residential rates and fees to be effective January 1, 2014; and

WHEREAS, revised residential rates and fees were last approved on November 16, 2011, with a January 1, 2012, effective date; and

WHEREAS, no revision to commercial rates and fees are being requested at this time; and

WHEREAS, the proposed revised residential rates and fees, to be effective

January 1, 2014, and the calculation of the increase percentage in the CPI are attached to this Fifteenth Amendment to Franchise Agreement; and

WHEREAS, residential rates revised for the allowed annual CPI increase were noticed in a direct mailing to all affected customers in Escondido in November 2013; and

WHEREAS, the Public Works Director/City Engineer recommends approval of the proposed amendment to the contract for an increase in Solid Waste Disposal and Recycling rates and fees for residential accounts, effective January 1, 2014;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the City Council hereby accepts the recommendation of the Public Works Director/City Engineer.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Fifteenth Amendment to the Franchise Agreement with Refuse Services, Inc., to revise the rates and fees for Solid Waste Disposal and Recycling Services for residential accounts effective January 1, 2014. A copy of the Fifteenth Amendment to Franchise Agreement is attached as Exhibit "1" and is incorporated by this reference.

CITY OF ESCONDIDO

FIFTEENTH AMENDMENT TO FRANCHISE AGREEMENT

This "Amendment" is made this December 4, 2013.

Between: CITY OF ESCONDIDO
a municipal corporation
201 N. Broadway
Escondido, California 92025
("CITY")

And: Refuse Services, Inc.
Dba Escondido Disposal, Inc.
P.O. Box 1818
Escondido, CA 92033
("CONTRACTOR")

Witness that whereas:

A. CITY and CONTRACTOR entered into an agreement on October 12, 1999 ("Agreement"), wherein CITY retained CONTRACTOR to provide services for Solid Waste and Recycling Services throughout the City of Escondido; and

B. Section 8 (C) of the Agreement authorizes annual amendments pertaining to increases in rates for Solid Waste and Recycling Services provided by Contractor and requires an amendment to the Agreement before such increase becomes effective; and

C. On November 16, 2011, the Fourteenth Amendment to Franchise Agreement was executed to revise residential and commercial rates and fees, effective January 1, 2012; and

D. CITY and CONTRACTOR desire to amend the agreement to include an increase in residential rates and fees, effective January 1, 2014, as set forth in Attachment A to this Amendment, which is incorporated by reference;

NOW THEREFORE, it is mutually agreed by and between CITY and CONSULTANT as follows:

1. The CITY hereby adopts the new residental rates as set forth in Attachment A to this Amendment, effective January 1, 2014.

2. All other terms of the original Agreement between CITY and CONTRACTOR shall remain in full force and effect; in the event of any conflict between any specific provision of the original Agreement and this Amendment, this Amendment shall prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

CITY OF ESCONDIDO

Date: _____

_____
Sam Abed, Mayor

Date: _____

_____
Diane Halverson, City Clerk

REFUSE SERVICES, INC.

Date: _____

_____
Edward G. Burr, Chairman

Date: _____

_____
Jeff Ritchie, Vice President/General Manager

(The above two signatures must be notarized)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
Jeffrey R. Epp, City Attorney

By: _____

ORDINANCE NO. 2013-07(RR)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING THE ESCONDIDO ZONING CODE ARTICLES 16, 26, 44, 56, 57 AND 61, DIVISION 3, REGARDING COTTAGE FOOD OPERATIONS, HOME OCCUPATION PERMITS, AND NONCONFORMING USES, STRUCTURES AND LAND

Planning Case No. AZ 13-0004

WHEREAS, the California Homemade Food Act ("AB 1616") became effective January 1, 2013, and requires that cities allow Cottage Food Operations ("CFO's") in residential units, and

WHEREAS, the City Council desires to facilitate the attraction, retention, and expansion of small businesses and stimulate the creation of jobs and improve median income, and

WHEREAS, the City Council desires to adopt standards to address local concerns about noise, availability of parking, parking of business vehicles, and business hours regarding Cottage Food Operations.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That the proper notices of a public hearing have been given and a public hearing has been held before the City Council on this issue.

SECTION 2. That the City Council has reviewed and considered the Notice of Exemption prepared for this project and issued on August 6, 2013, in conformance with

A COMPLETE COPY OF THIS ORDINANCE IS ON FILE IN THE OFFICE OF THE CITY CLERK FOR YOUR REVIEW.

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 12
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney
Diane Halverson, City Clerk
Allegra Frost, Deputy City Attorney

SUBJECT: Recommended Districting Plan of the Escondido Independent Districting Commission

RECOMMENDATION:

It is recommended that the City Council approve Ordinance 2013-17 adopting the Recommended Districting Plan submitted by the Independent Districting Commission. If adopted, the plan submitted by the Independent Districting Commission will become the Final Districting Plan and will be used for all regular elections of the four Council members. The plan will also be used for the recall of any Council member elected from the new districts and for the appointment of any new Council member to fill a vacancy in the office of the member of the Council elected from the new district. Finally, the plan would be used for any special election to fill a vacancy in the office of the member of the Council elected from the new districts.

BACKGROUND:

The Judgment and Consent Decree in Gomez v. City of Escondido (San Diego Superior Court Case No. 37-2011-00060480-CU-CR-NC) states that the City will replace its existing at-large method for electing City Council members with a district based method. Under the district based method, the four City Council members will be elected from four distinct districts and the Mayor will continue to be elected at-large. Under the time frames set forth in the Decree, the new system must be in place for the November 2014 elections. Therefore, the initial districting process must conclude by June 20, 2014 to meet deadlines set by the County Registrar of Voters.

Pursuant to the terms of the Consent Decree, the City established a seven-member Independent Districting Commission (IDC), to develop an initial district-based plan for future City Council elections. The seven IDC members were chosen by a Selection Panel, comprised of three retired judges residing in San Diego County. Attorneys for the City of Escondido selected Judge William C. Pate (ret.) to serve on the Selection Panel. Judge Patricia Yim Cowett (ret.) was selected by the Plaintiff's attorneys. These two judges selected Judge James R. Milliken (ret.) to serve as the third member of the Selection Panel.

The Consent Decree provided the eligibility requirements for the IDC Commissioners. To be eligible for appointment to the Commission, the individual was required to be a qualified elector in the City of Escondido. Additionally, within the ten years preceding the date of application, the individual must not: (a) have been a candidate for local, federal or California state office; (b) have been a paid employee or paid consultant of the campaign for a California political candidate or for a California political committee as defined by state or federal law; (c) have been an official or paid employee of any California political party organization; (d) have made monetary contributions to California political campaigns or political parties that exceeded a total of $5,000 during a two-year period and (e) currently, be a candidate for local, federal or California state office.

The City Clerk's Office published a notice of the nomination and application period for the Independent Districting Commission. The application and nomination period was June 3, 2013 through June 28, 2013. A total of 32 applications/nominations were received by the City Clerk's Office during the nomination period. Three applicants voluntarily withdrew and no applicants or nominees were ineligible. Upon the close of the nomination period, the City Clerk's Office delivered the names and information of all eligible nominees to the Selection Panel. Per the Consent Decree, the Selection Panel was required to "use its best efforts to appoint people who will give the Commission racial, geographic, social and ethnic diversity, and who, in its judgment, have a high degree of competency to carry out the responsibilities of the Commission and a demonstrated capacity to serve with impartiality." (Decree at Section IX.A.5.)

On July 18, 2013, the Selection Panel held a meeting in City Council chambers and invited all applicants to give a short three minute presentation regarding their interest and/or qualification for appointment. Applicants were also allowed to submit written testimony. Applicants who did not submit testimony or make a presentation on July 18th were still considered by the Selection Panel. After receiving written and verbal testimony from applicants, the Selection Panel appointed seven individuals to serve on the Independent Districting Commission. The Selection Panel appointed Jack Anderson, Andrew Carey, Doris Cruz, William Flores, Dana Nuesca, Roberto Ramirez and John Valdez.

Districting Criteria

The Consent Decree provided mandatory criteria for the Commission to follow when preparing the districting plan. The Consent Decree stated:

> "The Commission shall draw the proposed district boundary lines of the City pursuant to the criteria set forth in the following order of priority:
>
> 1. Districts shall comply with the United States Constitution, including containing reasonably equal population.
> 2. Districts shall comply with the federal Voting Rights Act.

3. Districts shall be geographically contiguous and drawn to encourage geographic compactness.
4. Districts shall be drawn with respect for geographic integrity of any neighborhood and any community of interest, including racial, ethnic, and language minorities, to the extent possible without violating the requirements of any of the preceding provisions. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.
5. The place of residence of any incumbent or political candidate shall not be considered in the drawing of district boundaries. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party." (Decree at Section IX.E.)

The first criterion requires the Commission to create districts that have reasonably equal district populations. The Commission is using a total population figure of 143,908 and therefore the ideal population of each district is 35,977 persons.[1]

The second criterion prohibits drawing districts which dilute the voting strength of minorities. A district designed to comply with Section 2 of the Voting Rights Act is commonly referred to as a "Majority-Minority District" or "Section 2 District."

The third criterion requires districts to be drawn to encourage contiguity and compactness. Contiguity refers to a district in which all parts are connected to each other. Compactness generally refers to the shape of a district. The goal of compactness is to make the district perimeter as close to equidistant from the geographic center as possible. However, the shape of natural boundaries and city lines are considered.

The expert consultant, Q2 Data and Research, explained that a Community of Interest (COI) is a group of people in the same area that shares a common bond or interest. Keeping communities of interest together was the fourth criteria for the Commission to follow. The Commission received written and verbal testimony from the public about COIs.

The Consent Decree also required the Commission to adopt a budget and submit it to the City Council within sixty days of appointment. The Decree also required the Commission, once constituted, to retain an expert consultant familiar with the requirements of the California and Federal Voting Rights Acts, census data and its use in redistricting, public engagement in redistricting, and with drawing voting districts. Next, the Commission was required to hold a minimum of six public hearings before drawing a Preliminary Districting Plan and an additional three public hearings before

[1] The Consultant verified the City boundaries and associated data and re-allocated geography that was not part of the City boundary in the 2010 Census file, but that is now part of the City according to the most recent information. Reflecting the adjustments to incorporate annexations that took place after the census was conducted, the City of Escondido's total population is 143,908. Therefore, the ideal population for each district is 35,977 persons.

adopting a Recommended Districting Plan. In compliance with the Consent Decree, the Commission has held a total of ten public meetings and nine public hearings. The City videotaped all Commission meetings held in the Council Chambers. Recordings of the meetings are available on the City's website and were rebroadcast on the local public channel. Minutes from each public meeting and hearing are also available on the Commission's webpage.

Public Meetings

On July 29, 2013, the Commission held its first public meeting. During the meeting, the Commissioners swore the oath of office and elected Dana Nuesca to serve as the chairperson and John Valdez to serve as the vice chairperson of the Commission. National Demographics Corporation presented information to the Commission regarding their expert consulting services. During this first meeting, the Commission also received a staff report recommending "that the Commission members review the . . . budget estimates for processing the Districting Plan; and discuss with and provide direction to staff for adoption of a budget." The budget estimate from the staff report was $107,000, which included funding for each of the required elements of the Consent Decree: translation of six public hearing notices into four languages; translation of three public hearing notices into one language; publication of the hearing notices (36 notices for nine hearings); interpretation services at the public hearings; payment for an expert consultant; and extraneous office, meeting, and printing costs. The budget estimate included $75,000 for expert consulting services, including mapping software. After receiving the staff report, a motion was made to adopt the proposal with an increase of $3,000 in order to provide flexibility for additional public hearings, if needed. Thus, the initial budget adopted by the Commission was $110,000 and was approved on a vote of 7-0.

On August 5, 2013, the Commission held a second public meeting to discuss retention of the Expert Consultant, the Commission Calendar and Timeline, Conduct and Procedures of Commission Meetings, Duties/Role of Chairperson and Vice-Chairperson, Agenda Development and Staff Recommendations, and Publishing of Notices. National Demographics Corporation provided a second presentation to the Commission. Q2 Data and Research submitted two letters explaining the experience of the firm and the firm's owners.

On August 12, 2013, the Commission held a third public meeting and voted to amend the previously adopted budget. The Commission revised its budget from $110,000 to $138,000, an increase of $28,000. The Commission chose to increase their budget in order to match the dollar value attributed to "Elections Costs" in the City's adopted Operating Budget. The Commission also chose to increase the originally adopted budget to pay for meeting and hearing expenses not required by the Consent Decree. The additional items the Commission discussed included a Spanish interpreter to attend regular Commission meetings, translation of written materials, publication of notices in local media outlets that would reach non-English speaking residents, and televising the Commission's meetings and/or hearings. During the meeting, National Demographics Corporation, Q2 Data and Research

and Redistricting Partners gave presentations regarding their expert consulting services, experience and suitability for the position. The Commission voted to hire Q2 Data and Research as the expert consultant, contingent on Q2 providing a budget capped at $65,000 by 5:00 p.m. on August 13, 2013. Q2 Data and Research submitted a budget capped at $65,000 before the deadline, as requested.

On August 21, 2013, the City Council received and considered the Commission's proposed budget of $138,000. Three Commissioners attended the City Council meeting and spoke on this item. The City Council voted to approve the Commission's proposed budget of $138,000.

On August 22, 2013, the Commission held a fourth public meeting to discuss the meeting and hearing schedule, the role of the City Attorney's Office, use of social media, selection of a parliamentarian and to review the budget submitted by expert consultant Q2 Data and Research. Karin MacDonald from Q2 Data and Research attended the meeting, answered questions from the Commissioners and provided suggestions about the hearing process.

On September 5, 2013, the Commission held a fifth public meeting to discuss the meeting and hearing schedule. During the meeting, the Commission discussed the locations for the nine public hearings. The Commission also conducted a workshop with expert consultant Q2 Data and Research. During the workshop, the consultant explained the districting process and criteria.

On September 19, 2013, the Commission held a sixth public meeting to discuss meeting and hearing planning, community outreach, mapping software, the role of the City Attorney's Office, and Commissioner email accounts. The Commission finalized the times and locations for the nine public hearings and approved documents for the Commission webpage and for distribution at the hearings.

On October 3, 2013, the Commission held a seventh public meeting to discuss meeting and hearing planning, community outreach, whether to purchase the mapping software, and potential need for any future legal opinions. The Commission finalized plans for the public hearings. The Commission also arranged for distribution of flyers, in Spanish and English, about the public hearings and districting process.

Pre-Map Public Hearings

The Commission held six public hearings, at geographically diverse locations throughout Escondido, to provide the public with a meaningful opportunity to consider and comment on the drawing of district lines. The first six public hearings were held at the following times and locations:

- Thursday, October 10, 2013 at 6 p.m. at Bear Valley Middle School;
- Saturday, October 12, 2013 at 9 p.m. at Hidden Valley Middle School;
- Thursday, October 17, 2013 at 6 p.m. at Church of Resurrection;
- Saturday, October 19, 2013 at 9 a.m. at Mission Middle School;

- Thursday, October 24, 2013 at 6 p.m. at Felicita Elementary School; and
- Sunday, October 27, 2013 at 3 p.m. at City Council Chambers.

The agendas were posted in English and Spanish at the location of each hearing, the lobby of the Council Chambers, on the City Website, at the Library and at the East Valley Community Center. In compliance with the Consent Decree, notices were published in English, Spanish, Chinese, Vietnamese, and Filipino. Per the Commission's direction, notices were published in the following newspapers: The Union Tribune, La Prensa, Epoch Times, Tieng Viet San Diego and The Filipino Press. Interpretation services were provided for Spanish, Mandarin (Chinese), Vietnamese, and Tagalog (Filipino) at each hearing.

Additional steps were taken to publicize the Commission's meetings and hearings, including Channel 19 posting Public Hearing information online in Spanish and English during the month of October and the school sites displaying the hearing dates and times on digital marquees. The schools also provided English and Spanish "robo-call" messages to parents with information about upcoming public hearings. In coordination with the Neighborhood Services Division, flyers about the public hearings were distributed to the City's Neighborhood Groups. The City's website was regularly updated with hearing information, including agendas and related documents. The City also sent information, including hearing dates, times and locations, to local newspaper, radio and television media. The City provided the Commission with a booth at the Escondido Street Faire on October 20, 2013. The Commission's hearing and meeting information was also posted on the City of Escondido Facebook page. The City also provided information via a "Letter from the Mayor" for publication in "The Paper." Some of the Commissioners also distributed flyers. The City Clerk's office created signs in Spanish and English and posted them at the hearing sites directing members of the public to the hearing room.

At the six public hearings, Q2 Data and Research provided an overview of the districting process, the criteria and how members of the public could become involved and submit testimony or information to the Commission. The public then had an opportunity to walk around the room to view the large printed maps of the City and complete forms describing their Community of Interest. After a brief recess, the hearings resumed and public testimony on the drawing of district lines and Communities of Interest was received. At the hearings, the Commission received testimony and comments from between six and twelve members of the public. Generally, the hearings lasted two to three hours. The number of attendees at the 'public input hearings' ranged from about fifteen to approximately thirty-five persons. Attendees actively participated in each hearing and many stayed after the conclusion of the hearings to work with the consultant on defining their COIs. Numerous COI's were submitted by the public and are available for viewing on the Commission's webpage.

Aside from public testimony at the hearings, members of the public could also submit comments about the drawing of district boundaries to the Commission by email, mail, or in person at a meeting. Comments were also submitted through the City Clerk's office. Contact information for and

instructions were also available on the Commission's webpage, in the handouts provided at the hearings and from the City Clerk's Office.

Preliminary Districting Plan

On October 27, 2013 and October 29, 2013, the Commission held public meetings to draw the Preliminary Districting Plan. Per the Commission's direction, the City Clerk's Office posted a draft of the Preliminary Districting Plan on the Commission's webpage after the October 27, 2013 meeting. On October 29, 2013, the Commission held a second line-drawing public meeting and approved the Preliminary Districting Plan by a vote of 7-0.

The Preliminary Districting Plan was described in detail in the Preliminary Districting Plan Report, prepared by Q2 Data and Research. The Preliminary Districting Plan closely resembles the Recommended Districting Plan submitted to the City Council.

On October 30, 2013 the City Clerk's Office issued a news release regarding the Commission's Preliminary Districting Plan and the final hearings and meeting.

Post-Map Public Hearings

The Consent Decree required the Commission to hold at least three public hearings within thirty days after the Preliminary Districting Plan was filed with the City Clerk before making any modifications to the plan. Within thirty days of filing the Preliminary Districting Plan with the City Clerk, the Commission held three public hearings, in various geographic locations throughout Escondido. At the hearings, the Commission received public comment on the drawing of district lines and on the Preliminary Districting Plan. The final three public hearings were held at the following times and locations:

- Thursday, November 21, 2013 at 6 p.m. at Hidden Valley Middle School;
- Saturday, November 23, 2013 at 9 a.m. at Mission Middle School;
- Sunday, November 24, 2013 at 3 p.m. at the Center for the Arts, Escondido.

Notice of the final three public hearings was published in the following newspapers: The Union Tribune, La Prensa, Epoch Times, Tieng Viet San Diego and The Filipino Press with a copy of the Preliminary Districting Map. The notices were published in English, Spanish, Mandarin (Chinese), Vietnamese, and Tagalog (Filipino). The public hearings were conducted in English and Spanish, using headsets to provide simultaneous interpretation.

Recommended Districting Plan

The Consent Decree also required the Commission, in consultation with the expert consultant, to approve a Recommended Districting Plan by majority vote within forty days after filing the Preliminary Districting Plan with the City Clerk. At 6 p.m. on November 24, 2013, the Commission held a public meeting in City Council Chambers to consider feedback from the community, consider any final changes to the plan and approve a Recommended Districting Plan.

After receiving feedback from the public regarding the Preliminary Districting Plan, the Commission made minor changes to the proposed council districts in order to incorporate public feedback. Specifically, the Commission moved the southern boundary of District One south to Escondido Creek. Second, the Commission moved a census block along the north boundary of District One into District Two in order to avoid splitting a mobile home park. The Commission also moved an area along the eastern boundary of District One into District Two. An area south of Highway 78 and west of Broadway was also moved from District One into the District Two. Finally, the Commission voted to split a census block in the eastern area of the City, along the border of Districts Two and Three, to prevent splitting a homeowner's association (HOA).

The Commission approved the Recommended Districting Plan by a vote of 7-0 and has submitted the attached Recommended Districting Plan for approval or disapproval by the City Council. The Recommended Plan consists of four districts. All districts have legally insignificant deviations from the ideal population for each and the districts meet each of the criteria set forth in the Consent Decree, as well as applicable law.

District One has a total population of 35,353, which deviates from the ideal total population by -1.73 percent. District One is a "Section 2 District" and was drawn by the Commissioners to comply with the Federal Voting Rights Act. The Hispanic citizen voting age population (CVAP) is 50.18 percent. When drawing the district, the Commission's goal was to keep the total population of the district as close to the ideal population as possible. Second, the Commission's intent was to create a district that complied with the federal Voting Rights Act. Third, the Commission drew the district boundaries to create a district that was geographically contiguous and compact. Finally, the Commission drew this district to keep as many communities of interest together as possible, including uniting one gated community in the north-west corner of the district and keeping a mobile home park along the northern boundary united in one district.

District Two has a total population of 36,384, which deviates from the ideal total population by 1.13 percent. When drawing this district, the Commission's goal was to keep the total population of the district as close to the ideal population as possible. The Commission drew the district boundaries in order to create a district that was geographically contiguous and compact. Finally, the Commission drew District Two to keep as many communities of interest together as possible, including keeping an HOA along the far-east boundary of the map united in one district. The Commission received

public testimony from two HOA board members who testified about their communities of interest and their neighborhood. The speakers each asked that their neighborhoods not be divided. In order to keep the communities intact while maintaining reasonably equal district populations, the Commission decided to split Census block number 20709.1. The consultant analyzed the data and calculated the populations in the resulting halves of the split block.

District Three has a total population of 35,837, which deviates from the ideal total population by -0.39 percent. When drawing the district, the Commission's goal was to keep the total population of the district as close to the ideal population as possible. Second, the Commission drew the district boundaries in order to create a district that was geographically contiguous and compact. Finally, the Commission drew District Three to keep as many communities of interest together as possible. The Commissioner reviewed several COIs in the area of this district and drew the boundaries to maintain the historic old-town Escondido area in one district.

District Four has a total population of 36,333, which deviates from the ideal total population by 0.99 percent. When drawing District Four, the Commission's goal was to keep the total population of the district as close to the ideal population as possible. Second, the Commission drew the district boundaries in order to create a district that was geographically contiguous and compact. Finally, the district was also drawn to respect several COIs which are wholly contained in the southwest.

Future Council Elections

The Consent Decree states that for purposes of implementing the Final Districting Plan, each City Council member resides in the District where the City Council member resides on the date of the Final Districting Plan's approval. The City will hold elections in November 2014 for the two seats representing Council Districts One and Two. The City will hold elections in November 2016 for the two seats representing Council Districts Three and Four.

The City Council is required to have one public hearing for the purpose of approving or rejecting the proposed districts. If the City Council wishes to approve the districts, Ordinance 2013-17 is presented to adopt and implement the necessary election procedures.

Respectfully submitted,

Jeffrey R. Epp
City Attorney

Diane Halverson
City Clerk

Allegra Frost
Deputy City Attorney

Agenda Item No.: 12
Date: December 4, 2013

ORDINANCE NO. 2013-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING THE ESCONDIDO MUNICIPAL CODETO PROVIDE FOR CITY COUNCIL ELECTIONS BY DISTRICTS

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

SECTION 1. Future elections for the City of Escondido's four City Council members will be conducted under a district-based method of election in which the four City Council members will be elected from four districts and the Mayor will remain elected at-large.

SECTION 2. The Consent Decree entered in San Diego Superior Court Case No. 37-2011-00060480-CU-CR-NC establishes the guidelines and criteria for districting of the City of Escondido.

SECTION 3. The City Council makes the following findings:

1. The City of Escondido established a seven-member independent districting commission vested with the authority to develop an initial district-based plan for future City Council elections; and

2. The Independent Districting Commission has considered the matter of drawing four council districts in the City of Escondido, and has considered the population of the City of Escondido as reflected in the United States 2010 Census; and

3. The Independent Districting Commission has held six public hearings in geographically diverse locations throughout Escondido where all Escondido citizens had an equal opportunity to comment on the drawing of district lines; and

4. After the six public hearings, the Independent Districting Commission published a preliminary districting plan and report for public consideration and comment; and

5. The Independent Districting Commission has held three public hearings in various geographic areas of the City where Escondido citizens had an equal opportunity to comment on the drawing of district lines and the preliminary districting plan; and

6. After having heard comments from the public on the preliminary districting plan, the Independent Districting Commission held a public meeting and approved a recommended districting plan by majority vote; and

7. The Independent Districting Commission submitted the recommended districting plan to the City for approval or disapproval; and

8. Proper notice of a public hearing has been given and the City Council has held one public hearing on the recommended districting plan; and

9. The City Council has listened to public comment on this issue and has reviewed and considered the recommended districting plan; and

10. That upon consideration of the staff report and all public testimony presented, the City Council finds that the proposed Council districts reflected in the recommended districting plan, as set forth in Exhibit A, comply with the criteria set forth in the consent decree, are as equal as practicable in population as shown by the United Stated 2010 Census, were drawn to comply with the federal Voting Rights Act, are

geographically contiguous and drawn to encourage compactness, were drawn with respect for the geographic integrity of neighborhoods and communities of interest and were not drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

SECTION 4. The City of Escondido is hereby divided in to four Council districts, and the boundaries of the districts are more particularly depicted in Exhibit A, which is attached and incorporated by this reference.

The Escondido Municipal Code is hereby amended to add Sections 2-32, 2-33 and 2-34 to Chapter 2, Article 2, as follows.

Section 2-32 Election of Council Members

The four City Council members shall be elected from four districts and the Mayor shall be elected at-large. Each district Councilmember shall reside within and be elected by voters within their respective district. Such districts shall be used in all matters concerning the appointment, recall, vacancy or any other aspects of that particular Council seat.

Section 2-33 Map of Council Districts

The City Clerk shall maintain a map of the City showing the current boundaries and numbers of each City Council district as may be established and amended from time to time by ordinance of the City Council.

Section 2-34 2014 and 2016 City Council Elections

a. The City shall hold elections for the seats representing City Council Districts One and Two in November of 2014. The two individuals so elected shall fill the seats of the Council Members whom were elected in November of 2010.

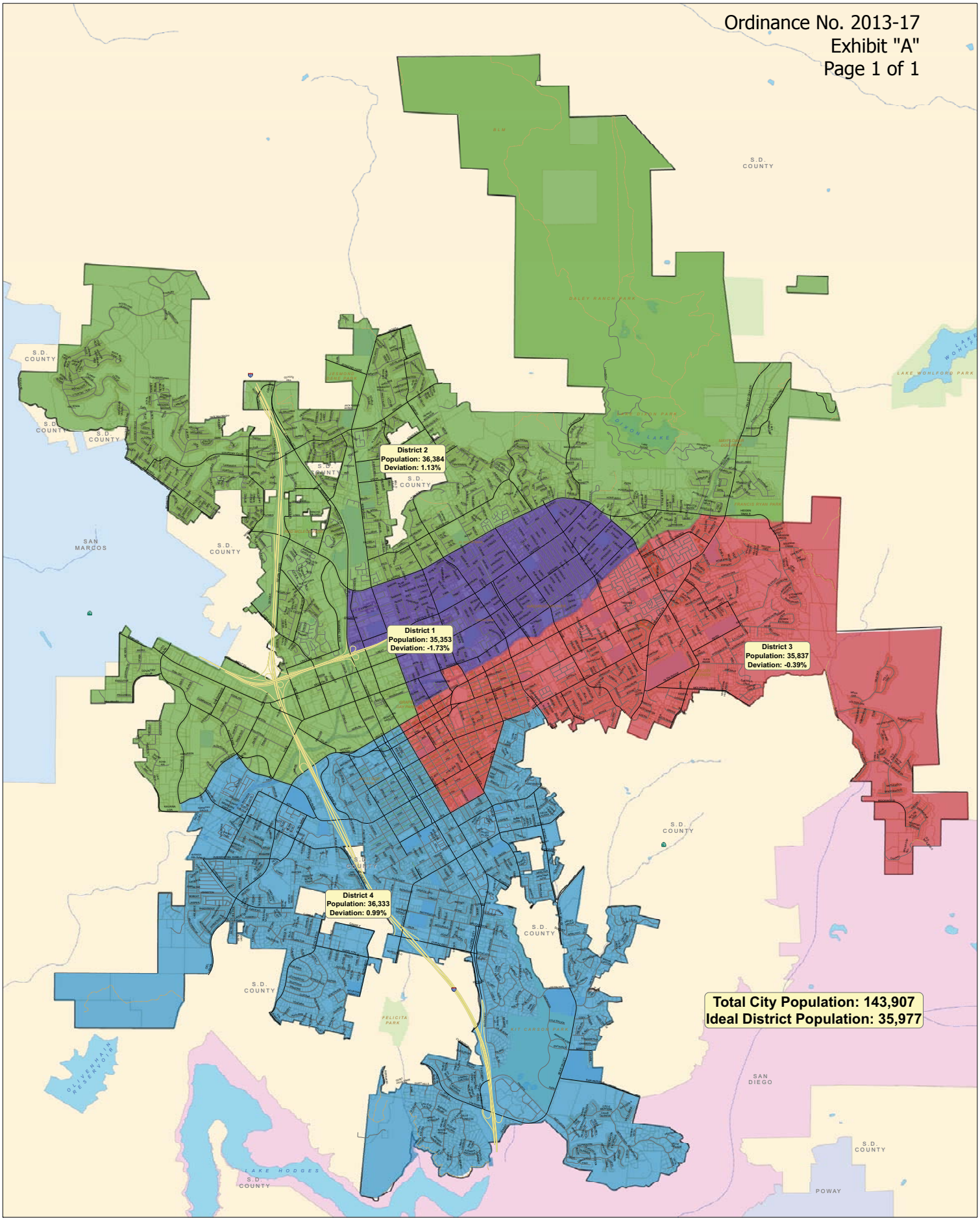
b. The City shall hold elections for the seats representing City Council Districts Three and Four in November of 2016. The two individuals so elected shall fill the seats of the Council Members whom were elected in November of 2012.

SECTION 5. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify the passage of this ordinance and to cause the same or a summary to be published in a newspaper of general circulation, printed and published in the City of Escondido.

Ordinance No. 2013-17
Exhibit "A"
Page 1 of 1



Date: 11/26/2013

Document Path: S:\GIS\Projects\Citywide\Districting2013\Recommended District Plan.mxd

CITY OF ESCONDIDO
Map for the Independent Districting Commission

Park
School

Recommended Districting Plan

N

0 0.5 1 2 3 Miles

ESCONDIDO
City of Choice

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 13
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Herb Griffin, Division Chief/Fire Marshal

SUBJECT: Adoption of the 2013 California Fire Code, Most Current Version of County of San Diego Consolidated Fire Code and Local Amendments

RECOMMENDATION:

It is requested that Council introduce Ordinance No. 2013-13, which modifies the City of Escondido Municipal Code to reflect the 2013 California Fire Code (CFC), the most current version of the County of San Diego Consolidated Fire Code and proposed local amendments.

FISCAL ANALYSIS:

No impact on the general fund.

PREVIOUS ACTION:

Approximately every three years the City of Escondido adopts new state and local Fire Codes. The last Fire Code adoption was in February 2011.

BACKGROUND:

In January 2013 the California Building Standards Commission (CBSC) adopted the model codes from the International Code Council as the basis for the California Building Standards Code. As part of the adoption process various State agencies proposed amendments that were incorporated into the code. Once the CBSC adopts the codes with approved amendments they become effective as the State Codes. For this code cycle the effective date for local enforcement will be January 1, 2014. The International Code is the base document from which the California Fire Code is derived.

For the past six months, many of the local fire marshals within the County have been working together to develop a comprehensive list of local amendments. These amendments collectively make up the County of San Diego Consolidated Fire Code. The purpose of which is to make the Fire Code as universal as possible throughout the County of San Diego. The attached ordinance modifies the City of Escondido Municipal Code (EMC) to reflect the proposed California Fire Code and proposed

local amendments to the code. The new 2013 California Fire Code is based on the 2012 International Fire Code.

2013 California Fire Code

The adopting of Ordinance No. 2013-13 modifies the City of Escondido Municipal Code to reflect the 2013 California Fire Code, the most current version of the County of San Diego Consolidated Fire Code and proposed local amendments. The amendments to the 2013 CFC are minimal and noted below:

- Open Burning is prohibited. Except for prescribed burns authorized by fire code official.
- Carbon Monoxide Alarms required in all new and existing Group R and I occupancies.
- Biofuels are now considered motor vehicle fuels and falls under Chapter 23 for Class III-B fuels.

There are no changes to the local amendments from the 2010 Code. Working with the other Fire Marshals from around the County, we were able to consolidate many of the individual amendments into the County of San Diego Consolidated Code. The Local amendments we are retaining specifically for Escondido fall into three categories, matching City Engineering Standards, Keeping us in line with surrounding County areas, and exceptions (this is where we have the flexibility to be less restrictive than the County).

State of California Health and Safety Code Section 17958.7 allows local amendments to the California Codes when findings can be made for unique climatic, geological or topographical conditions. Those required findings are attached as Exhibit A.

Respectfully submitted,

Herb Griffin
Division Chief/Fire Marshal

Exhibit "A"

FINDINGS FOR THE FIRE CODE

Finding 1

The City of Escondido is situated on the slopes of and at the base of the Coastal Mountains, with drainage from the eastern portion of the district, including the San Dieguito River and Escondido Creek, which when flooded, could result in conditions rendering fire departments vehicular traffic access unduly burdensome or impossible.

Further, the flood conditions described above carries the potential for overcoming the ability of the fire department to aid or assist in fire control, evacuations, rescues and the emergency tasks demands inherent in such situations. The potential for the aforementioned flooding conditions to result in limiting fire department emergency vehicular traffic, with resulting overtaxing fire department personnel, may further cause a substantial or total lack of protection against fire for the buildings and structures located within the jurisdiction.

Finding 2

The City of Escondido is situated near several known major faults, each capable of generating earthquakes of significant magnitude. These include the Rose Canyon Fault, the Coronado Banks, and the Silver Strand Faults, located generally west of the City and the Elsinore Fault, the Agua Caliente Fault, located east of the City. These faults are subject to becoming active at any time; the City of Escondido is particularly vulnerable to devastation should such an earthquake occur.

The potential effects of earthquake activity include isolating the City of Escondido from the surrounding area and restricting or eliminating internal circulation due to the potential for collapsing of highway overpasses and underpasses, along with other bridges in the district, or an earth slide, and the potential for vertical movement rendering surface travel unduly burdensome or impossible.

Finding 3

San Diego County Highway S6 bisects the City of Escondido. Transportation vehicles carrying known toxic, flammable, explosive, and hazardous materials heavily travel this highway.

The potential for release or threatened release of a hazardous material along this route and others within the City is likely given the volume transported daily. Incidents of this nature will normally require all available emergency response personnel to prevent injury and loss of life and to prevent, as far as practicable, property loss. Emergency personnel responding to such aforementioned incidents may be unduly impeded and delayed in accomplishing an emergency response as a result of this situation. With the potential result of undue and unnecessary risk to the protection of life and public safety and, in particular, endangering residents and occupants in buildings or structures without the protection of automatic fire sprinklers.

Finding 4

The City of Escondido and Southern California are semi-arid regions and experience water shortages from time to time. Those shortages can have a severely adverse effect on water availability for firefighting. Fires starting in sprinkled buildings are typically controlled by one or two sprinkler heads, flowing as little as 13 gallons per minute.

Hose streams used by engine companies on well-established structure fires operate at about 250 gallons per minute each, and the estimated water need for a typical residential fire is 1,250 to 1,500 gallons per minute, according to the Insurance Service Office and the International Fire Code.

Under circumstances such as, lack of water infrastructure, earthquakes, multiple fires and wildland fires within a community, the limited water demands needs of residential fire sprinklers would control and extinguish many fires before they spread from building to wildland. In such a disaster, water demands needed for conflagration firefighting probably would not be available.

Finding 5

The topography of the City of Escondido presents problems in delivery of emergency services, including fire protection. Hilly terrain has narrow, winding roads, with little circulation, and much of these hills are covered with natural vegetation preventing rapid access and orderly evacuation. Much of these hills are covered with highly non-fire-resistive natural vegetation. In addition to access and evacuation problems, the terrain makes delivery of water extremely difficult. Some hill areas are served by water pump systems subject to failure in fire, high winds, earthquake, and other power failure situations. This would only allow domestic gravity feed water from tanks and not enough water for firefighting.

Finding 6

Due to the topography in much of the City of Escondido, it is very important that roadways be named and identified in order to facilitate emergency response.

Finding 7

Due to the topography in much of the City of Escondido, steep, narrow and winding roads and areas of heavy brush are common. These features make it difficult for emergency response personnel to easily, and quickly find the location of the site that requires assistance. It is therefore essential that street numbers and signs be easily readable to ensure the quickest response times for a given location.

Finding 8

Due to the topography in much of the City of Escondido, roadway condition, gates, angle of approach or departure, steeply sloping roadways and grades are common. In addition, combining potentially severe rainstorms and ground water retention of many areas of the City where there is expansive soil. This produces a condition wherein the moisture content of the soil is sufficient that roadways become damaged due to soil expansion and shrinkage. All weather, paved surfaces capable of supporting the imposed loads of fire apparatus are necessary to ensure access of emergency response personnel. These roadways, gates, approach angles, steep slopes, and grades can also make it difficult for fire apparatus and other emergency vehicles to access a site. It is therefore essential that these roadway accesses be provided with proper all weather, paved surfaces, angle of approach, grades and gate access.

Finding 9

Areas in the City of Escondido can have special fire prevention needs not fully covered by the provisions of the Fire Code itself. This is due to the unique topographic features, demographics, infrastructure, and local economics of the City.

Finding 10

Due to the steeply sloping topography in the City of Escondido, the potential exists that new and future development will result in taller buildings on smaller parcels. Defining mid-rise buildings as four stories or more in height and less than from 75 feet in height modifies the application of special provisions for these buildings to all occupancies. Because of the need to mitigate the potential danger of mid-rise buildings this change is necessary. In addition, the limitations of available fire-fighting equipment, limited availability of human resources in local fire departments, and the necessity to climb vertically up flights of stairs greatly impacting the response time to reach an incident scene, it necessary to define the height of mid-rise buildings. The reduced height and built in protection will mitigate extended fire department response time and keep incidents manageable.

Finding 11

The topography of the City of Escondido presents problems in delivery of emergency services, including fire protection. Hilly terrain has narrow, winding roads with little circulation, preventing rapid access and orderly evacuation. Much of these hills are covered with highly non-fire resistive natural vegetation. In addition to access and evacuation problems, the terrain makes delivery of water extremely difficult. Some hill areas are served by water tank and pump systems are subject to failure in fire, high winds, earthquake and other power failure situations.

The aforementioned problems are set forth in the 2013 California Building Code and amendments.

Finding 12

The seasonal climatic conditions during the late summer and fall create numerous serious difficulties regarding the control of and protection against fires in the City of Escondido. The hot, dry weather typical of this area in summer and fall, coupled with Santa Anna winds and low humidity frequently results in wildfires that threaten or could threaten the City of Escondido.

Although some code requirements, such as fire-resistive roof classification, have a direct bearing on building survival in a wildland fire situation, others, such as residential fire sprinklers, may also have a positive effect. In dry climate on low humidity days, many materials are much more easily ignited. More fires are likely to occur and any fire, once started, can expand extremely rapidly. Residential fire sprinklers can arrest a fire starting within a structure before the fire is able to spread to adjacent brush and structures.

A seasonal wind also have the potential for interfering with emergency vehicle access, delaying or making impossible fire responses, because of toppling of extensive plantings of dense chaparral, eucalyptus and confers trees. The trees are subject to uprooting in strong winds due to relatively small root bases compared to the tree itself. The aforementioned problems support the imposition of fire-protection requirements greater than those set forth in the Building Code or Fire Code.

ORDINANCE NO. 2013-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING CHAPTER 11 OF THE ESCONDIDO MUNICIPAL CODE, TO ADOPT THE 2013 CALIFORNIA FIRE CODE, THE COUNTY OF SAN DIEGO 2011 CONSOLIDATED FIRE CODE AND LOCAL AMENDMENTS

WHEREAS, the State of California Building Standards Commission is charged with the development of uniform codes and regulations for application to the construction of buildings within the state; and

WHEREAS, California Health and Safety Code Section 17960 requires the City enforce within its jurisdiction all the provisions published in the State Buildings Standards Code and the provisions of other rules and regulations promulgated pursuant to the provisions of the California Health and Safety Code pertaining to the erection, construction, reconstruction, movement, enlargement, conversion, alteration, repair, removal, or arrangement of apartments, hotels or dwellings; and

WHEREAS, every three years the California Building Standards Commission updates and adopts uniform codes for application throughout the state; and

WHEREAS, California Health and Safety Code Section 17958.7 allows local amendments to the California Building Standards Codes, when such codes are amended and adopted at the local level, and when local findings are made for unique climatic, geological or topographical conditions; and

WHEREAS, this Ordinance sets forth those local amendments to the uniform codes; and the required findings attached to this Ordinance as Exhibit "A" and

incorporated by this reference. Also included in this Ordinance is the City of Escondido Fire Severity Zone map, previously adopted in Ordinance 2007-31.

NOW, THEREFORE, the City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That Escondido Municipal Code Chapter 11, Article 2, Fire Prevention, Division 1, Generally, Section 11-15 is repealed and replaced to read as follows:

Fire Codes Adopted; copies on file.

The following technical codes are adopted by the City of Escondido:

(a) The 2013 California Fire Code, California Code of Regulations, Title 24, Part 9, excluding section 103.2 and including the Appendix to Chapter 4 and Appendices B, BB, H and I.

(b) The County of San Diego 2011 Consolidated Fire Code as published in Title 9 of the San Diego County Regulatory Ordinances. Any specific reference in the adopted Consolidated Fire Code to the regulatory authority of the County of San Diego shall be replaced with the City of Escondido.

(c) The Fire Marshall shall maintain copies of the California Fire Code, the County of San Diego Consolidated Fire Code and the City of Escondido amendments and make copies available for public review at the Police and Fire Department Headquarters.

SECTION 2. That Escondido Municipal Code Chapter 11, Article 2, Fire Prevention, Division 1, Generally, Section 11-16 is repealed and replaced to read as follows:

California Fire Code Amendments.

(a) The City of Escondido amends the 2013 California Fire Code, Chapter 3, General Requirements, to add Sections 319 and 319.1 to read as follows:

Section 319 - Mid-Rise Buildings

Section 319.1. A Mid-Rise Building shall meet the requirements of a High-Rise Building except for the following: Secondary Water Supply Section 903.3.5.2, Stand-by Power System 604.2.15.1. Buildings three stories or more shall meet the requirements of a mid-rise building with regard to sprinkler systems. Standpipe systems, vertical or horizontal may be required with regard to access or project design. Variations to the system design will need the approval of the fire code official.

(b) The City of Escondido amends the 2013 California Fire Code, Chapter 5, Fire Service Features, by the addition of the following sections to read:

Section 503.2.1.1 - Vertical Clearance Exception: Upon approval by the fire code official, vertical clearances or width may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

Section 503.2.1.2 - Road Phasing Policy For Single Family Dwellings on Existing Legal Parcels: The fire access roadway requirement for widening existing improved fire apparatus roadway shall be per Table 503.2.1.1A "Phasing Policy - Fire Apparatus Access" and will extend from the property out to the nearest public road.

TABLE 503.2.1.1A - PHASING POLICY:

Fire Apparatus Access—Single Family Dwellings

Number of Parcels	Unobstructed Road Width	Roadways Over 600 ft. Long	Extend to Nearest Public Road
1	16-foot, paved	Turnouts every 400 feet	Yes
2	20-foot, paved	Turn-outs every 400 feet	Yes
3-8	24-foot, paved	Turn-outs every 400 feet	Yes
9 or more	24-foot, paved	Not required	Yes

Auxiliary structures (non-habitable) and residential additions/remodels less than 500 square feet: The access roadway will not be required to be improved if the access roadway has already been improved to a minimum width of 20 feet. If the roadway is not 20 feet, then the roadway shall be widened per Table 503.2.1.1A – Phasing Policy – "Fire Apparatus Access," but not greater than 20 feet. The

preceding addition/remodel exception is limited to one permit (addition or remodel) per three-year period from the date of the last permit approval.

Section 503.2.3.1 - Imposed Loads: For properties relying on City of Escondido fire apparatus access the imposed loads of fire apparatus not less than 75,000 lbs., unless authorized by the FAHJ.

Section 507.2.3 - Fire Flow: In setting the requirements for fire flow, the fire code official may be guided by Section 507.3 and by Appendix B of this Code, or by the standard published by the Insurance Services Office, "Guide for Determination of Required Fire Flow."

Section 507.5.1.1.1 - Requirements for Single-Family Dwellings: In projects zoned for single family dwellings, fire hydrants shall be installed every 500 feet in accordance with City of Escondido design standards and standard drawings.

Section 507.5.1.1.2 - Requirements for Multi-Family Dwellings: In multi-family zones and in commercial and industrial zones, fire hydrants shall be installed at intersections, at the beginning radius of cul-de-sacs, and every 300 feet of fire access roadways.

Exception: When improved methods of fire protection are provided, beyond those required by the Code, and accepted by the fire code official, adjusted spacing of fire hydrants from those set forth above may be considered.

(c) The City of Escondido amends the 2013 California Fire Code, Chapter 6, Building Services & Systems, by the addition of the following section to read:

Section 603.8.1 - Residential Incinerators shall be prohibited.

(c) The City of Escondido amends the 2013 California Fire Code, Chapter 9, Fire Protection Systems, by the addition of the following sections to read:

Section 903.1.2 - Life Safety Sprinkler Systems: Life safety sprinkler systems shall meet National Fire Protection Association Standards 13, 13-D or 13-R, and City of Escondido installation policies as appropriate.

Section 903.2.8.2 - Group R Additions: An automatic sprinkler system installed in accordance with Section 903.3 may be required to be installed throughout structures when the addition is more than 50% of the existing building, by square foot, or when the altered buildings will exceed a fire flow requirement of 1,500 gallons per minute. The fire code official may require an automatic sprinkler system be installed in buildings where no water main exists to provide the required fire flow or where a special hazard exists such as: poor access roads, grade and canyon rims, hazardous brush, and response times greater than 5 minutes by fire departments.

(e) The City of Escondido amends the California Fire Code, Chapter 47, Requirements for Wildland-Urban Interface Fire Areas, by the addition of section 4907.1.2 to read:

Section 4907.1.2 - Structure Setbacks from Top of Slope: A single story structure shall be setback a minimum 15 feet (4,572 mm) horizontally from top of slope to the farthest projection from a roof. A single story structure shall be less than 12 feet above grade. A two story structure shall be setback a minimum of 30 feet (9,144 mm) measured horizontally from top of slope to the farthest projection from a roof. Structures greater than two stories may require greater setback, which is based upon a 2 to 1 slope.

(f) The City of Escondido amends the California Fire Code, Chapter 56, Explosives and Fireworks, by the addition of the following sections to read:

Section 5601.2 - Applicability: This Section shall apply to the manufacture, possession, storage, sale, transportation and use of explosives and blasting agents, and to any blasting operation unless the blast is determined to be a minor blast, in which case the inspection requirements of this amended article shall not apply. The fire code official shall determine if the blast is minor. Persons conducting major blasting shall comply with all the requirements of this article as amended.

Section 5601.2.1 - Definitions: The following words and terms shall, for the purposes of this Section and as used elsewhere in this code, have the meanings shown herein.

Blaster: A blaster who has been approved by the fire code official to conduct blasting operations in the City of Escondido and who has been placed on the list of approved blasters. Such listing shall be valid for a period of one (1) year unless revoked by the authority having jurisdiction.

Blasting Agent: A material or mixture consisting of a fuel and oxidizer intended for blasting. The finished product as mixed and packaged for use or shipment cannot be detonated by means of a No. 8 test blasting cap when unconfined.

Blasting Operation: The uses of an explosive device or explosive material to destroy, modify, obliterate, or remove any obstruction of any kind.

Blasting Permit: A permit issued by the fire code official of the fire department serving the jurisdiction, pursuant to Section 105.6.14 of the California Fire Code, and shall apply to a specific site. This permit shall be valid for a period not to exceed one (1) year.

Blasting Site: A geographically defined area where blasting may occur. It shall be shown on a project map or plot plan. Major blasting operations

shall be conducted only within such defined areas. Distances for inspection and notification purposes shall be measured from all specific blast locations on a project site.

Explosives Permit: A permit issued by the Sheriff pursuant to Section 12000, et seq., of the California Health and Safety Code and Chapter 33 of the California Fire Code. An explosives permit shall be valid for a period not to exceed one (1) year, as designated by the Sheriff and may impose conditions on the permittee and his operations up to the point of actual use. In addition to this permit, a blasting permit is also required for the actual act of blasting.

Inspector: Means a state certified building inspector, a civil engineer, an architect, or other qualified individual who has been approved by the Fire Chief to conduct pre and post blast inspections in conjunction with blasting operations in the City of Escondido.

Major Blasting: A blasting operation not qualifying as minor blasting.

Minor Blasting: A blasting operation that meets all of the following criteria:

1. Quantity of rock to be blasted does not exceed one hundred (100) cubic yards per shot

2. Bore hole diameter does not exceed two inches (2″)

3. Hole depth does not exceed twelve feet (12′)

4. Maximum charge weight does not exceed eight (8) pounds of explosives per delay

5. The initiation of each charge will be separated by at least 10 milliseconds.

The maximum charge weight shall not exceed the Scaled Distance as shown below:

Distance from Blast Site (In Feet)	**Scale Distance (Factor)**
0 – 300	Mandatory Seismic Monitoring
301 - 5,000	55
5,000+	65

Sheriff's Authorized Representative: The fire code official serving the jurisdiction.

Section 5601.2.2 - Blasting Permits

1. All blasting operations within the City of Escondido are prohibited unless a Certificate of Authorization is first obtained from the Escondido Fire Department.

2. No Blasting Permit shall be granted or obtained unless the following conditions listed below are met to the satisfaction of the Fire Department:

a. The blaster shall obtain an explosive permit from the San Diego County Sheriff's Department and copy thereof shall be placed on file with the Escondido Fire Department.

b. The blaster shall obtain a business license from and issued by the Business License Division of the City of Escondido and a copy thereof placed on file with the Escondido Fire Department.

c. The property owner/developer or general contractor shall obtain liability insurance covering the blaster's activities in the minimum amount of $1 million for property damage and $1 million for bodily injury. The property owner/developer or general contractor's insurance company shall file a copy of insurance policy with the Escondido Fire Department. In addition, the blaster shall have liability insurance, for property damage, and bodily injury in the minimum amount of $1 million each for each blasting operation. A copy of the insurance policy of the blaster shall be filed with the Escondido Fire Department. The City of Escondido shall be named as an additional insured party.

d. The blaster's qualifications shall be reviewed by the fire code official. Approval shall be based upon a review of the blaster's qualifications, past safety record, and his or her history of complaints of job performance. Failure on the part of the blaster to comply with the terms and conditions under which approval is granted may result in revocation of the Blasting Permit and penalties pursuant to Section 77.508.

e. The blaster shall provide authorization from the property owner for all blasting operations.

f. In order to ensure public safety, it is the blaster's responsibility to ensure compliance with United States Bureau of Mines and the California Department of Health and Safety (CALOSHA) standards.

3. It shall be unlawful and a violation of this code for any person, firm, corporation, blaster, contractor to provide false or misleading information or documentation to the City of Escondido or any of its departments or the public during any phase of the permit process or blasting operations.

4. Additional fire department conditions are as follows:

a. For any blasting operations outside the Escondido City limits that are conducted in conjunction with projects within the City of Escondido, blasters are required to comply with blasting regulations of neighboring jurisdictions.

b. The Escondido Fire Department may impose such additional conditions and procedures as it deems are necessary to protect the public health, safety and welfare based upon the peculiar and individual facts and circumstances of a particular blasting operation. The Fire Department shall provide the blaster with the additional conditions or procedures in writing and the blaster shall comply with those requirements until such time as the Fire Department is satisfied that the conditions are no longer required and cancel the additional requirements.

5. Blasting Permit Repository and Renewal.

a. The Blasting Permit shall be kept on file with the Escondido Fire Department's Fire Prevention Bureau. A copy of the Blasting Permit shall be retained by the general contractor or property owner/developer and by the blaster and shall be available at the job site for public or official inspection at all times during blasting operations.

b. Blasting Permits shall be cancelled with the Fire Department when a blaster completes or discontinues, for thirty (30) consecutive days, blasting operations at a construction site. Said permit must be renewed before any blasting operations are continued or resumed.

c. Blasting Permit(s) for different blasters at the same site will require pre and post blast inspections as required for each blaster.

Section 5601.2.3 - Blasting Operation Procedures

Section 5601.2.3.1 - Major Blasts:

1. Notification: It is the City's intent to provide notification of the likelihood for blasting as early as possible. Whenever possible, based on information received, for projects requiring a public notice (Public Hearing, Environmental Review and/or Intended Decision Notice), said notices shall indicate whether blasting may occur in conjunction with the proposed

development. In the event blasting does occur, additional notice shall be required as follows:

a. Prior to the issuance of a Blasting Permit, the general contractor or property owner/developer or blaster shall give a reasonable notice in writing, but not less than one week prior to the blasting occurrence, to owners, tenants and/or occupants of all residences (including mobile homes), businesses and structures within 600 feet of any potential blast site. The notice shall be in a form approved by the Fire Chief, and shall include, but not limited to, the following:

i. A statement indicating that the notice is given as part of the permitting/development process.

ii. The location, address, and type of development.

iii. The anticipated date and duration of blasting operations.

iv. The name, address and telephone number of the blaster and/or developer as well as the Fire Department contact person's name, address and telephone number.

v. A radius map which shows the project location, the anticipated location of potential blasting operations, and the properties located within 300 feet and 600 feet from the Blast Site as defined under Section 7705.2.

vi. A disclosure statement outlining pre-blast and post-blast inspection procedures, timing and the time frame during which requests for pre-blast advanced notice and post-blast inspection and damage assessment complaints must be filed with the Fire Department.

The general contractor or property owner/developer shall be responsible for the preparation of the notice and the notification list, and shall provide the Fire Department with proof of notification prior to issuance of a Blasting Permit.

Any resident or business receiving such notice may request of the Fire Department that the blaster give a 24-hour advance notice of impending blast on a given day. The advanced notice shall specify the dates and estimated times of scheduled blasting operations. A subsequent advance notice shall be provided if blasting operations discontinue for a period exceeding 48 hours. The general contractor or property owner/developer shall obtain the advanced notification list of residents or businesses from the Fire Department, and shall make every reasonable effort to contact any and all parties requesting the 24-hour advance notice.

2. General Requirements:

a. The blaster shall provide the Fire Department with a minimum 24-hour notice prior to the commencement of any blasting operation.

b. Blasting shall only be permitted between the hours of 9:00 a.m. and 4:00 p.m. during any weekday, Monday through Thursday, unless special circumstances warrant another time or day and special approval is granted by the Fire Chief based on consideration of the blasting operations potential impact on the surrounding properties and demonstrated compliance with the Noise Ordinance (Article XII. Noise Abatement Control).

c. If a Fire Department witness is desired, arrangement shall be made at least 12 hours prior to the blast. Confirmation shall be made to the Fire Department no less than one hour prior to the blast. The Fire Department may then assign a Department member to be present and observe the blast at their discretion. A representative of the Fire Department may also be present during the blasting operation without any prior notice to the blaster.

d. All blasting operations shall be monitored by an approved seismograph located at the nearest man-made structure. All daily seismograph reports shall be forwarded to the Fire Department by the end of the business week.

Exception: Public Utility Companies are not required to seismographically monitor minor blasting operations.

3. Pre-blast Inspections.

a. Inspections of all man-made structures (including mobile homes) within 300 feet of a major blast site shall be made before blasting operations. The inspection shall be for the purpose of determining the existence of any visible or recognizable preexisting defect or damages in any structure. The inspection shall also identify all existing operating wells on site for documentation purposes only. Waiver of such inspection shall be in writing by owner(s), and persons who have vested interest, control, custody, lease or rental responsibility of said property or their legally recognized agent.

b. The person(s) inspecting shall obtain the permission of the building owner prior to conducting the inspection.

c. The inspections shall be performed by an approved blast inspector per Section 7705.2.

d. The inspector shall file with the Fire Department, a summary report identifying address, occupant and/or owner's name, time and date of inspections. The summary report shall also include inspection waiver signed by property owner or owner's agent, with an explanation as to why an inspection of a specific structure was not made. This summary and waiver report shall be signed by the inspector and filed with the Fire Department prior to blasting operation.

e. The blaster shall permit the Fire Department personnel to inspect the site and blast materials or explosives at any reasonable time.

4. Post-blast Inspections.

a. Post-blast inspections shall be required upon receipt of a written complaint to the Fire Department by the person in charge of the property alleging property damage due to blasting operations. For complaint received within one year of completion of blasting operations, the Fire Department shall forward a copy of the written complaint to the contractor and/or blaster. In no way does this relieve the blaster and/or the developer of their legal obligations toward the complainant.

b. Said inspection shall be conducted and reports filed with the Fire Department and the complainant within 30 days of receipt of complaints.

Section 5601.2.3.2 - Minor Blasts:

1. Notification: Prior to issuance of a Blasting Permit, the general contractor or property owner/developer or blaster shall give a reasonable notice in writing, but not less than 12 hours prior to the blasting occurrence, to all residences (including mobile homes), businesses or structures on contiguous properties or at the discretion of the Fire Department. The notice shall be in a form approved by the Fire Chief, and shall include, but not be limited to, the following:

a. A statement indicating that the notice is given as part of the permitting/development process.

b. The location, address, and type of development.

c. The anticipated date and the estimated duration of blasting operations.

d. The name, address and telephone number of the blaster and/or developer as well as the Fire Department's contact person's name, address and telephone number.

2. General Requirements: All blasting operations shall be monitored by an approved seismograph located at the nearest man-made structure. All daily seismograph reports shall be forwarded to the Fire Department by the end of the business week.

Exception: Public Utility Companies are not required to seismographically monitor blasting operations for minor blasts.

Section 5601.2.4 - Blasting Hours: Blasting shall only be permitted between the hours of 9:00 a.m. and 4:00 p.m. Monday through Thursday, unless special circumstances warrant another time or day and special approval is granted by the fire code official.

Section 5601.2.5 - Violations and Penalties: The fire code official, issuing authority, or peace officer may seize, take, remove or cause to be removed at the expense of the owner all explosives, ammunition or blasting agents offered or exposed for sale, stored, possessed or transported in violation of this article. In addition:

1. Any person violating or causing the violation of any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000.00 or by imprisonment in the County jail for six (6) months, or by both fine and imprisonment.

2. It shall be unlawful and a violation of this ordinance for any person to provide false or misleading information or documentation to the County of San Diego or any of its officers or employees or to any jurisdiction having authority during any phase of the explosives or blasting permit process or blasting operations.

3. In addition to the penalties provided in Paragraph 1 of this Section, any conditions caused or permitted to exist in violation of the provisions of this ordinance or in violation of the conditions of an explosives or blasting permit shall be deemed a public nuisance, and may be abated by the County as such or remedied in court in any manner provided by law.

4. The general contractor or owner/developer shall be responsible for compliance with all provisions of this ordinance.

Section 5601.2.6 - Fee Structure: A blaster and inspector shall pay a fee to the Sheriff upon being designated an approved blaster or inspector. Fees shall also be charged for issuance of a blasting permit to conduct blasting operations within the City of Escondido. The amount of said fees shall be determined by City of Escondido on the basis of the full costs involved in processing said permits.

SECTION 3. That Escondido Municipal Code Chapter 11, Article 2, Fire Prevention, Division 1, Generally, Section 11-20, is repealed and replaced to read as follows:

Appeals. Whenever the chief of the fire department shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the adopted technical codes do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal the decision to the building advisory appeals board. The appeal must be initiated within ten (10) days from the act, decision or interpretation which is the subject of the appeal.

SECTION 4. That Escondido Municipal Code Chapter 11, Article 2, Fire Prevention, Division 1, Generally, Section 11-21, is added to read as follows:

Wildland-Urban Interface Fire Severity Zones. The City of Escondido Fire Severity Zones map, as shown in Figure 11-21, identifies the areas of moderate, high, and very high danger of fire hazard.

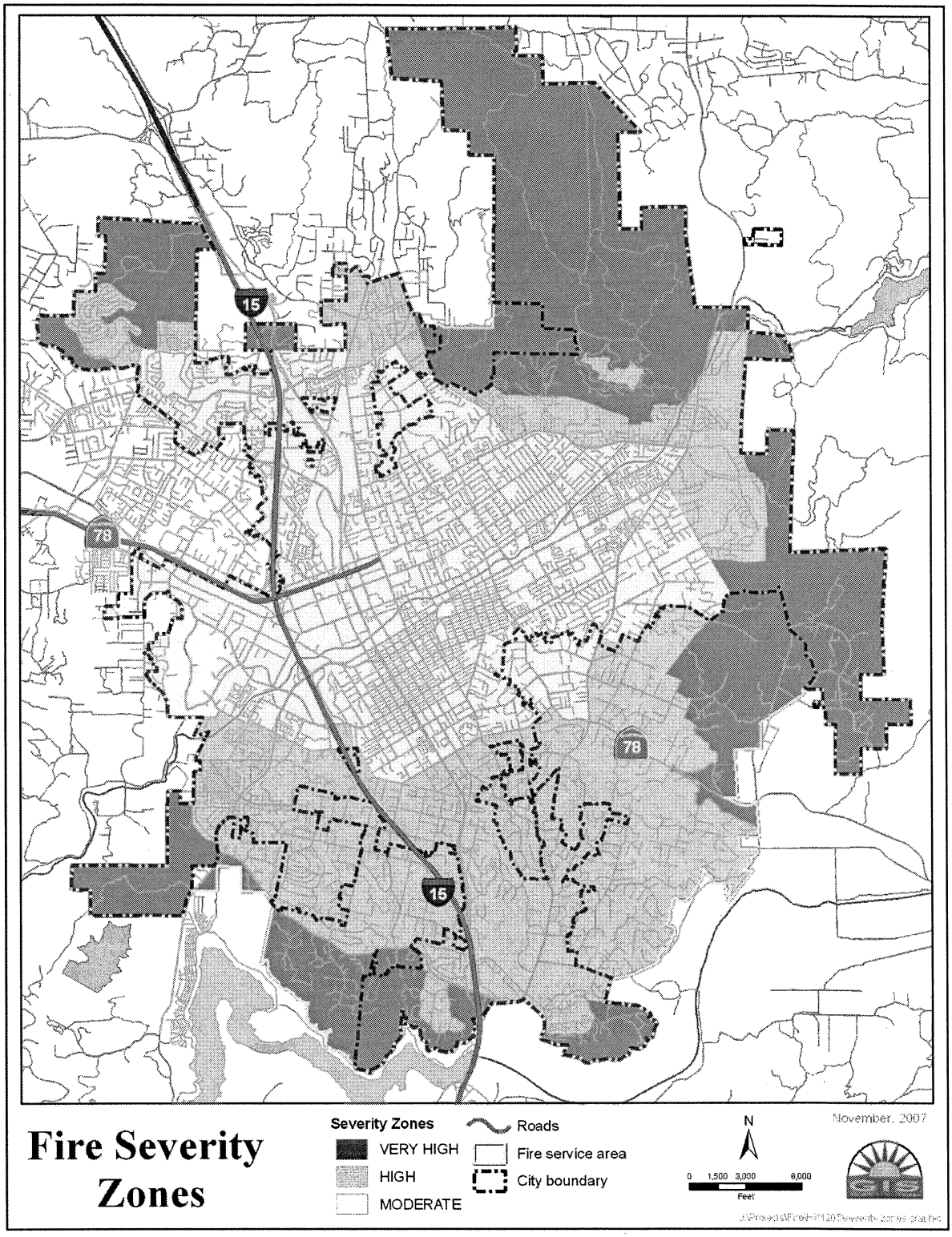

Fire Severity Zones
Severity Zones
VERY HIGH
HIGH
MODERATE
Roads
Fire service area
City boundary
N
0 1,500 3,000 6,000
Feet
November, 2007
15
78
78
15

Figure 11-21

SECTION 5. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

Exhibit "A"

FINDINGS FOR THE FIRE CODE

Finding 1

The City of Escondido is situated on the slopes of and at the base of the Coastal Mountains, with drainage from the eastern portion of the district, including the San Dieguito River and Escondido Creek, which when flooded, could result in conditions rendering fire departments vehicular traffic access unduly burdensome or impossible.

Further, the flood conditions described above carries the potential for overcoming the ability of the fire department to aid or assist in fire control, evacuations, rescues and the emergency tasks demands inherent in such situations. The potential for the aforementioned flooding conditions to result in limiting fire department emergency vehicular traffic, with resulting overtaxing fire department personnel, may further cause a substantial or total lack of protection against fire for the buildings and structures located within the jurisdiction.

Finding 2

The City of Escondido is situated near several known major faults, each capable of generating earthquakes of significant magnitude. These include the Rose Canyon Fault, the Coronado Banks, and the Silver Strand Faults, located generally west of the City and the Elsinore Fault, the Agua Caliente Fault, located east of the City. These faults are subject to becoming active at any time; the City of Escondido is particularly vulnerable to devastation should such an earthquake occur.

The potential effects of earthquake activity include isolating the City of Escondido from the surrounding area and restricting or eliminating internal circulation due to the potential for collapsing of highway overpasses and underpasses, along with other bridges in the district, or an earth slide, and the potential for vertical movement rendering surface travel unduly burdensome or impossible.

Finding 3

San Diego County Highway S6 bisects the City of Escondido. Transportation vehicles carrying known toxic, flammable, explosive, and hazardous materials heavily travel this highway.

The potential for release or threatened release of a hazardous material along this route and others within the City is likely given the volume transported daily. Incidents of this nature will normally require all available emergency response personnel to prevent injury and loss of life and to prevent, as far as practicable, property loss. Emergency personnel responding to such aforementioned incidents may be unduly impeded and delayed in accomplishing an emergency response as a result of this situation. With the potential result of undue and unnecessary risk to the protection of life and public safety and, in particular, endangering residents and occupants in buildings or structures without the protection of automatic fire sprinklers.

Finding 4

The City of Escondido and Southern California are semi-arid regions and experience water shortages from time to time. Those shortages can have a severely adverse effect on water availability for firefighting. Fires starting in sprinkled buildings are typically controlled by one or two sprinkler heads, flowing as little as 13 gallons per minute.

Hose streams used by engine companies on well-established structure fires operate at about 250 gallons per minute each, and the estimated water need for a typical residential fire is 1,250 to 1,500 gallons per minute, according to the Insurance Service Office and the International Fire Code.

Under circumstances such as, lack of water infrastructure, earthquakes, multiple fires and wildland fires within a community, the limited water demands needs of residential fire sprinklers would control and extinguish many fires before they spread from building to wildland. In such a disaster, water demands needed for conflagration firefighting probably would not be available.

Finding 5

The topography of the City of Escondido presents problems in delivery of emergency services, including fire protection. Hilly terrain has narrow, winding roads, with little circulation, and much of these hills are covered with natural vegetation preventing rapid access and orderly evacuation. Much of these hills are covered with highly non-fire-resistive natural vegetation. In addition to access and evacuation problems, the terrain makes delivery of water extremely difficult. Some hill areas are served by water pump systems subject to failure in fire, high winds, earthquake, and other power failure situations. This would only allow domestic gravity feed water from tanks and not enough water for firefighting.

Finding 6

Due to the topography in much of the City of Escondido, it is very important that roadways be named and identified in order to facilitate emergency response.

Finding 7

Due to the topography in much of the City of Escondido, steep, narrow and winding roads and areas of heavy brush are common. These features make it difficult for emergency response personnel to easily, and quickly find the location of the site that requires assistance. It is therefore essential that street numbers and signs be easily readable to ensure the quickest response times for a given location.

Finding 8

Due to the topography in much of the City of Escondido, roadway condition, gates, angle of approach or departure, steeply sloping roadways and grades are common. In addition, combining potentially severe rainstorms and ground water retention of many areas of the City where there is expansive soil. This produces a condition wherein the moisture content of the soil is sufficient that roadways become damaged due to soil expansion and shrinkage. All weather, paved surfaces capable of supporting the imposed loads of fire apparatus are necessary to ensure access of emergency response personnel. These roadways, gates, approach angles, steep slopes, and grades can also make it difficult for fire apparatus and other emergency vehicles to access a site. It is therefore essential that these roadway accesses be provided with proper all weather, paved surfaces, angle of approach, grades and gate access.

Finding 9

Areas in the City of Escondido can have special fire prevention needs not fully covered by the provisions of the Fire Code itself. This is due to the unique topographic features, demographics, infrastructure, and local economics of the City.

Finding 10

Due to the steeply sloping topography in the City of Escondido, the potential exists that new and future development will result in taller buildings on smaller parcels. Defining mid-rise buildings as four stories or more in height and less than from 75 feet in height modifies the application of special provisions for these buildings to all occupancies. Because of the need to mitigate the potential danger of mid-rise buildings this change is necessary. In addition, the limitations of available fire-fighting equipment, limited availability of human resources in local fire departments, and the necessity to climb vertically up flights of stairs greatly impacting the response time to reach an incident scene, it necessary to define the height of mid-rise buildings. The reduced height and built in protection will mitigate extended fire department response time and keep incidents manageable.

Finding 11

The topography of the City of Escondido presents problems in delivery of emergency services, including fire protection. Hilly terrain has narrow, winding roads with little circulation, preventing rapid access and orderly evacuation. Much of these hills are covered with highly non-fire resistive natural vegetation. In addition to access and evacuation problems, the terrain makes delivery of water extremely difficult. Some hill areas are served by water tank and pump systems are subject to failure in fire, high winds, earthquake and other power failure situations.

The aforementioned problems are set forth in the 2013 California Building Code and amendments.

Finding 12

The seasonal climatic conditions during the late summer and fall create numerous serious difficulties regarding the control of and protection against fires in the City of Escondido. The hot, dry weather typical of this area in summer and fall, coupled with Santa Anna winds and low humidity frequently results in wildfires that threaten or could threaten the City of Escondido.

Although some code requirements, such as fire-resistive roof classification, have a direct bearing on building survival in a wildland fire situation, others, such as residential fire sprinklers, may also have a positive effect. In dry climate on low humidity days, many materials are much more easily ignited. More fires are likely to occur and any fire, once started, can expand extremely rapidly. Residential fire sprinklers can arrest a fire starting within a structure before the fire is able to spread to adjacent brush and structures.

A seasonal wind also have the potential for interfering with emergency vehicle access, delaying or making impossible fire responses, because of toppling of extensive plantings of dense chaparral, eucalyptus and confers trees. The trees are subject to uprooting in strong winds due to relatively small root bases compared to the tree itself. The aforementioned problems support the imposition of fire-protection requirements greater than those set forth in the Building Code or Fire Code.

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 14
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Barbara Redlitz, Director of Community Development

SUBJECT: Adoption of the 2013 California Building, Residential, Plumbing, Electrical, Mechanical, and Green Building Standards Codes and Local Amendments

STAFF RECOMMENDATION:

It is requested that Council introduce Ordinance No. 2013-11, amending the City of Escondido Municipal Code to reflect the 2013 California Building, Residential, Plumbing, Electrical, Mechanical, and Green Building Standards Codes and proposed local amendments.

FISCAL ANALYSIS:

No anticipated impact on the General Fund.

BACKGROUND:

Every three years the State of California Building Standards Commission adopts model codes as the basis for the California Building Standards Code (CBSC). The adopted codes, California Code of Regulations (CCR), Title 24, provide a common set of rules and regulations throughout the state. The CBSC is a compilation of three types of building criteria from three different origins:

- Building standards that have been adopted by state agencies without change from building standards contained in national model codes;
- Building standards that have been adopted and adapted from the national model code standards to meet California conditions; and
- Building standards, authorized by the California legislature, that constitute extensive additions not covered by the model codes that have been adopted to address particular California concerns.

The State recently modified and adopted, effective on January 1, 2014, the following codes:

- 2013 California Building Code (based on the 2012 International Building Code)
- 2013 California Residential Code (based on the 2012 International Residential Code)
- 2013 California Plumbing Code (based on the 2012 Uniform Plumbing Code)
- 2013 California Electrical Code (based on the 2011 National Electrical Code)
- 2013 California Mechanical Code (based on the 2012 Uniform Mechanical Code)

- 2013 California Green Building Standards Code

DISCUSSION:

The changes to the uniform codes are minimal and should impose no substantial changes on the City of Escondido residents or their contractors. Adoption of the codes will allow the Building Division to enforce the most recent state standards.

The change to EMC 6-13.3.12 is designed to address a recurring problem. As a general rule, the municipal code does not require a building permit for window replacements. However, the Escondido Zoning Code requires residents of the Old Escondido Neighborhood to obtain a Certificate of Appropriateness for changes to the exterior appearance of a building. On occasion, an Old Escondido Neighborhood property owner has installed vinyl replacement windows that do not meet the historic preservation standards. Correcting this violation can prove very expensive to the property owner. The proposed change will align the requirements in the building and zoning codes.

The remaining changes are administrative.

The Building Advisory and Appeals Board members and the Building Industry Association of San Diego County were provided a copy of the proposed ordinance, findings and local amendments.

Respectfully Submitted,

Barbara J. Redlitz
Director of Community Development

Tim Draper
Building Official

ORDINANCE NO. 2013-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING CHAPTER 6 OF THE ESCONDIDO MUNICIPAL CODE, TO ADOPT THE 2013 CALIFORNIA BUILDING, RESIDENTIAL, PLUMBING, ELECTRICAL, MECHANICAL, AND GREEN BUILDING STANDARDS CODES AND LOCAL AMENDMENTS

WHEREAS, the State of California Building Standards Commission is charged with the development of uniform codes and regulations for application to the construction of buildings within the state; and

WHEREAS, California Health and Safety Code Section 17960 requires the City enforce within its jurisdiction all the provisions published in the State Buildings Standards Code and the provisions of other rules and regulations promulgated pursuant to the provisions of the California Health and Safety Code pertaining to the erection, construction, reconstruction, movement, enlargement, conversion, alteration, repair, removal, or arrangement of apartments, hotels or dwellings; and

WHEREAS, every three years the California Building Standards Commission updates and adopts uniform codes for application throughout the state; and

WHEREAS, California Health and Safety Code Section 17958.7 allows local amendments to the California Building Standards Codes, when such codes are amended and adopted at the local level, and when local findings are made for unique climatic, geological or topographical conditions; and

NOW, THEREFORE, the City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That Escondido Municipal Code Chapter 6, Article 1, Section 6-1.2 is repealed and replaced with the following:

Sec. 6-1.2. Codes Adopted. The following technical codes are adopted by the City of Escondido:

(a) The 2013 California Building Code, California Code of Regulations, Title 24, Part 2, (including Chapter 29, and Appendix Chapters C and I.

(b) The 2013 California Residential Code, California Code of Regulations, Title 24, Part 2.5, including Appendix Chapter H.

(c) The 2013 California Electrical Code, California Code of Regulations, Title 24, Part 3.

(d) The 2013 California Mechanical Code, California Code of Regulations, Title 24, Part 4, including Appendix Chapter D.

(e) The 2013 California Plumbing Code, California Code of Regulations, Title 24, Part 5, including Appendix Chapters A, D, H and I.

(f) The 2013 California Historical Building Code, California Code of Regulations Title 24, Part 8.

(g) The 2013 California Existing Building Code, Appendix Chapter A1, California Code of Regulations, Title 24, Part 10.

(h) The 2013 California Green Building Standards Code, California Code of Regulations, Title 24, Part 11, excluding all appendices.

(i) The Uniform Housing Code of the International Conference of Building Officials, except its definition of a "substandard building."

SECTION 2. That Escondido Municipal Code Chapter 6, Article 2, Section 6-39, is amended as follows: all references to the 2009 edition to the Standard Specifications for Public Works Construction (the "Green Book") are replaced with the 2012 edition.

SECTION 3. That Escondido Municipal Code Chapter 6, Article 1, Section 6-13.3.12 is repealed and replaced with the following:

> Except for buildings on the historic register or in the Old Escondido Neighborhood, the installation of replacement windows in existing window openings associated with a residential dwelling unit with no modifications to the existing rough opening or to the exterior weather proofing. This does not exempt the installation from retaining code compliance for bedroom egress.

SECTION 4. That Escondido Municipal Code Chapter 6, Article 6, Section 6-160.2 is amended as follows: CEC Article 408.3(f) shall read CEC Article 408.3(e).

SECTION 5. That Escondido Municipal Code Chapter 6, Article 7, Section 6-272. Amendments, is repealed.

SECTION 6. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 7. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. 2013-153 File No.
Ord No. 2013-12

Agenda Item No.: 15
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Barbara J. Redlitz, Director of Community Development

SUBJECT: Zoning Code Amendment (Environmental Quality Regulations) and Climate Action Plan (Case Nos. AZ 13-0003 and PHG 09-0020)

STAFF RECOMMENDATION:

1. Introduce Ordinance No. 2013-12 approving amendments to Article 47 "Environmental Quality Regulations" (EQR) and the Environmental Determination (Notice of Exemption).

2. Adopt Resolution No. 2013-153 approving the Escondido Climate Action Plan (E-CAP) and proposed CEQA Screening Tables as well as the previously certified EIR and associated CEQA Findings of Significant Effect, Statement of Overriding Considerations, and Mitigation Monitoring Program.

The E-CAP is online at:
http://www.escondido.org/Data/Sites/1/media/PDFs/Planning/ClimateActionPlan/DraftClimateActionPlan.pdf

The CEQA Screening Tables are online at:
http://www.escondido.org/Data/Sites/1/media/PDFs/Planning/ClimateActionPlan/CEQAThresholdsAndScreeningTables.pdf

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission unanimously recommended approval (vote: 5-0-0; Commissioners Johns, and Winton, absent) on October 22, 2013.

PROJECT DESCRIPTION:

The amendments to Article 47 modify local thresholds, as permitted by CEQA, for determining significant impacts in concert with regional and industry standards for use in the preparation of exemptions, negative declarations and environmental impact reports. The E-CAP, with CEQA Thresholds and Screening Tables, comply with Assembly Bill (AB) 32 requirements to document existing and future Greenhouse Gas (GHG) emissions and establish a program for reducing emissions to 1990 levels by the year 2020, and implement General Plan air quality policies.

LOCATION:

Citywide

FISCAL ANALYSIS:

The proposed actions will not impact the City's budget.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

The proposed E-CAP and screening tables, as well as amendments to the City's EQR are related to Economic Development and Streamlining of Regulations.

ENVIRONMENTAL REVIEW:

The proposed modifications to the Environmental Quality Regulations are exempt from environmental review in conformance with the CEQA Section 15061(b)3 "General Rule." The proposal does not have the possibility to have a significant effect on the environment. Therefore, the project is exempt from CEQA.

A Final Environmental Impact Report (EIR) for the General Plan Update included analysis of the E-CAP and was certified in May 2012 (City Council Resolution 2012-53R). The CEQA Findings of Significant Effect, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program have been referenced in the E-CAP Resolution of adoption to be consistent with the General Plan Update Resolution. The City Council does not need to re-certify the EIR.

BACKGROUND:

Environmental Quality Regulations (EQR)

The California Environmental Quality Act (CEQA) establishes environmental review requirements, and mandates jurisdictions adopt local implementation provisions commonly referred to as Environmental Quality Regulations (EQR). The City's EQR were adopted in the early 1980s and were comprehensively amended in 1994 to incorporate local environmental significance thresholds as CEQA relies on local standards to evaluate levels of significance which can vary from jurisdiction to jurisdiction. The level of significance thresholds are generally based on a jurisdiction's General Plan Quality of Life Standards and environmental policies. The EQR also include provisions that clarify Environmental Impact Report (EIR), Mitigated Negative Declaration, Categorical and Statutory Exemption preparation thresholds.

Escondido Climate Action Plan (E-CAP)

An extensive discussion on greenhouse gases (GHGs) is provided in the attached Planning Commission staff report. In summary, GHGs are a collection of atmospheric gases that trap

heat similar to the effect of glass walls in a greenhouse. Human activities involving the burning of fossil fuels (i.e. vehicle emissions, electricity generation, natural gas combustion, construction, etc.) emit GHGs in the atmosphere. Assembly Bill (AB) 32 passed by the state legislature in 2006 mandates that California reduce GHG emissions to 1990 levels by 2020, and 80 percent below 1990 levels by 2050. State legislation mandating increased vehicle and equipment efficiencies, alternative energy sources (i.e. solar, wind, etc.), conservation, and State Title 24 energy efficiency standards address AB 32 requirements, benefiting Escondido.

Escondido received Energy Efficiency Conservation Block Grant (EECBG) funding to prepare the E-CAP, and Atkins consulting firm was contracted by the city to prepare the plan in 2009. The General Plan Update EIR (certified in 2012) included the E-CAP in its analysis. An initial step in crafting the E-CAP involved preparing a local GHG emissions inventory that identified and documented major sources of emissions affecting air quality within Escondido's boundaries. Results of that inventory formed the foundation for establishing the Climate Action Plan that will guide the city toward achieving its GHG reduction goals.

ZONING CODE ARTICLE 47 (EQR) DISCUSSION:

Criteria in the ordinance are intended to ensure consistency between the City's environmental thresholds and General Plan implementation measures. Specific threshold criteria are intended to clarify how project impacts affect CEQA determinations in the decision to prepare environmental documents. The existing thresholds of significance are proposed for modification in categories pertaining to Traffic/Circulation, Air Quality, and GHG Emissions:

Traffic / Circulation Amendments

Traffic congestion during peak periods (typically morning and evening commuting times) is rated on a Level of Service (LOS) scale of "A" (free flowing) to "F" (stop and go). The current traffic threshold of significance requires the preparation of an EIR if, after mitigation, a project causes a circulation element street to fall below the mid- range of LOS "D" or add more than 200 trips to a circulation element street below mid-range LOS "D" yet above LOS "F."

The amendment incorporates regionally adopted standards from the San Diego Regional Traffic Engineers' Council (SANTEC) who serves as SANDAGs technical advisory committee on regional traffic engineering matters. The updated criteria provide uniformity, consistency and flexibility to address differing levels of service without automatically requiring an EIR. These amendments have been recommended for approval by the City's Transportation Commission and are consistent with the revised LOS objectives identified in the City's General Plan Quality of Life Standards, Mobility and Infrastructure Element policies.

Sec. 33-924.(a) (4) Proposed Language:

After mitigation, the project does not exceed SANTEC thresholds for intersection/segments on a circulation element street with a service level of LOS E or F within certain specified areas of the Downtown Specific Planning Area, or LOS D, E or F elsewhere in the community.

Deleted Language:

A. ~~*After mitigation, a project or combination of projects do not cause the level of service of a circulation element street to fall below the mid-range of level of service "D."*~~

B. ~~*The project does not add more than two-hundred (200) trips to a circulation element street with a service level below the mid-range of L.O.S. "D" yet above L.O.S. "F."*~~

Air Quality Amendments

Air quality thresholds for determining if a project must prepare an EIR are based on South Coast Air Quality Management District (SCAQMD) standards for the Los Angeles area. The amendment incorporates San Diego Air Pollution Control District (APCD) thresholds, which are appropriate for the local air basin and consistent with County and City of San Diego standards. APCD does not include thresholds for Volatile Organic Compounds (VOCs) emissions, which constitutes an air pollutant of concern. As a result, VOC thresholds from SCAQMD will be incorporated into the city's thresholds, which is consistent with regional practice. Ordinance language regarding cumulative air quality impacts are proposed for deletion because the text does not constitute a threshold and the ordinance simply references compliance with CEQA, which is standard procedure.

Sec. 33-924.(a) (6) Proposed Language:

The project does not individually generate air-quality impacts for fixed, mobile or construction sources within the general plan area by more than any of the following screening level thresholds per day after mitigation:

Pounds per Day-Screening Level Thresholds

Respiratory Particulate Matter (PM10)	*Fine Particulate Matter (PM2.5)*	*Oxides of Nitrogen (NOx)*	*Oxides of Sulfur (SOx)*	*Carbon Monoxide (CO)*	*Lead and Lead Compounds*	*Volatile Organic Compounds (VOCs)*
100	***55***	***250***	***250***	***550***	***3.2****	***75**** ***55*****

* *Not applicable to construction*
** *Threshold for construction per SCAQMD CEQA Air Quality Handbook*
*** *Threshold for operational per SCAQMD CEQA Air Quality Handbook*

Deleted Language:

~~The project does not individually generate air quality impacts for fixed or mobile sources within the general plan area by more than any of the following amount per day:~~

~~Carbon monoxide~~	~~550 lbs.~~
~~Reactive organic gases~~	~~55 lbs.~~
~~Oxides of nitrogen~~	~~55 lbs.~~
~~Fine particulate matter~~	~~150 lbs.~~
~~SOx~~	~~250 lbs.~~
~~Lead~~	~~3.2 lbs.~~

~~If cumulative impacts are greater than the above thresholds, a technical study may be necessary to review the impacts on a case-by-case basis pursuant to 15130 of CEQA. Although the above standards constitute the threshold for preparing an environmental impact report, findings regarding the significance shall be based on the results of the EIR.~~

GHG Emissions Amendments

Article 47 amendments include adding thresholds for GHG emissions to implement the provisions of the Climate Action Plan (as described previously in the staff report).

Sec. 33-924.(a) (7) *Proposed Language:*

Greenhouse Gas (GHG) emissions – In situations where a negative declaration is otherwise appropriate, the following incremental GHG emissions are generally not considered significant:

A. *Projects that do not generate more than 2,500 metric tons (MT) of Carbon Dioxide equivalent (CO_2e) greenhouse gas (GHG) emissions: or*

B. *Projects generating more than 2,500 MT CO2e that have achieved 100 points implementing reduction measures outlined in the Escondido Climate Action Plan (E-CAP) screening tables, adopted by separate Resolution; or*

C. *Projects generating more than 2,500 MT CO2e that demonstrate through a project specific analysis quantifying GHG emission can, through mitigation and design features, reduce GHG emissions consistent with the E-CAP.*

Sec. 33-922.(e) Exemption Procedures.

Sections pertaining to exceptions from exempting a project from CEQA have been reorganized to establish consistency with other portions of the ordinance. No substantive changes are proposed.

Other Article 47 Amendments Proposed

Other minor edits and refinements to various sections of Article 47 are included to incorporate current standards; maintain General Plan conformance; provide consistency throughout the ordinance; and simplify the text involving no substantive changes.

ESCONDIDO CLIMATE ACTION PLAN (E-CAP) DISCUSSION:

The California Environmental Quality Act (CEQA) requires an assessment of environmental impacts associated with certain projects including GHG emissions. There are no statewide thresholds for measuring GHG emission impacts. CEQA Guidelines Section 15064.7 states: "each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects."

Establishing a GHG Significance Threshold

Staff proposes to adopt the County of San Diego's standards that have been endorsed by the state, which provides consistency between jurisdictions and ensures Escondido's competiveness. In this approach, projects generating annual GHG emissions of 2,500 Metric Tons of Carbon Dioxide equivalent gasses (MT CO_2e) would trigger a significant environmental impact. A list of representative projects that generate 2,500 MT CO_2e is provided in Exhibit 1 (next page). Projects less intense than those identified in Exhibit 1 are determined to annually generate less than 2,500 MT CO_2e and therefore not considered to significantly impact GHG emissions.

Reducing GHG Emission Impacts

The E-CAP includes a companion document: *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* (Screening Tables). Projects that exceed 2,500 MT CO_2e in GHG emissions would be directed to the Screening Tables that provide design enhancements for reducing annual GHG emissions below 2,500 MT CO_2e. The menu of features allows maximum flexibility for implementing the GHG reduction measures. Projects that garner at least 100 points will be consistent with the reduction quantities anticipated in the city's E-CAP and would be determined to have a less than significant individual and cumulative impact for GHG emissions.

GHG Screening Table Benefits

The Screening Tables are intended to be a streamlined, business-friendly and easy-to-use tool for reducing their GHG emissions in concert with the city efforts to meet state mandates. The Screening Tables also provide the city with local control in its compliance efforts and can be modified to include other features as technology, innovation and best management practices change over time. Further, state and federal action would also result in changes that would influence local GHG emissions resulting in modifications to the Screening Tables.

Screening Table Alternative

Applicants proposing projects exceeding 2,500 MT CO_2e annual GHG emissions that choose not to utilize the Screening Tables, would have the option of preparing an individualized GHG emission assessment incorporating alternative features. If the assessment documents that emissions are consistent with the E-CAP, the project would be determined to have a less than significant individual and cumulative impact for GHG emissions.

EXHIBIT 1	
Sample Project Sizes by Land Use Category that Generate 2,500 MT CO_2e[1] per year	
Project Type	**Project Size**
Single Family Residential	86 dwelling units
Low Rise Apartments	121 dwelling units
Mid-Rise Apartments	136 dwelling units
High-Rise Apartments	144 dwelling units
Condominiums or Townhouses	120 dwelling units
Retirement Community (age restricted)	112 dwelling units
Congregate Care (Assisted Living) Facility	239 dwelling units
Elementary or Middle School	91,000 square feet of interior area
High School	103,000 square feet of interior area
University or College	336 students
Library	81,000 square feet of interior area
Hospital/Medical Facility	47,000 square feet of interior area
General Office Space	61,000 square feet of interior area
Office Park	56,000 square feet of interior area
Retail Commercial Space (no refrigeration)	33,000 square feet of interior area
Retail Commercial Space (with refrigeration)	31,000 square feet of interior area
Supermarket / Grocery Space	32,000 square feet of interior area
Restaurants (sit down)	12,000 square feet of interior area

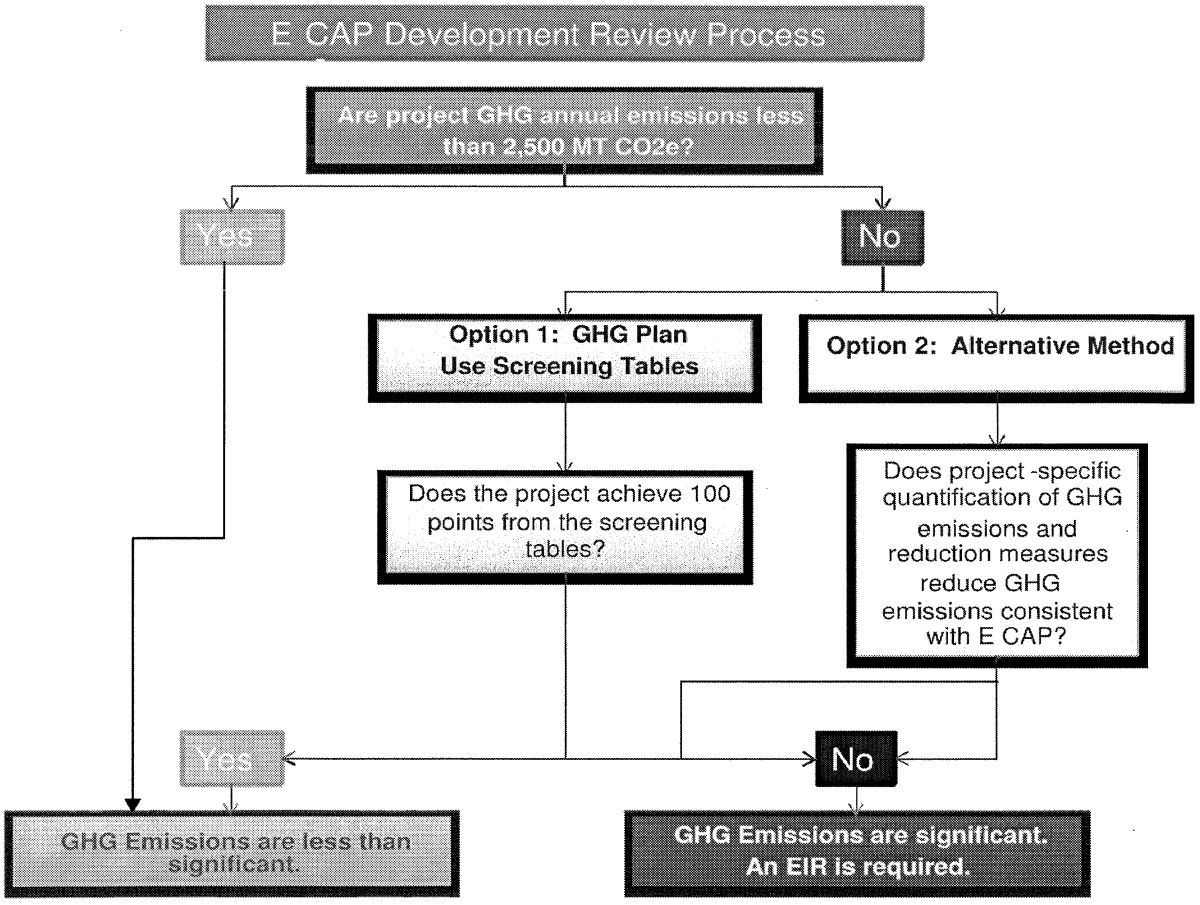
Fast-Food Restaurants	5,200 square feet of interior area
Convenience Store/Gas Station (24 hour)	2,000 square feet of interior area
Warehousing	141,000 square feet of interior area
Light Duty Manufacturing	74,000 square feet of interior area

(1) Based upon statistical analysis of projects run in the CalEEMod model.

Projects Exceeding GHG Emission Thresholds

Projects that cannot reduce their annual GHG emissions to less than 2,500 MT CO_2e would be subject to an Environmental Impact Report with the City Council required to make overriding findings in order to approve the project. Exhibit 2 illustrates the E-CAP Development Review Process delineating the approach for projects to follow in their GHG reduction efforts.

EXHIBIT 2



PLANNING COMMISSION SUMMARY

At their meeting on October 22nd, the Planning Commission expressed displeasure regarding AB 32 pertaining to GHG emission reduction requirements and the state's mandates affecting local government operations. However, they conceded that the ability to retain local control and flexibility in how GHG emissions should be reduced was better than relying on other agencies to control the process. The Planning Commission unanimously recommended approval (vote: 5-0-0; Commissioners Johns, and Winton, absent).

CONSEQUENCES FOR NOT ADOPTING THE E-CAP AND SCREENING TABLES:

The E-CAP, which includes Escondido's GHG emission reduction target, was included in the General Plan Update and reviewed by the State Attorney General's office as part of their effort for ensuring each jurisdiction's compliance with AB 32. If the City Council does not adopt the E-CAP it will not relieve Escondido's requirement to reduce GHG emissions, or to comply with state legislation. Not adopting the E-CAP and Screening Tables will remove local control for implementing GHG reduction measures subjecting the City and developers to apply stricter GHG thresholds adopted by the San Diego County Air Pollution Control District (APCD) and California Air Resources Board (CARB). In such a scenario future projects would undergo a greater level of scrutiny that would require more projects to undergo a costly Environmental Impact Report preparation and the associated increase in processing times.

Respectfully Submitted

Barbara J. Redlitz
Director of Community Development

Jay Petrek
Principal Planner

CITY OF ESCONDIDO
PLANNING DIVISION
201 NORTH BROADWAY
ESCONDIDO, CA 92025-2798
(760) 839-4671

Notice of Exemption

To: San Diego County Recorder's Office
Attn: Deputy County Clerk
P.O. Box 121750
San Diego, CA 92112-1750

From: City of Escondido
201 North Broadway
Escondido, CA 92025

Project Title/Case No.: AZ 13-0003

Project Location - Specific: Citywide

Project Location - City: Escondido, **Project Location - County**: San Diego

Description of Project: An Amendment to Escondido Zoning Code Article 47 "Environmental Quality Regulations" (EQR) that implements the California Environmental Quality Act (CEQA) and State CEQA Guidelines. The modifications clarify procedures and modify significance criteria in concert with regional and industry standards (including traffic, air quality and greenhouse gas emissions) and establish thresholds for the preparation of CEQA exemptions, negative declarations and environmental impact reports. The Amendment also includes refinements to various sections of the document to incorporate current standards; maintain conformance with the General Plan; provide consistency throughout the document; and to simplify the text.

Name of Public Agency Approving Project: City of Escondido

Name of Person or Agency Carrying Out Project:

Name Jay Paul, Associate Planner, City of Escondido Telephone (760) 839-4537

Address 201 N. Broadway, Escondido, CA 92025

☐ Private entity ☐ School district ☒ Local public agency ☐ State agency ☐ Other special district

Exempt Status: Categorical Exemption. Section 15061(b)(3) "General Rule." The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Reasons why project is exempt:

The First Court of Appeal concluded (*in California Building Industry Assoc. v. Bay Area Air Quality Management District, filed August 13, 2013*) that an agency's approval of CEQA significance thresholds does not constitute a "project" under CEQA, and consequently, does not require CEQA review. The Court of Appeal found that the CEQA Guidelines establish the required procedure for enacting generally applicable thresholds of significance and prior CEQA review of the thresholds is not part of this procedure.

CEQA Guidelines Section 15064.7 encourages public agencies to develop and publish thresholds of significance for use in determining the significance of environmental effects. This section does not explicitly call for CEQA review as a prerequisite for promulgating such threshold, however, and such a process would duplicate the public review process and substantial evidence standard set out under Section 15064.7(b). The City would be in compliance with this process as part of the noticed public hearings and consideration of the Amendment by the Planning Commission and City Council.

The proposed amendments would implement CEQA Guidelines Section 15064.7 through the proposed amendments to Article 47 (EQR) of the Zoning Code. The proposed amendments would update specific significance threshold requirements in conformance with regionally adopted standards and also would achieve consistency between the City's Environmental Quality Regulations, General Plan Quality of Life Standards, and environmental protection policies and programs. Therefore, in light of the reasons indicated above, the City has determined the proposed amendment to the EQR would not have the potential for causing a significant effect on the environment and the activity is not subject to CEQA.

Lead Agency Contact Person: Jay Paul, Planning Division

Area Code/Telephone/Extension (760) 839-4537 Email: jpaul@ci.escondido.ca.us

Signature: _____ October 7, 2013

Jay Paul, Associate Planner Date

☒ Signed by Lead Agency Date received for filing at OPR: N/A

ESCONDIDO
City of Choice

PLANNING COMMISSION

Agenda Item No.: G.1
Date: October 22, 2013

TO: Planning Commission

FROM: Planning Staff

SUBJECT: CLIMATE ACTION PLAN – PHG 09-0020 and ZONING CODE AMENDMENT – AZ 13-0003: – Environmental Quality Regulations (EQR)

STAFF RECOMMENDATION:

1) Approve the Escondido Climate Action Plan (E-CAP) involving the previously certified EIR and associated CEQA Findings of Significant Affect, Statement of Overriding Considerations, and Mitigation Monitoring Program, including the proposed CEQA Screening Tables for implementing E-CAP provisions.

   The E-CAP is also online at:
   http://www.escondido.org/Data/Sites/1/media/PDFs/Planning/ClimateActionPlan/DraftClimateActionPlan.pdf

   The CEQA Screening Tables are also online at:
   http://www.escondido.org/Data/Sites/1/media/PDFs/Planning/ClimateActionPlan/CEQAThresholdsAndScreeningTables.pdf

2) Approve an amendment to Zoning Code Article 47 "Environmental Quality Regulations" (EQR) (Refer to Attachment A) and Environmental Determination (Notice of Exemption)

PROJECT DESCRIPTION:

The City has prepared the Escondido Climate Action Plan (E-CAP) establishing goals and policies for reducing Greenhouse Gas (GHG) Emissions generated in the community in compliance with federal requirements and the state's adopted AB 32 "California Global Warming Solutions Act." The E-CAP contains implementing measures, sustainability features and strategies, including separate screening tables to assist developers in their efforts to reduce GHG emissions to 1990 levels by the year 2020 as mandated by law.

The request also includes an Amendment to Escondido Zoning Code Article 47 "Environmental Quality Regulations" (EQR) that implements the California Environmental Quality Act (CEQA) and State CEQA Guidelines. The modifications clarify procedures and modify significance criteria in concert with regional and industry standards, and establish thresholds for the preparation of CEQA exemptions, negative declarations and environmental impact reports.

BACKGROUND:

Greenhouse Gas Emissions

Greenhouse gases (GHGs) are a collection of atmospheric gases that trap heat similar to the effect of glass walls in a greenhouse. These gases, mainly water vapor, carbon dioxide, methane, nitrous oxide, ozone and chlorofluorocarbons (CFCs) all act as global insulators, reflecting infrared radiation back to earth. Human activities involving the burning of fossil fuels, such as generating electricity and driving internal combustion vehicles, emit these gases in the atmosphere. Because GHGs have variable heat-trapping properties, a common unit of measurement, the carbon dioxide equivalent (CO_2e), is used to quantify different GHGs. For example, methane is a GHG that is 21 times more potent than carbon dioxide in its heat-trapping properties; therefore, one metric ton of methane is equal to 21 MT CO_2e.

An individual project cannot generate enough GHG emissions to be considered a significant impact to the environment. The project participates in this potential impact by its incremental contribution combined with the cumulative increase of all other sources of GHG, which when taken together may have a significant effect on the environment. The largest contributors to GHG include vehicle emissions, electricity generation, natural gas combustion, landscaping equipment, transporting potable water, wastewater treatment, landfill equipment emissions, and construction. Legislation mandating increased vehicle and equipment fuel efficiencies, developing alternative energy sources (i.e. solar, wind, etc.) and conservation play an important role in reducing GHG emissions statewide, which also benefits Escondido.

Construction-related projects (i.e. residential, commercial, office, industrial, etc.) require compliance with State Title 24 energy efficiency standards. These construction practices include such features as thermal pane windows, enhanced ceiling, wall and ducting / piping insulation, energy efficient appliances, etc. Title 24 requirements are modified every three years incorporating stricter standards for energy efficiency. Incorporating these features in construction reduces the need to burn fossil fuels for generating electricity to meet a building's heating, cooling and operating requirements, thereby reducing GHG emissions.

Escondido Climate Action Plan (E-CAP)

Assembly Bill 32 (AB 32) was passed by the state legislature in 2006 to address the state's requirement that all jurisdictions reduce their GHG emissions to 1990 levels by 2020, and 80 percent below 1990 levels by 2050. Escondido received Energy Efficiency Conservation Block Grant (EECBG) funding to prepare the E-CAP, and Atkins consulting firm was contracted by the city to prepare the plan in 2009 (refer to *'Final Climate Action Plan'* under separate cover). The E-CAP evaluates Escondido's GHG emissions, provides measures that new development projects must follow to meet the city's reductions target and provides an implementation, monitoring and update program to insure that the reduction target is met. The General Plan Update EIR (certified in 2012) included the ECAP in its analysis.

An initial step in crafting the E-CAP involved preparing a local GHG emissions inventory that identified and documented major sources of emissions affecting air quality within Escondido's boundaries. Results of that inventory formed the foundation for establishing the Climate Action Plan that will guide the city toward achieving its GHG reduction goals. Consistent with AB 32 provisions, the 1990 GHG emissions target was calculated as 15% less than 2005 GHG levels (the earliest GHG emissions recording). For Escondido, this totals 788,176 MT CO_2e and provides a baseline for the city to measure future progress toward attaining the 2020 target.

After including updated GHG emission inventories, and factoring statewide GHG reduction measures and continued energy efficiencies in building construction, Escondido's GHG emissions projection for 2020 has been calculated as 992,583 MT CO_2e. The difference between the 1990 and 2020 GHG emissions equals 204,406 MT CO_2e, which represents Escondido's overall GHG emission reduction requirement by 2020.

Environmental Quality Regulations (EQR)

The California Environmental Quality Act (CEQA) establishes environmental review requirements that are binding on all jurisdictions, and mandates the preparation of local implementation provisions commonly referred to as Environmental Quality Regulations (EQR). The City's EQR were adopted in the early 1980s and have been amended incrementally overly the years in response to mandates for habitat preservation, congestion management, mitigation monitoring, General Plan Quality of Life Standards and General Plan environmental protection policies.

The EQR was comprehensively amended in 1994 to incorporate environmental significance thresholds as CEQA relies on local standards to evaluate levels of significance which can vary from jurisdiction to jurisdiction. The determination of levels of significance generally is based on compliance with a jurisdiction's General Plan Quality of Life Standards and environmental policies. The EQR also includes provisions that clarify Environmental Impact Report (EIR) and Mitigated Negative Declaration preparation threshold requirements, as well as when a Categorical or Statutory Exemption from CEQA may or may not be issued.

REASONS FOR STAFF RECOMMENDATION:

1. E-CAP – The proposed Plan complies with state law and includes appropriate measures for reducing GHG emissions that will improve the health and safety of the community, consistent General Plan goals and policies. Reducing GHG emissions will be accomplished in coordination with the city's land use decisions including, but not limited to, 'smart growth' concepts, walkability, expanded transportation options, and energy efficient construction.

2. The proposed GHG thresholds are consistent with adopted County of San Diego standards. The screening tables' implementing measures and allows for maximum flexibility for projects to meet their reduction allocation, balancing the need to reduce emissions while maintaining a business-friendly environment that keeps Escondido competitive for development.

3. EQR – The proposed amendments would update thresholds requirements in conformance with regionally adopted standards. The standards also would achieve consistency between the City's Environmental Quality Standards and General Plan Quality of Life, and environmental protection policies and programs.

ANALYSIS

A. ENVIRONMENTAL STATUS

A Final Environmental Impact Report (EIR) for the comprehensive General Plan Update included analysis of the E-CAP and was certified in May 2012 (City Council Resolution 2012-53R). The CEQA Findings of Significant Effect, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program have been referenced in the E-CAP Resolution of adoption in order to be consistent with the General Plan Update Resolution. The Planning Commission does not need to re-certify the EIR.

The proposed modifications to the Environmental Quality Regulations are exempt from environmental review in conformance with the CEQA Section 15061(b)3 "General Rule." The proposal does not have the possibility to have a significant effect on the environment. Therefore, the project is exempt from CEQA.

B. PROJECT DISCUSSION / ANALYSIS

Establishing GHG Emissions Thresholds

The California Environmental Quality Act (CEQA) requires an assessment of environmental impacts associated with certain projects including the impacts of GHG emissions. There are currently no published statewide thresholds of significance for measuring the impact of GHG emissions generated by a proposed project. CEQA Guidelines Section 15064.7 indicates that, "each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects."

In establishing thresholds of significance for GHG emissions staff proposes to incorporate the County of San Diego's standards, which have been approved by the state. This would provide consistency between jurisdictions and ensure Escondido's competiveness for development. In this approach, projects generating annual GHG emissions of 2,500 MT CO_2e would trigger a significant environmental impact. A list of representative projects that generate 2,500 MT CO_2e is provided in Exhibit 1 (next page). Projects less intense than those identified in Exhibit 1 are determined to annually generate less than 2,500 MT CO_2e and therefore not considered to significantly impact GHG emissions.

Mitigating GHG Emissions

The E-CAP includes a companion document: *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* (Screening Tables) that provides guidance in measuring the reduction of GHG emissions attributable to certain design and construction measures incorporated into development projects. Projects that exceed 2,500 MT CO_2e in GHG emissions would be directed to the Screening Tables that include options for enhancing the design in order to reduce the GHG emissions below the 2,500 MT CO_2e threshold. The Screening Tables include a menu of features that allow maximum flexibility and options for how development projects can implement the GHG reduction measures. Projects that garner at least 100 points will be consistent with the reduction quantities anticipated in the city's E-CAP and would be determined to have a less than significant individual and cumulative impact for GHG emissions.

EXHIBIT 1	
Sample Project Sizes by Land Use Category that Generate 2,500 MT CO_2e[1] per year	
Project Type	**Project Size**
Single Family Residential	86 dwelling units
Low Rise Apartments	121 dwelling units
Mid-Rise Apartments	136 dwelling units
High-Rise Apartments	144 dwelling units
Condominiums or Townhouses	120 dwelling units
Retirement Community (age restricted)	112 dwelling units
Congregate Care (Assisted Living) Facility	239 dwelling units
Elementary or Middle School	91,000 square feet of interior area
High School	103,000 square feet of interior area
University or College	336 students
Library	81,000 square feet of interior area
Hospital/Medical Facility	47,000 square feet of interior area
General Office Space	61,000 square feet of interior area
Office Park	56,000 square feet of interior area
Retail Commercial Space (no refrigeration)	33,000 square feet of interior area
Retail Commercial Space (with refrigeration)	31,000 square feet of interior area
Supermarket / Grocery Space	32,000 square feet of interior area
Restaurants (sit down)	12,000 square feet of interior area
Fast-Food Restaurants	5,200 square feet of interior area
Convenience Store/Gas Station (24 hour)	2,000 square feet of interior area
Warehousing	141,000 square feet of interior area
Light Duty Manufacturing	74,000 square feet of interior area

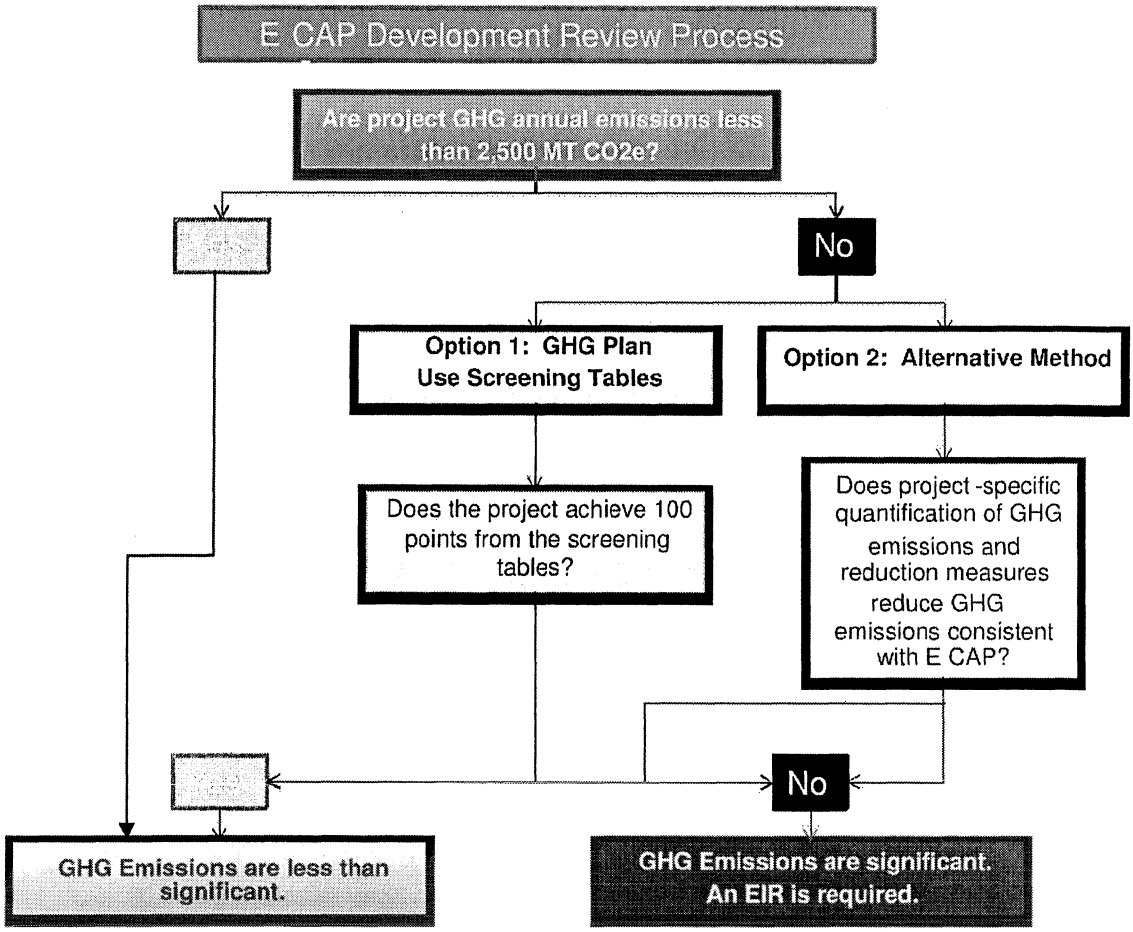
(1) Based upon statistical analysis of projects run in the CalEEMod model.

The Screening Tables are intended to be a streamlined, flexible and easy-to-use tool to assist applicants in reducing their projects' GHG emissions in concert with the city efforts to meet state mandates. An additional benefit is that the Screening Tables provide the city with local control in its GHG emissions compliance efforts and can be modified to include other features and options as technology, innovation and best management practices change over time. Further, state and federal action would also result in changes that would influence the level of Escondido GHG emissions resulting in modifications to the Screening Tables.

Applicants proposing projects that exceed the 2,500 MT CO_2e threshold, but choosing not to utilize the Screening Tables, would have the option of preparing an individualized GHG emission assessment incorporating alternative features for reducing emissions. If the assessment documents that GHG emissions can be reduced consistent with the E-CAP the project would be determined to have a less than significant individual and cumulative impact for GHG emissions.

Projects that cannot reduce their annual GHG emissions to less than 2,500 MT CO_2e would be subject to an Environmental Impact Report with the City Council required to make overriding findings in order to approve the project. Exhibit 2 illustrates the E-CAP Development Review Process delineating the approach for projects to follow in their GHG reduction efforts.

EXHIBIT 2



ZONING CODE ARTICAL 47 (EQR) AMENDMENTS:

Section 33-924 (Coordination of CEQA, quality of life standards and growth management provisions) is intended to ensure consistency between the City's thresholds of environmental significance and the Public Facilities Master Plans which implement the Growth Management Element of the General Plan. Specific threshold criteria is intended to clarify how facility deficiencies should affect CEQA determinations, and whether a negative or mitigated negative declaration may still be prepared in lieu of the more costly, time consuming and sometimes unnecessary Environmental Impact Report (EIR). The existing thresholds of significance are proposed to be modified/updated as indicated in the following categories:

Traffic / Circulation {Sec. 33-924.(a) (4)}

The current traffic thresholds of significance would require the preparation of an Environmental Impact report if, after mitigation, a project caused a circulation element street to fall below the mid-range of Level-of-Service "D" or add more than 200 trips to a circulation element street below mid-range LOS "D" yet above LOS "F." The current threshold criteria would be replaced with regionally adopted (and more conservative) standards based on San Diego Regional Traffic Engineers' Council (SANTEC) criteria. SANTEC serves as SANDAGs technical advisory committee on regional traffic engineering matters, thus promoting uniformity and consistency in traffic impact studies and creating a region-wide standard for determining traffic impacts.

Individual review of projects still would occur to ensure that appropriate project related impacts are mitigated and necessary improvements incorporated. The updated criteria also would provide for more flexibility to address differing levels of service and improvement conditions along street segments and intersections without automatically requiring an Environmental Impact Report. These standards have been developed in conjunction with the City's Engineering and Traffic Divisions, and also recommended for approval by the City's Transportation Commission. The updated threshold criteria also would be consistent with the LOS objectives identified in the City's General Plan Quality of Life Standards, Mobility and Infrastructure Element policies, as well as the Downtown Specific Planning Area (SPA 9) criteria which promotes LOS C, but acknowledges LOS D may be appropriate in limited circumstances, and allows an LOS E in the City's downtown commercial core.

Proposed Language:

After mitigation, the project does not exceed SANTEC thresholds for intersection/segments on a circulation element street with a service level of LOS E or F within certain specified areas of the Downtown Specific Planning Area, or LOS D, E or F elsewhere in the community.

Deleted Language:

A. ~~*After mitigation, a project or combination of projects do not cause the level of service of a circulation element street to fall below the mid-range of level-of-service "D."*~~

B. ~~*The project does not add more than two-hundred (200) trips to a circulation element street with a service level below the mid-range of L.O.S. "D" yet above L.O.S. "F."*~~

Air Quality {Sec. 33-924.(a) (6)}

The City of Escondido has adopted quantitative air quality thresholds for determining if a project is required to prepare an EIR based on standards from the South Coast Air Quality Management District (SCAQMD). As proposed, modifications to the thresholds would incorporate the San Diego Air Pollution Control District (APCD) standards, which are more appropriate for the San Diego Air Basin and consistent with thresholds adopted by the County of San Diego and the City of San Diego. However, APCD does not include thresholds for emissions of Volatile Organic Compounds (VOCs), which constitutes an air pollutant of concern. As a result, VOC thresholds from the South Coast Air Quality Management District (SCAQMD) will be incorporated into the city's thresholds, which is consistent with regional practice.

In addition, ordinance language regarding cumulative air quality impacts is proposed for deletion because the text does not constitute a threshold and the ordinance simply references compliance with CEQA, which is standard procedure.

Proposed Language:

The project does not individually generate air-quality impacts for fixed, mobile or construction sources within the general plan area by more than any of the following screening level thresholds per day after mitigation:

Pounds per Day-Screening Level Thresholds

Respiratory Particulate Matter (PM10)	*Fine Particulate Matter (PM2.5)*	*Oxides of Nitrogen (NOx)*	*Oxides of Sulfur (SOx)*	*Carbon Monoxide (CO)*	*Lead and Lead Compounds*	*Volatile Organic Compounds (VOCs)*
100	***55***	***250***	***250***	***550***	***3.2****	***75**** ***55*****

* *Not applicable to construction*
** *Threshold for construction per SCAQMD CEQA Air Quality Handbook*
*** *Threshold for operational per SCAQMD CEQA Air Quality Handbook*

Deleted Language:

~~The project does not individually generate air quality impacts for fixed or mobile sources within the general plan area by more than any of the following amount per day:~~

~~Carbon monoxide~~	~~550 lbs.~~
~~Reactive organic gases~~	~~55 lbs.~~
~~Oxides of nitrogen~~	~~55 lbs.~~
~~Fine particulate matter~~	~~150 lbs.~~
~~SOx~~	~~250 lbs.~~
~~Lead~~	~~3.2 lbs.~~

~~If cumulative impacts are greater than the above thresholds, a technical study may be necessary to review the impacts on a case-by-case basis pursuant to 15130 of CEQA. Although the above standards constitute the threshold for preparing an environmental impact report, findings regarding the significance shall be based on the results of the EIR.~~

GHG Emissions {Sec. 33-924.(a) (7)}

Modifications to Article 47 include adding thresholds for GHG emissions to implement the provisions and standards of the Climate Action Plan (as described previously in the staff report).

Proposed Language:

Greenhouse Gas (GHG) emissions – In situations where a negative declaration is otherwise appropriate, the following incremental GHG emissions are generally not considered significant:

A. *Projects that do not generate more than 2,500 metric tons (MT) of Carbon Dioxide equivalent (CO_2e) greenhouse gas (GHG) emissions: or*

B. *Projects generating more than 2,500 MT CO2e that have achieved 100 points implementing reduction measures outlined in the Escondido Climate Action Plan (E-CAP) screening tables, adopted by separate Resolution; or*

C. *Projects generating more than 2,500 MT CO2e that demonstrate through a project specific analysis quantifying GHG emission can, through mitigation and design features, reduce GHG emissions consistent with the E-CAP.*

Exemption Procedures. {Sec. 33-922.(e)}

Sections pertaining to exceptions from exempting a project from CEQA have been consolidated and reorganized in order to establish consistency with other portions of the ordinance. No substantive changes are proposed.

OTHER AMENDMENTS PROPOSED:

It its review of the ordinance, staff has made several minor edits and refinements to various sections of the document to incorporate current standards; maintain conformance with the General Plan; provide consistency throughout the document; and to simplify the text.

Jay Petrek
Principal Planner

Jay Paul
Associate Planner

Exhibit "A"

FACTORS TO BE CONSIDERED
PHG 09-0020 and AZ 13-0003

E-CAP

1. The proposed Plan complies with state law and includes appropriate measures for reducing GHG emissions that will improve the health and safety of the community, consistent General Plan goals and policies. Reducing GHG emissions will be accomplished in coordination with the city's land use decisions including, but not limited to, 'smart growth' concepts, walkability, expanded transportation options, and energy efficient construction.

2. The proposed GHG thresholds are consistent with adopted County of San Diego standards. The screening tables' implementing measures and allows for maximum flexibility for projects to meet their reduction allocation, balancing the need to reduce emissions while maintaining a business-friendly environment that keeps Escondido competitive for development.

EQR

1. The California Environmental Quality Act (CEQA) establishes environmental review requirements that are binding on cities. However, CEQA affords some latitude in its implementation. The amendment to the City's Environmental Quality Regulations (EQR) will clearly specify how the city implements these requirements/options.

2. The amendments to the Environmental Quality Regulations (EQR) will implement the California Environmental Quality Act (CEQA) and state CEQA Guideline for the City of Escondido by applying the provisions and procedures contained in CEQA to development projects proposed within the City of Escondido.

3. The amendment to the Environmental Quality Regulations will ensure consistency between the City's thresholds of environmental significance and the Public Facilities Master Plans, which implements the Growth Management Element of the General Plan. The proposed amendments would update thresholds requirements in conformance with regionally adopted standards. The standards also would achieve consistency between the City's Environmental Quality Standards and General Plan Quality of Life, and environmental protection policies and programs.

Attachment A
PROPOSED MODIFICATIONS
Article 47
Environmental Quality Regulations
(Draft 10-22-13)

Prior history: Zoning Code, Ch. 109, §§ 1090.00—1090.40 as amended by Ord. Nos. 89-3, 90-69 and 92-38.

DIVISION 1. REGULATIONS

Sec. 33-920. Purpose.

These environmental quality regulations (EQR) implement the California Environmental Quality Act (CEQA) and state CEQA Guidelines (guidelines) by applying the provisions and procedures contained in CEQA to development projects proposed within the City of Escondido. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-921. Incorporation of the California Environmental Quality Act and the CEQA Guidelines.

The City of Escondido hereby adopts the California Environmental Quality (CEQA) Guidelines (Division 13 of the Public Resources Code of the State of California, Sec. 21000 et seq.) and the CEQA Guidelines (Sec. 15000 et seq.) as amended, by reference. Whenever any provisions of CEQA or the guidelines conflict with any provision of this chapter, CEQA and the guidelines shall supersede this chapter. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-922. Exemption procedures.

The following sections implement Section 15300.4 of the CEQA Guidelines which requires the city to list those specific activities which fall within each of the following exempt classes:

(a) Ministerial projects. Pursuant to Section 15369 of the CEQA Guidelines, "ministerial projects" are those that involve little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. They involve the use of fixed standards or objective measurements. Projects in the city specifically deemed to be ministerial include all post-approval submittals in substantial conformance with the approval. Post-approval submittals include certified tentative subdivision maps, final maps, grading, landscape and improvement plans, CC and R's, and building plans. Other ministerial projects include final inspections, issuance of licenses, utility service connections and disconnections, city-ordered brush clearance of nonsensitive areas in accordance with City of Escondido procedures, and other similar actions for which no discretion exists that could create or avoid environmental impacts.

(b) Categorical exemptions. Pursuant to Section 15300 of the CEQA Guidelines, Categorical Exemptions are classes of projects determined not to have a significant effect on the environment and are therefore exempt. No clarifications or additions are necessary to Sections 15300 to ~~15329~~**15333** other than to specify that Administrative Adjustments, within prescribed parameters, fall within Class 5, Section 15305 of the Guidelines.

(c) "General rule" exemptions. Section 15061(b)3 of the CEQA Guidelines provides that "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The following are specific actions considered not to have a significant effect pursuant to this provision:

(1) Minor zone or Municipal Code amendments that do not involve physical modifications, or lead to physical improvements beyond those typically exempt, or which refine or clarify existing land use standards;

(2) Projects that are not specifically listed as categorical or statutory exemptions but exhibit characteristics similar to one or more specific exemptions.

(d) Determination procedures. Initial determinations as to whether a statutory, categorical or general rule exemption is warranted are made by the staff planner before an application is deemed complete. Prior to project approval, the director or his/her designee shall prepare a notice of exemption form, which shall be placed in the appropriate case file and be available for public review. Prior to any final action, the notice of exemption shall be reviewed and certified by the appropriate decision makers as part of the approval action. Written findings supporting the determination on the environmental status and shall be considered prior to approval of the project and be included on the notice of exemption.

(e) Exceptions. Even though a project may otherwise be eligible for an exemption, no exemption shall apply ~~in the following circumstances:~~ **for grading and clearing activities, parcel maps, plot plans and all discretionary development projects otherwise exempt that would have a potential for significant effect on all or a portion of the site involving:**

(1) Plant or animal species, which disturb, fragment or remove such areas defined by either the California Endangered Species Act (Fish and Game Code Sections 2050 et seq.), or the Federal Endangered Species Act (16 U.S.C. Section 15131 et seq.) as sensitive, rare, candidate, species of special concern, endangered, or threatened biological species or their habitat (specifically including coastal sage scrub habitat for the California Gnatcatcher),

(2) Archaeological or cultural resources from either historic or prehistoric periods,

(3) Stream courses designated on U.S. Geological Survey maps,

(4) Hazardous materials, unstable soils or other factors requiring special review.

~~(1) Grading and clearing activities affecting sensitive plant or animal habitats, which disturb, fragment or remove such areas as defined by either the California Endangered Species Act (Fish and Game Code Sections 2050 et seq.), or the Federal Endangered Species Act (16 U.S.C. Section 15131 et seq.) sensitive, rare, candidate, species of special concern, endangered, or threatened biological species or their habitat (specifically including sage scrub habitat for the California Gnatcatcher) or archaeological or cultural resources from either historic or prehistoric periods;~~

~~(2) Parcel maps, plot plans and all discretionary development projects otherwise exempt but which affect sensitive, threatened or endangered biological species or their habitat (as defined above), archaeological or cultural resources from either historic or prehistoric periods, wetlands, streamcourses designated on U.S. Geological Survey maps, hazardous materials, unstable soils, or other factors requiring special review, on all or a portion of the site. (Ord. No. 95-2, § 1, 2-15-95)~~

Sec. 33-923. Mitigation and reporting requirements.

It is the intent of the city to ensure that all required mitigation measures to avoid potentially significant effects are effectively implemented and monitored throughout the project approval, permitting, construction process, as well as the lifespan of the project. In conjunction with the approval of each project, an individual program shall be developed and adopted, to ensure that each feature related to the mitigation measures to avoid a significant effect is specifically included in the conditions of approval, incorporated into the subsequent stages of development review and permitting process, monitored during construction, final inspection, as well as on an ongoing basis. The program may contain remedies to ensure compliance with the ongoing mitigation measures beyond final inspection. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-924. Coordination of CEQA, quality of life standards, and growth management provisions.

The purpose of this section is to ensure consistency between the city's thresholds of environmental significance and the ~~Citywide~~ **Public** Facilities **Master** Plan**s** which implements the growth management element of the General Plan. The city's General Plan contains quality of life standards that are to be considered in comprehensive planning efforts as well as individual project review. The degree to which a project, and the area in which it is located, conforms with the quality of life standards, is an issue in determining thresholds of significance. Notwithstanding the city's goal of providing adequate infrastructure concurrent with development, the ~~Citywide~~ **Public** Facilities **Master** Plan**s** acknowledge**s** that the concurrent provision of infrastructure cannot be provided in all cases, particularly in the short term. Instead, only critical infrastructure deficiencies affect the timing of development. The following criteria are intended to clarify how facility deficiencies should affect the following CEQA determinations.

(a) Negative and mitigated negative declarations. In situations where the preparation of a negative declaration is otherwise appropriate, yet quality of life standard deficiencies are found to exist, a negative declaration may still be prepared under the following circumstances, as applicable:

(1) Facility deficiencies are of an interim nature in that a master plan has been adopted for the provision of the facilities, appropriate fees are charged to offset project impacts, or other measures are in place to address long-run impacts;

(2) The project does not in itself, or in conjunction with other pending and approved projects, cause the number of units outside specified fire and emergency response times to exceed ten (10) percent of the total number of city units;

(3) A project proposes less than two hundred (200) units, and the cumulative total of reasonably anticipated projects does not exceed a total of one thousand (1,000) units where such police service beat is experiencing, or is likely to experience, unacceptable service times;

~~(D) After mitigation, a project or combination of projects do not cause the level of service of a circulation element street to fall below the mid-range of level of service "D".~~

~~(E) The project does not add more than two hundred (200) trips to a circulation element street with a service level below the mid-range of L.O.S. "D" yet above L.O.S. "F."~~

(4) After mitigation, the project does not exceed SANTEC thresholds for intersections/segments with a service level of LOS E or F within certain specified areas of the Downtown Specific Planning Area, or LOS D, E or F elsewhere in the community.

(~~F~~**5**) Adequate sewer, water and drainage facilities for the area can be provided to the satisfaction of the city engineer in accordance with adopted master plans;

~~(G)(i) The project does not individually generate air quality impacts for fixed or mobile sources within the general plan area by more than any of the following amount per day:~~

~~Carbon monoxide~~	~~550 lbs.~~
~~Reactive organic gases~~	~~55 lbs~~
~~Oxides of nitrogen~~	~~55 lbs~~
~~Fine particulate matter~~	~~150 lbs~~
~~SOx~~	~~250 lbs~~
~~Lead~~	~~3.2 lbs~~

(6) After mitigation, the project does not individually generate air-quality impacts for fixed, mobile or construction sources within the general plan area by more than any of the following thresholds per day:

Pounds per Day Thresholds

Respiratory Particulate Matter (PM10)	Fine Particulate Matter (PM2.5)	Oxides of Nitrogen (NOx)	Oxides of Sulfur (Sox)	Carbon Monoxide (CO)	Lead and Lead Compounds	Volatile Organic Compounds (VOCs)
100	**55**	**250**	**250**	**550**	**3.2***	**75** **55****

* **Not applicable to Construction**
** **Threshold for construction per SCAQMD CEQA Air Quality Handbook**
*** **Threshold for operational per SCAQMD CEQA Air Quality Handbook**

~~(A) If cumulative impacts are greater than the above thresholds, a technical study may be necessary to review the impacts on a case-by-case basis pursuant to Section 15130 of CEQA. Although the above standards constitute the threshold for preparing an environmental impact report, findings regarding the significance shall be based on the results of the EIR.~~

(A) Standby, diesel generators in conformance with Zoning Code Section 33-1122 are exempt from the above requirement for daily emissions of oxides of nitrogen.

(7) Greenhouse Gas (GHG) emissions. In situations where a negative declaration is otherwise appropriate, the following incremental GHG emissions are generally not considered significant:

(A) Projects that do not generate more than 2,500 metric tons (MT) of Carbon Dioxide equivalent (CO_2e) greenhouse gas (GHG) emissions; or,

(B) Projects generating more than 2,500 MT CO_2e that have achieved 100 points implementing reduction measures outlined in the Escondido Climate Action Plan (E-CAP) screening tables, adopted by separate Resolution; or,

(C) Projects generating more than 2,500 MT CO_2e that demonstrate through a project specific analysis quantifying GHG emissions that through mitigation and design features, the project reduces GHG emissions consistent with the E-CAP.

(~~2~~**8**) Noise impacts of circulation element street widenings. In situations where a negative declaration is otherwise appropriate, the following incremental noise increases are generally not considered significant:

(A) Short- or long-term increases, regardless of the extent, that do not result in noise increases in excess of General Plan standards;

(B) Short- or long-term increases that result in a three (3) DbA or less incremental increase in noise beyond the General Plan's noise standards.

(~~3~~**9**) Demolition or Removal of Historic Resources. Demolition of an historic resource would be considered significant if:

~~(A) Demolition of an historic resource would be considered significant if:~~

(~~i~~**A**) Structures are determined to be a unique or rare example of an architectural design, detail, historical type or method of construction in the community representing an example of a master (a figure of generally recognized greatness in a field, or a known craftsman of consummate skill), possessing high artistic value, embodying the distinctive characteristics of a types period or method of construction referring to the way in which a property was conceived, designed or fabricated in past periods of history in Escondido, and containing enough of those characteristics to be considered a true representative of a particular type, period, or method of construction;

(~~ii~~**B**) Structures located within an historic district and the relationship with other structures in the vicinity contributes to the unique character and quality of the streetscape and/or district;

(~~iii~~**C**) Structures involving the site of a locally historic person (or event) whose activities were demonstrably important within the context of Escondido, and is generally restricted to those properties that illustrate (rather than commemorate) important achievements that are directly associated with the subject property and reflect the time period;

(~~iv~~**D**) Structures listed with, or eligible for listing with the State or National Register;

(~~v~~**E**) Pursuant to CEQA Section 15300.2(f) a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of an historic resource, since a project that is ordinarily insignificant in its impact to the environment in a particularly sensitive environment may be significant.

(b) Environmental Impact Reports. Where deficiencies exist relative to the city's quality of life standards, and the extent of the deficiency exceeds the levels identified in subsection (a) of this section, an environmental impact report shall be prepared. (Ord. No. 95-2, § 1, 2-15-95; Ord. No. 2001-18, § 4, 7-25-01; Ord. No. 2002-10, § 5, 4-10-02; Ord. No. 2003-36, § 4, 12-3-03)

Sec. 33-925. City responsibility for environmental documentations and determinations.

(a) The city shall have responsibility and control over the form, scope and content of all documents comprising the environmental assessment of a project. All reports, studies or other documents prepared by or under the direction of an applicant, intended for inclusion in the environmental documents, shall be clearly identified as proponents environmental assessment (PEA), and shall set forth in detail the assumptions and methodologies supporting any conclusions reached or upon which any recommendations may be based.

(b) The city, at its sole discretion, may decide to utilize the services of a private consulting firm to prepare or review all studies, reports and other documents required or permitted by the guidelines, including those submitted by the proponent or any other party. In all cases, the consultant shall enter into a contract with and shall be responsible directly to the city. All services shall be performed to the satisfaction of the director of planning and building, or his/her designee.

(c) All costs Incurred in the preparation of the environmental documents, including the cost of services performed under subsection (b) of this section, shall be borne by the proponent. (Ord. No. 952, § 1, 2-15-95)

Sec. 33-926. Enhanced CEQA review for projects subject to congestion management program requirements.

Unless otherwise exempt from state law, development proposals or other discretionary planning actions which are expected to generate either an equivalent of two thousand four hundred (2,400) or more average daily trips (ADT) or two hundred (200) or more peak hour vehicle trips shall include as part of the enhanced CEQA review the following information:

(a) A traffic analysis to determine the project's impact on the regional transportation system. The regional transportation system includes all the state highway system (freeways and conventional state highways) and the regional arterial system identified in SANDAG's (San Diego Association of Governments) most recent regional transportation plan (RTP). The regional transportation system includes all of the designated congestion management program (CMP) system.

(b) The traffic analysis shall be made using the ~~TRANPLAN computer~~ traffic model approved by SANDAG for congestion management program traffic analysis purposes. The traffic analysis shall also use SANDAG's most recent regional growth forecasts as the basic population and land use database.

(c) The traffic analysis should acknowledge that standard trip generation estimates may be overstated when a project is designated using transit-oriented development design principles. Trip generation reductions should be considered for factors such as focused development intensity within walking distance to a transit station, introduction of residential units into employment centers, aggressive transportation demand management programs, and site design and street layouts which promote pedestrian activities.

(d) The project analysis shall include an estimate of the costs associated with mitigating the project's impacts to the regional transportation system. The estimates of any costs associated with the mitigation of interregional travel (both trips end outside the county) shall not be attributed to the project. Credit shall be provided to the project for public and private contributions to improvements to the regional transportation system. The city shall be responsible for approving any such credit to be applied to a project. The credit may be in any manner approved by the city including donated/dedicated right-of-way, interim or final construction, impact fee programs and/or money contributions. Monetary contributions may include public transit, ride sharing, trip reduction program support, and air quality transportation control measure funding support. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-927. Public noticing of negative declarations and mitigated negative declarations.

In conformance with Article 6 of CEQA (Negative Declaration Process, section 15072), a notice of intent to adopt a negative declaration or mitigated negative declaration shall be mailed to the last known name of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by the following procedures to allow the public the review period provided under CEQA section 15105:

(a) Publication at least one (1) time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one (1) area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(b) Direct mailing to the owners of property within a five hundred (500) foot radius of the exterior boundaries of the project as shown on the latest equalized assessment roll, except as provided in California Government Code section 65091(a)(3), or as subsequently amended. (Ord. No. 99-15-R, § 4 Exh. C, 6-9-99)

Secs. 33-928.1—33-929. Reserved.

Editor's note—Ord. No. 2007-12, § 5, adopted May 9, 2007, repealed Ch. 33, Art. 47, Div. 2, §§ 33-928.1—33-929, pertaining to the environmental advisory board, which derived from Ord. No. 2003-25, § 1, adopted July 30, 2003; and Ord. No. 2005-05, § 11, adopted October 26, 2005.

ORDINANCE NO. 2013-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING ESCONDIDO ZONING CODE ARTICLE 47 REGARDING ENVIRONMENTAL QUALITY REGULATIONS

Planning Case No. AZ 13-0003

The City Council of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That the proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. That the City Council has reviewed and considered the Notice of Exemption prepared for this project in conformance with CEQA Section 15061(b)(3) "General Rule" and finds that no significant environmental impact will result from approving this code amendment.

SECTION 3. That upon consideration of the staff report, Planning Commission recommendation, Factors to be Considered, attached as Exhibit "A" to this Ordinance and incorporated by this reference, and all public testimony presented at the hearing held on this amendment, this City Council finds that this Code Amendment is consistent with the General Plan and all applicable specific plans of the City of Escondido.

SECTION 4. That Article 47 of the Zoning Code is amended as set forth in Exhibit "B" which is attached and incorporated by this reference.

SECTION 5. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by

any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk shall certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

EXHIBIT "A"
FACTORS TO BE CONSIDERED
AZ 13-0003

1. The California Environmental Quality Act (CEQA) establishes environmental review requirements that are binding on cities. However, CEQA affords some latitude in its implementation. The amendment to the City's Environmental Quality Regulations (EQR) will clearly specify how the city implements these requirements/options.

2. The amendments to the Environmental Quality Regulations (EQR) will implement the California Environmental Quality Act (CEQA) and state CEQA Guidelines for the City of Escondido by applying the provisions and procedures contained in CEQA to development projects proposed within the City of Escondido.

3. The amendment to the Environmental Quality Regulations will ensure consistency between the City's thresholds of environmental significance and the Public Facilities Master Plans, which implements the Growth Management Element of the General Plan. The proposed amendments would update thresholds requirements in conformance with regionally adopted standards. The standards also would achieve consistency between the City's Environmental Quality Standards and General Plan Quality of Life, and environmental protection policies and programs.

4. The proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15061(b)(3) "General Rule." The proposal does not have the possibility to have a significant effect on the environment.

EXHIBIT "B"
PROPOSED MODIFICATIONS
Article 47
Environmental Quality

Prior history: Zoning Code, Ch. 109, §§ 1090.00—1090.40 as amended by Ord. Nos. 89-3, 90-69 and 92-38.

DIVISION 1. REGULATIONS

Sec. 33-920. Purpose.

These environmental quality regulations (EQR) implement the California Environmental Quality Act (CEQA) and state CEQA Guidelines (guidelines) by applying the provisions and procedures contained in CEQA to development projects proposed within the City of Escondido. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-921. Incorporation of the California Environmental Quality Act and the CEQA Guidelines.

The City of Escondido hereby adopts the California Environmental Quality (CEQA) Guidelines (Division 13 of the Public Resources Code of the State of California, Sec. 21000 et seq.) and the CEQA Guidelines (Sec. 15000 et seq.) as amended, by reference. Whenever any provisions of CEQA or the guidelines conflict with any provision of this chapter, CEQA and the guidelines shall supersede this chapter. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-922. Exemption procedures.

The following sections implement Section 15300.4 of the CEQA Guidelines which requires the city to list those specific activities which fall within each of the following exempt classes:

(a) Ministerial projects. Pursuant to Section 15369 of the CEQA Guidelines, "ministerial projects" are those that involve little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. They involve the use of fixed standards or objective measurements. Projects in the city specifically deemed to be ministerial include all post-approval submittals in substantial conformance with the approval. Post-approval submittals include certified tentative subdivision maps, final maps, grading, landscape and improvement plans, CC and R's, and building plans. Other ministerial projects include final inspections, issuance of licenses, utility service connections and disconnections, city-ordered brush clearance of nonsensitive areas in accordance with City of Escondido procedures, and other similar actions for which no discretion exists that could create or avoid environmental impacts.

(b) Categorical exemptions. Pursuant to Section 15300 of the CEQA Guidelines, Categorical Exemptions are classes of projects determined not to have a significant effect on the environment and are therefore exempt. No clarifications or additions are necessary to Sections 15300 to 15333 other than to specify that Administrative Adjustments, within prescribed parameters, fall within Class 5, Section 15305 of the Guidelines.

(c) "General rule" exemptions. Section 15061(b)3 of the CEQA Guidelines provides that "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The following are specific actions considered not to have a significant effect pursuant to this provision:

(1) Minor zone or Municipal Code amendments that do not involve physical modifications, or lead to physical improvements beyond those typically exempt, or which refine or clarify existing land use standards;

(2) Projects that are not specifically listed as categorical or statutory exemptions but exhibit characteristics similar to one or more specific exemptions.

(d) Determination procedures. Initial determinations as to whether a statutory, categorical or general rule exemption is warranted are made by the staff planner before an application is deemed complete. Prior to project approval, the director or his/her designee shall prepare a notice of exemption form, which shall be placed in the appropriate case file and be available for public review. Prior to any final action, the notice of exemption shall be reviewed and certified by the appropriate decision makers as part of the approval action. Written findings supporting the determination on the environmental status and shall be considered prior to approval of the project and be included on the notice of exemption.

(e) Exceptions. Even though a project may otherwise be eligible for an exemption, no exemption shall apply for grading and clearing activities, parcel maps, plot plans and all discretionary development projects otherwise exempt that would have a potential for significant effect on all or a portion of the site involving:

(1) Plant or animal species, which disturb, fragment or remove such areas defined by either the California Endangered Species Act (Fish and Game Code Sections 2050 et seq.), or the Federal Endangered Species Act (16 U.S.C. Section 15131 et seq.) as sensitive, rare, candidate, species of special concern, endangered, or threatened biological species or their habitat (specifically including coastal sage scrub habitat for the California Gnatcatcher);

(2) Archaeological or cultural resources from either historic or prehistoric periods;

(3) Stream courses designated on U.S. Geological Survey maps;

(4) Hazardous materials, unstable soils or other factors requiring special review.

Sec. 33-923. Mitigation and reporting requirements.

It is the intent of the city to ensure that all required mitigation measures to avoid potentially significant effects are effectively implemented and monitored throughout the project approval, permitting, construction process, as well as the lifespan of the project. In conjunction with the approval of each project, an individual program shall be developed and adopted, to ensure that each feature related to the mitigation measures to avoid a significant effect is specifically included in the conditions of approval, incorporated into the subsequent stages of development review and permitting process, monitored during construction, final inspection, as well as on an ongoing basis. The program may contain

remedies to ensure compliance with the ongoing mitigation measures beyond final inspection. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-924. Coordination of CEQA, quality of life standards, and growth management provisions.

The purpose of this section is to ensure consistency between the city's thresholds of environmental significance and the Public Facilities Master Plans which implements the growth management element of the General Plan. The city's General Plan contains quality of life standards that are to be considered in comprehensive planning efforts as well as individual project review. The degree to which a project, and the area in which it is located, conforms to the quality of life standards, is an issue in determining thresholds of significance. Notwithstanding the city's goal of providing adequate infrastructure concurrent with development, the Public Facilities Master Plans acknowledges that the concurrent provision of infrastructure cannot be provided in all cases, particularly in the short term. Instead, only critical infrastructure deficiencies affect the timing of development. The following criteria are intended to clarify how facility deficiencies should affect the following CEQA determinations.

(a) Negative and mitigated negative declarations. In situations where the preparation of a negative declaration is otherwise appropriate, yet quality of life standard deficiencies are found to exist, a negative declaration may still be prepared under the following circumstances, as applicable:

(1) Facility deficiencies are of an interim nature in that a master plan has been adopted for the provision of the facilities, appropriate fees are charged to offset project impacts, or other measures are in place to address long-run impacts;

(2) The project does not in itself, or in conjunction with other pending and approved projects, cause the number of units outside specified fire and emergency response times to exceed ten (10) percent of the total number of city units;

(3) A project proposes less than two hundred (200) units, and the cumulative total of reasonably anticipated projects does not exceed a total of one thousand (1,000) units where such police service beat is experiencing, or is likely to experience, unacceptable service times;

(4) After mitigation, the project does not exceed SANTEC thresholds for intersections/segments with a service level of LOS E or F within certain specified areas of the Downtown Specific Planning Area, or LOS D, E or F elsewhere in the community.

(5) Adequate sewer, water and drainage facilities for the area can be provided to the satisfaction of the city engineer in accordance with adopted master plans;

(6) After mitigation, the project does not individually generate air-quality impacts for fixed, mobile or construction sources within the general plan area by more than any of the following thresholds per day:

Pounds per Day Thresholds

Respiratory Particulate Matter (PM10)	Fine Particulate Matter (PM2.5)	Oxides of Nitrogen (NOx)	Oxides of Sulfur (Sox)	Carbon Monoxide (CO)	Lead and Lead Compounds	Volatile Organic Compounds (VOCs)
100	**55**	**250**	**250**	**550**	**3.2***	**75** **55****

* Not applicable to Construction
** Threshold for construction per SCAQMD CEQA Air Quality Handbook
*** Threshold for operational per SCAQMD CEQA Air Quality Handbook

(A) Standby, diesel generators in conformance with Zoning Code Section 33-1122 are exempt from the above requirement for daily emissions of oxides of nitrogen.

(7) Greenhouse Gas (GHG) emissions. In situations where a negative declaration is otherwise appropriate, the following incremental GHG emissions are generally not considered significant:

(A) Projects that do not generate more than 2,500 metric tons (MT) of Carbon Dioxide equivalent (CO_2e) greenhouse gas (GHG) emissions; or,

(B) Projects generating more than 2,500 MT CO_2e that have achieved 100 points implementing reduction measures outlined in the Escondido Climate Action Plan (E-CAP) screening tables, adopted by separate Resolution; or,

(C) Projects generating more than 2,500 MT CO_2e that demonstrate through a project specific analysis quantifying GHG emissions that through mitigation and design features, the project reduces GHG emissions consistent with the E-CAP.

(8) Noise impacts of circulation element street widening. In situations where a negative declaration is otherwise appropriate, the following incremental noise increases are generally not considered significant:

(A) Short- or long-term increases, regardless of the extent, that do not result in noise increases in excess of General Plan standards;

(B) Short- or long-term increases that result in a three (3) DbA or less incremental increase in noise beyond the General Plan's noise standards.

(9) Demolition or Removal of Historic Resources. Demolition of an historic resource would be considered significant if:

(A) Structures are determined to be a unique or rare example of an architectural design, detail, historical type or method of construction in the community representing an example of a master (a figure of generally recognized greatness in a field, or a known craftsman of consummate skill), possessing high artistic value, embodying the distinctive characteristics of a types period or method of construction referring to the way in which a property was conceived, designed or fabricated in past periods of history in Escondido, and containing enough of those characteristics to be

considered a true representative of a particular type, period, or method of construction;

(B) Structures located within an historic district and the relationship with other structures in the vicinity contributes to the unique character and quality of the streetscape and/or district;

(C) Structures involving the site of a locally historic person (or event) whose activities were demonstrably important within the context of Escondido, and is generally restricted to those properties that illustrate (rather than commemorate) important achievements that are directly associated with the subject property and reflect the time period;

(D) Structures listed with, or eligible for listing with the State or National Register;

(E) Pursuant to CEQA Section 15300.2(f) a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of an historic resource, since a project that is ordinarily insignificant in its impact to the environment in a particularly sensitive environment may be significant.

(b) Environmental Impact Reports. Where deficiencies exist relative to the city's quality of life standards, and the extent of the deficiency exceeds the levels identified in subsection (a) of this section, an environmental impact report shall be prepared. (Ord. No. 95-2, § 1, 2-15-95; Ord. No. 2001-18, § 4, 7-25-01; Ord. No. 2002-10, § 5, 4-10-02; Ord. No. 2003-36, § 4, 12-3-03)

Sec. 33-925. City responsibility for environmental documentations and determinations.

(a) The city shall have responsibility and control over the form, scope and content of all documents comprising the environmental assessment of a project. All reports, studies or other documents prepared by or under the direction of an applicant, intended for inclusion in the environmental documents, shall be clearly identified as proponent's environmental assessment (PEA), and shall set forth in detail the assumptions and methodologies supporting any conclusions reached or upon which any recommendations may be based.

(b) The city, at its sole discretion, may decide to utilize the services of a private consulting firm to prepare or review all studies, reports and other documents required or permitted by the guidelines, including those submitted by the proponent or any other party. In all cases, the consultant shall enter into a contract with and shall be responsible directly to the city. All services shall be performed to the satisfaction of the director of planning and building, or his/her designee.

(c) All costs Incurred in the preparation of the environmental documents, including the cost of services performed under subsection (b) of this section, shall be borne by the proponent. (Ord. No. 952, § 1, 2-15-95)

Sec. 33-926. Enhanced CEQA review for projects subject to congestion management program requirements.

Unless otherwise exempt from state law, development proposals or other discretionary planning actions which are expected to generate either an equivalent of two thousand four hundred (2,400) or more average daily trips (ADT) or two hundred (200) or more peak hour vehicle trips shall include as part of the enhanced CEQA review the following information:

(a) A traffic analysis to determine the project's impact on the regional transportation system. The regional transportation system includes all the state highway system (freeways and conventional state highways) and the regional arterial system identified in SANDAG's (San Diego Association of Governments) most recent regional transportation plan (RTP). The regional transportation system includes all of the designated congestion management program (CMP) system.

(b) The traffic analysis shall be made using the traffic model approved by SANDAG for congestion management program traffic analysis purposes. The traffic analysis shall also use SANDAG's most recent regional growth forecasts as the basic population and land use database.

(c) The traffic analysis should acknowledge that standard trip generation estimates may be overstated when a project is designated using transit-oriented development design principles. Trip generation reductions should be considered for factors such as focused development intensity within walking distance to a transit station, introduction of residential units into employment centers, aggressive transportation demand management programs, and site design and street layouts which promote pedestrian activities.

(d) The project analysis shall include an estimate of the costs associated with mitigating the project's impacts to the regional transportation system. The estimates of any costs associated with the mitigation of interregional travel (both trips end outside the county) shall not be attributed to the project. Credit shall be provided to the project for public and private contributions to improvements to the regional transportation system. The city shall be responsible for approving any such credit to be applied to a project. The credit may be in any manner approved by the city including donated/dedicated right-of-way, interim or final construction, impact fee programs and/or money contributions. Monetary contributions may include public transit, ride sharing, trip reduction program support, and air quality transportation control measure funding support. (Ord. No. 95-2, § 1, 2-15-95)

Sec. 33-927. Public noticing of negative declarations and mitigated negative declarations.

In conformance with Article 6 of CEQA (Negative Declaration Process, section 15072), a notice of intent to adopt a negative declaration or mitigated negative declaration shall be mailed to the last known name of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by the following procedures to allow the public the review period provided under CEQA section 15105:

(a) Publication at least one (1) time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one (1) area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(b) Direct mailing to the owners of property within a five hundred (500) foot radius of the exterior boundaries of the project as shown on the latest equalized assessment roll, except as provided in California Government Code section 65091(a)(3), or as subsequently amended. (Ord. No. 99-15-R, § 4 Exh. C, 6-9-99)

Secs. 33-928.1—33-929. Reserved.

Editor's note—Ord. No. 2007-12, § 5, adopted May 9, 2007, repealed Ch. 33, Art. 47, Div. 2, §§ 33-928.1—33-929, pertaining to the environmental advisory board, which derived from Ord. No. 2003-25, § 1, adopted July 30, 2003; and Ord. No. 2005-05, § 11, adopted October 26, 2005.

RESOLUTION NO. 2013-153

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING A CLIMATE ACTION PLAN, INCLUDING CEQA IMPLEMENTING SCREENING TABLES, CEQA FINDINGS REGARDING SIGNIFICANT EFFECTS, STATEMENT OF OVERRIDING CONSIDERATIONS, AND MITIGATION MONITORING AND REPORTING PROGRAM FOR THE COMPREHENSIVE GENERAL PLAN UPDATE

Case No. PHG 09-0020

WHEREAS, Assembly Bill ("AB") 32 passed by the state legislature in 2006 mandates that California reduce Greenhouse Gas ("GHG") emissions to 1990 levels by 2020, and 80 percent below 1990 levels by 2050; and

WHEREAS, a local GHG emissions inventory identified and documented major sources of emissions affecting air quality within Escondido's boundaries that formed the foundation for establishing a Climate Action Plan to establish the City's GHG reduction targets as required by AB 32; and

WHEREAS, the Climate Action Plan includes a separate document: *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* that may be modified administratively based on updated technology, innovation, best management practices, and/or state legislation designed to reduce GHG emissions in concert with AB 32 mandates; and

WHEREAS, on October 22, 2013, the Planning Commission considered and by Resolution No. 5991, recommended approval of a Climate Action Plan and *'Greenhouse*

Gas Emissions CEQA Thresholds and Screening Tables' establishing the City's program for compliance with state AB 32 GHG reduction measures; and

WHEREAS, on May 23, 2012, the City Council certified and approved the Final Environmental Impact Report ("EIR") issued for the comprehensive General Plan Update that included the Climate Actin Plan by Resolution 2012-53(R); and

WHEREAS, preparation of the Climate Action Plan includes Findings of Fact (Exhibit "A"), California Environmental Quality Act ("CEQA") Findings Regarding Significant Effects (Exhibit "B"), Statement of Overriding Considerations (Exhibit "C"), and Mitigation Monitoring and Reporting Program (Exhibit "D"). Exhibits "A," "B," "C," and "D" are attached to this Resolution and incorporated by this reference; and

WHEREAS, This City Council has considered the staff report, environmental documentation, recommendations of the Planning Commission and the appropriate agencies, and public testimony presented at the Council meeting and incorporates by reference the findings made in the report(s); and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said Climate Action Plan (Exhibit "E") and *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* (Exhibit "F") as well as the associated CEQA documentation. Exhibits "E" and "F are attached to this Resolution and incorporated by this reference;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the City Council has reviewed the Climate Action Plan and *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* as well as the associated CEQA documentation; .

3. That the Findings of Fact (Exhibit "A") were made by said Council.

4. That the CEQA documentation involving the Findings Regarding Significant Effects (Exhibit "B"), were made by said Council.

5. That upon consideration of the Findings of Fact (Exhibit "A"), CEQA Findings Regarding Significant Effects (Exhibit "B"), all material in the staff report (a copy of which is on file in the Planning Division), Planning Commission recommendation, public testimony presented at the hearing, and all other oral and written evidence on this project, this City Council desires at this time and deems to be in the best public interest to approve the proposed Climate Action Plan and *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* with a Statement of Overriding Considerations (Exhibit "C") for the significant and unavoidable effects of the project and the City Council also adopts a Mitigation Monitoring and Reporting Program (Exhibit "D") to reduce or avoid the significant and mitigable impacts of the project.

EXHIBIT "A"

FINDINGS OF FACT

PHG 09-0020

1. The proposed Climate Action Plan is consistent with General Plan Air Quality and Climate Protection Policy 7.1 requiring the City to 'participate in regional planning efforts and coordinate with the San Diego Air Pollution Control District and San Diego Association of Governments in their efforts to reduce air quality impacts and attain state and federal air quality standards.' The Climate Action Plan establishes Greenhouse Gas (GHG) emission targets in compliance with Assembly Bill (AB) 32.

2. The proposed Climate Action Plan conforms with General Plan Air Quality and Climate Protection Policy 7.2 which calls for a reduction of GHG emissions through a variety of measures. The proposed Climate Action Plan includes a companion document *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* designed to be a streamlined, business-friendly and easy-to-use tool for reducing their GHG emissions in concert with the city efforts to meet state mandates..

3. The proposed Climate Action Plan is consistent with General Plan Air Quality and Climate Protection Policy 7.3 that states 'Require that new development projects incorporate feasible measures that reduce construction and operational emissions.' The proposed *'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables'* provide the city with local control in its compliance efforts and can be modified to include other features as technology, innovation and best management practices change over time.

CEQA FINDINGS REGARDING SIGNIFICANT EFFECTS FOR THE ESCONDIDO CLIMATE ACTION PALN
City File # PHG 09-0020
SCH # 2010071064

The following Findings are made for the City of Escondido Climate Action Plan (hereinafter referred to as the "project"), which is scheduled to go before the City Council for review and approval in December 2013. The environmental effects of the General Plan Update, Housing Element, Downtown Specific Plan Update, and Climate Action Plan (E-CAP) are addressed in a Program Final Environmental Impact Report (EIR) dated April 23, 2012, which is incorporated by reference herein. The General Plan Update, Downtown Specific Plan Update and Housing Element have been approved by the City Council on prior dates. Findings for those documents have been prepared as separate documents.

The Final EIR prepared for the project consists of three volumes:

Volume 1: Program EIR evaluating the proposed project and a reasonable range of alternatives

Volume 2: Technical Appendices to the EIR

Volume 3: Summary of Changes to the Draft EIR, Comment Letters and Responses to Comments on the Draft EIR

The Final EIR evaluated potentially significant effects for the following environmental areas of potential concern: 1) Aesthetics; 2) Agricultural Resources; 3) Air Quality; 4) Biological Resources; 5) Cultural and Paleontological Resources; 6) Geology and Soils; 7) Greenhouse Gas Emissions; 8) Hazards and Hazardous Materials; 9) Hydrology and Water Quality; 10) Land Use; 11) Mineral Resources; 12) Noise; 13) Population and Housing; 14) Public Services; 15) Recreation; 16) Transportation and Traffic; and 17) Utilities and Service Systems.

Of these seventeen environmental subject areas, the City Council concurs with the conclusions in the Final EIR that project impacts related to Air Quality, Biological Resources, Cultural and Paleontological Resources, Noise, Population and Housing, Transportation and Traffic, and Utilities and Service Systems will involve potentially significant impacts. Moreover, these environmental issues will include impacts that are significant and unavoidable with the exception of Cultural and Paleontological Resources, for which all impacts will be mitigated below a level of significance. For those areas in which environmental impacts will remain significant and unavoidable, even with the implementation of mitigation measures, overriding considerations exist which make the impacts acceptable.

The California Environmental Quality Act (CEQA) (California Public Resources Code §21000 *et. seq.*) and the State CEQA Guidelines (Title 14, California Code of Regulations, §15000 *et. seq.*) require that no public agency shall approve or carry out a project which identifies one or more significant environmental effects of a project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment (refer to Section A below);
2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been or can or should be adopted by that other agency (refer to Section B below); or
3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (refer to Section C below) (CEQA, §21081(a); Guidelines, §15091(a)).

For each significant effect identified for the project, one of the above three findings applies. Therefore, the discussion of significant impacts and mitigation measures is organized below by finding rather than by environmental subject area.

Section A – Finding (1)

Pursuant to Section 15091(a)(1) of the State CEQA Guidelines, the Escondido City Council finds that, for each of the following significant effects identified in the Final EIR, changes or alterations (mitigation measures) have been required in, or incorporated into, the project which avoid or substantially lessen each of the significant environmental effects identified in the Final EIR. The significant effects (impacts) and mitigation measures are stated fully in the Final EIR. The rationale for this finding for each impact is as follows:

AIR QUALITY

A-1 **Direct/Indirect Significant Effect – Sensitive Receptors:** Implementation of the project would have the potential to expose sensitive receptors to toxic air contaminants (TACs) from the following types of facilities: waste transfer, industrial, medical, and research and development facilities.

Mitigation Measures: The project includes the following mitigation measures which would mitigate potentially significant impacts associated with these facilities to below a level of significance:

Mitigation Measure Air-3 (Siting Sensitive Receptors near Waste Transfer Facility) requires a Health Risk Assessment (HRA) to be prepared by a qualified air quality professional for development of new sensitive receptors proposed in the General Plan Update planning area within 500 feet of a waste transfer facility. The project cannot be considered for approval until an HRA has been completed and approved by the City. If a potentially significant health risk is identified, the HRA must identify appropriate measures to reduce the potential health risk to below a significant level or the sensitive receptor shall be sited in another location.

- **Mitigation Measure Air-4** (Siting Sensitive Receptors near Industrial, Medical, or Research and Development Facilities) requires an HRA to be prepared by a qualified air quality professional for development of new sensitive receptors in the General Plan Update planning area proposed within one mile of industrial land uses, medical facilities, or research and development facilities that generate a potential source of TACs. An HRA would also be required for such facilities proposed within one mile of a sensitive receptor. Sensitive receptors include day care centers, schools, retirement homes, hospitals, medical patients in residential homes, or other facilities that may house individuals with health conditions that would be adversely impacted by changes in air quality. The project cannot be considered for approval until an HRA has been completed and approved by the City. If a potentially significant health risk is identified, the HRA must identify appropriate measures to reduce the potential health risk to below a significant level, or the sensitive receptor or proposed facility shall be sited in another location.

Facts in Support of Finding: Implementation of the General Plan Update would have the potential to locate new residences in close proximity to land uses that emits TACs, including within 500 feet of a freeway; in close proximity to dry cleaning facilities, gas stations, automotive repair facilities, or industrial operations; or in an area that contains an existing source of TAC emissions.

Future development consistent with the proposed project would result in potentially significant emissions of diesel particulate matter (DPM) and other TACs. Land development projects are required to comply with AB 2588, SDAPCD Rule 1210, Toxic Air Contaminant Public Health Risks – Public Notification and Risk Reduction, and California Air Resources Board (CARB) standards for diesel engines. The General Plan Update Air Quality and Climate Protection Element requires future land uses to be sited according to CARB recommendations. Therefore, impacts related to TACs from freeways, dry cleaning facilities, and gas stations would be less than significant.

The General Plan Update Resource Conservation Element includes Air Quality and Climate Protection Policy 7.4, which would locate uses and facilities/operations that may produce toxic or hazardous air pollutants an adequate distance from each other and sensitive uses such as housing and schools, consistent with CARB recommendations. This policy will prevent new sensitive receptors from being located within the CARB siting distances for freeways, dry cleaning facilities, gas stations, and automotive repair facilities.

CARB does not make specific recommendations for other potential sources of TACs in the project planning area, including waste transfer, industrial, medical, and research and development facilities. Therefore, the proposed project would result in a potentially significant impact to sensitive receptors associated with these uses. Mitigation measures Air-3 and Air-4 would be implemented to reduce impacts associated with facilities that CARB has not made specific recommendations for to a less than significant level, such as waste transfer, industrial, medical, and research and development facilities.

CULTURAL RESOURCES

A-2 **Direct/Indirect Significant Effect – Historical Resources**: Implementation of the proposed project would have the potential to result in substantial adverse changes to the significance of historical resources from disturbance due to demolition, destruction, alteration, or structural relocation as a result of new private or public development or redevelopment allowable under the proposed General Plan Update, Downtown Specific Plan and E-CAP.

Mitigation Measures: The proposed project includes the following mitigation measures which would mitigate potentially significant impacts to historical resources to below a level of significance:

- **Mitigation Measure Cul-1** requires enhanced community appreciation of the importance of the City's historic sites and buildings, and protection and preservation of significant historical resources to the extent feasible through the identification of features of cultural and historical significance to the community and designation of these features as landmarks, structures and sites of historic, aesthetic, and special character. The incorporation of historical resources into historical parks and multiple use recreation parks shall be encouraged.
- **Mitigation Measure Cul-2** ensures landmarking and historical listing of City-owned historic sites in order to protect these historic sites.

Facts in Support of Finding: Impacts to historical resources would occur if development or redevelopment would result in the destruction of historical resources through activities such as grading, clearing, demolition, alteration, or structural relocation. The project could also result in an increase in development intensity which could adversely affect historical sites though the introduction of visual, audible, or atmospheric effects that are out of character with the historical resources or alter the setting of the resources when the setting contributes to the resources' significance. The proposed project may also result in the redevelopment of a historical structure or site that may result in the remodeling, alteration, addition, or demolition of a historical resource, or a change in use that is not compatible with the authenticity of the resource and that would substantially alter its significance. Additionally, infrastructure or other public works improvements associated with development allowable under the proposed General Plan Update, Downtown Specific Plan Update and E-CAP could result in damage to or demolition of historical features.

The City utilizes CEQA and the City Municipal Code to identify and protect important historic and archaeological resources. The City requires an assessment of the significance of potentially historic structures by a professional historic resource consultant as part of the development application. If the resource is considered historical per CEQA, the City requires the assessment to include recommendations for mitigating potential impacts to the structure, or identify requirements for the proper documentation per state or federal guidelines of any significant historic structure proposed

for demolition, which shall be made conditions of project approval. Further, the City provides incentives, such as reduced property taxes on eligible historic properties, through the Mills Act to encourage the restoration, renovation, or adaptive reuse of historic resources.

The proposed Resource Conservation Element includes a goal and supporting policies to prevent adverse impacts to historical resources. Goal 5 of the Resource Conservation Element calls for the preservation of important cultural and paleontological resources that contribute to the unique identity and character of Escondido. Policies 5.1 through 5.9 support this goal by encouraging preservation, adaptive reuse and rehabilitation, compliance with appropriate regulations, maintenance of the Escondido Historic Sites Survey, and education of the public.

While the proposed General Plan Update goals and policies are intended to protect historical resources, specific measures are necessary to ensure that the intended protections are achieved. The project would implement mitigation measures Cul-1 and Cul-2 (described above), to reduce impacts to a less than significant level. ,

A-3 **Cumulative Significant Effect – Historical Resources:** Projects located in the southern California region would have the potential to result in a cumulative impact associated with the loss of historical resources through the physical demolition, destruction, relocation, or alteration of a resource or its immediate surroundings such that the significance of a historical resource would be materially impaired. Past projects involving development and construction have already impacted historical resources within the region. Additionally, the project would result in a potentially significant cumulative impact prior to mitigation. However, the mitigation measures identified above would reduce potentially significant cumulative impacts identified for the project to a less than significant level by ensuring protection of the City's historical resources.

A-4 **Direct/Indirect Significant Effect – Archaeological Resources:** Implementation of the proposed project would have the potential to result in substantial adverse changes to the significance of archaeological resources from ground-disturbing construction activities such as clearing, excavation and grading.

Mitigation Measures: The project includes the following mitigation measures which would reduce potentially significant impacts to below a level of significance:

- **Mitigation Measure Cul-3** requires that significant archaeological resources be preserved in-situ, as feasible. The incorporation of resources into historical parks and multiple use recreation parks shall be encouraged. When avoidance of impacts is not possible, data recovery mitigation shall be required for all significant resources. Any significant artifacts recovered during excavation, other than cultural material subject to repatriation, shall be curated with its associated records at a curation facility approved by the City. Excavation of deposits of Native American origin shall be coordinated with and monitored by local Native American representatives. This measure would prevent or ameliorate adverse changes to significant archaeological resources.

- **Mitigation Measure Cul-4** requires the development of management and restoration plans for identified and acquired properties with cultural resources. Such plans would be implemented to preserve cultural resources.
- **Mitigation Measure Cul-5** supports the dedication of easements that protect important cultural resources by using a variety of funding methods, such as grant or matching funds, or funds from private organizations. Such easements would preserve cultural resources in their existing site locations and thus, help to minimize potential direct or indirect impacts.
- **Mitigation Measure Cul-6** requires protection of significant cultural resources through coordination and consultation with the NAHC and local tribal governments, including SB-18 review. These cooperative efforts would ensure that significant sites are identified and preserved to the satisfaction of all parties.

Facts in Support of Finding: The proposed project would result in impacts to archaeological resources if ground-disturbing activities associated with development of land uses allowed under the General Plan Update would occur without proper regulation and monitoring. Such alteration of archaeological resources may result in a loss of valuable information that could be gained from the resources, or prevent potentially eligible sites from being listed on a register of cultural resources. Additionally, archaeological resources may also be subject to indirect impacts as a result of development activities that increase erosion, fugitive dust, or the accessibility of a surface or subsurface resource, and thus increase the potential for the degradation of the resource.

The proposed project would comply with all applicable regulations pertaining to archaeological resources, such as the Native American Graves Protection and Repatriation Act (NAGPRA), Cal NAGPRA, PRC Section 5097, and PRC Section 210831. The City also requires that areas proposed for discretionary development projects, which are subject to CEQA review and found in areas exhibiting observable ground surface, be investigated for artifacts on the ground surface by a professional archaeological resource consultant.

The proposed General Plan Update includes a goal and supporting policies to prevent the proposed General Plan Update from adversely impacting cultural resources. Goal 5 of the Resource Conservation Element calls for the preservation of important cultural and paleontological resources that contribute to the unique identity and character of Escondido.

While the proposed General Plan Update goals and policies are intended to protect archaeological resources, specific measures are necessary to ensure that the intended protections are achieved. Implementation of mitigation measures Cul-3 through Cul-6 would reduce impacts to a less than significant level.

A-5 **Cumulative Significant Effect – Archaeological Resources:** Cumulative projects located in the San Diego region would have the potential to result in a significant cumulative impact associated with the loss of archaeological resources from extensive grading, excavation or other ground-

disturbing activities associated with the development of land uses. Past projects involving development and construction have already impacted archaeological resources within the region. Additionally, the project would result in a potentially significant cumulative impact prior to mitigation. However, implementation of the mitigation measures identified above would reduce the project's potentially significant cumulative impacts related to archaeological resources to a less than significant level by ensuring adequate protection of archaeological resources.

NOISE

A-6 **Direct/Indirect Significant Effect – Excessive Groundborne Vibration from SPRINTER Rail Line:** Implementation of the proposed project would result in significant impacts related to the exposure of vibration sensitive land uses to groundborne vibration in close proximity to the SPRINTER rail line.

Mitigation Measures: The project includes the following mitigation measure which would reduce potentially significant impacts to below a level of significance:

- **Mitigation Measure Noi-2** (Setback of Vibration-Sensitive Land Uses from SPRINTER Alignment) requires future development of vibration-sensitive land uses within 450 feet of the SPRINTER right-of-way (ROW) or places where people sleep within 230 feet of the SPRINTER ROW to prepare a site-specific groundborne vibration analysis conducted by a qualified vibration analyst to determine that vibration levels generated by the SPRINTER at the proposed project site would not exceed the Federal Transit Administration's groundborne vibration standards for vibration sensitive equipment and sleep disturbance. If necessary, mitigation would be required for land uses in compliance with the standards listed in EIR Table 4.12-10, General Plan Update Groundborne Vibration Impact Criteria. This measure would minimize effects of groundborne vibration from operation of the SPRINTER rail line.

Facts in Support of Finding: Placement of new development in close proximity to the SPRINTER rail line would have the potential to result in impacts associated with excessive groundborne vibration. The General Plan Update Community Protection Element includes Noise Policy 5.5, which requires compliance with the Federal Transit Administration's vibration criteria for construction that would occur under the General Plan Update, Specific Plan Update and E-CAP. Compliance with this policy and implementation of mitigation measure Noi-2, which requires compliance with the standards listed in EIR Table 4.12-10, General Plan Update Groundborne Vibration Impact Criteria, would reduce potential groundborne vibration impacts related to future development to a less than significant level.

TRANSPORTATION AND TRAFFIC

A-7 **Direct/Indirect Significant Effect – Traffic and Level of Service Standards:** Implementation of the proposed project would result in a significant impact to the following nine roadway segments and one intersection throughout the proposed project area.

1. Escondido Boulevard between 13th Avenue and 15th Avenue (LOS E)
2. Escondido Boulevard between 15th Avenue and Felicita Avenue (LOS E)
3. Escondido Boulevard between Felicita Avenue and Sunset Drive (LOS E)
4. Centre City Parkway between 13th Avenue and Felicita Avenue (LOS E)
5. Citrus Avenue between Washington Avenue and Valley Parkway (LOS E)
6. Citrus Avenue between Bear Valley Parkway and Glen Ridge Road (LOS E)
7. 9th Avenue between La Terraza Boulevard and Tulip Street (LOS E)
8. Lincoln Avenue between Lincoln Parkway (SR-78) and Fig Street (LOS E)
9. Mission Avenue between Rose Street and Midway Drive (LOS E)

Intersections

1. I-15 SB Ramps/Valley Parkway (LOS F, PM peak hour)

Mitigation Measures: Implementation of the following feasible mitigation measures identified in the Final EIR would reduce impacts to the following roadways and intersections to a less than significant level.

- **Mitigation Measure Tra-3** (Escondido Boulevard between 13th Avenue and 15th Avenue) requires the City of Escondido to implement adaptive traffic signal control technology along Escondido Boulevard between 13th Avenue and 15th Avenue prior to the segment reaching a Level of Service (LOS) of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to the segment of Escondido Boulevard between 13th Avenue and 15th Avenue to a less than significant level.
- **Mitigation Measure Tra-4** (Centre City Parkway between 13th Avenue and Felicita Avenue) requires the City of Escondido to implement adaptive traffic signal control technology along Centre City Parkway between 13th Avenue and Felicita Avenue prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to the segment of Centre City Parkway between 13th Avenue and Felicita Avenue to a less than significant level.
- **Mitigation Measure Tra-5** (Escondido Boulevard between 15th Avenue and Felicita Avenue) requires the City of Escondido to implement adaptive traffic signal control technology along Escondido Boulevard between 15th Avenue and Felicita Avenue prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-

time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to Escondido Boulevard between 15th Avenue and Felicita Avenue to a less than significant level.

- **Mitigation Measure Tra-6** (Escondido Boulevard between Felicita Avenue and Sunset Drive) requires the City of Escondido to implement adaptive traffic signal control technology along Escondido Boulevard between Felicita Avenue and Sunset Drive prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to Escondido Boulevard between Felicita Avenue and Sunset Drive to a less than significant level.
- **Mitigation Measure Tra-7** (Citrus Avenue between Washington Avenue and Valley Parkway) requires the City of Escondido to implement adaptive traffic signal control technology along Citrus Avenue between Washington Avenue and Valley Parkway prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to the segment of Citrus Avenue between Washington Avenue and Valley Parkway to a less than significant level.
- **Mitigation Measure Tra-8** (Citrus Avenue between Bear Valley Parkway and Glen Ridge Road) requires the City of Escondido to implement adaptive traffic signal control technology along Citrus Avenue between Bear Valley Parkway and Glen Ridge Road prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to the segment of Citrus Avenue between Bear Valley Parkway and Glen Ridge Road to a less than significant level.
- **Mitigation Measure Tra-9** (9th Avenue between La Terraza Boulevard and Tulip Street) requires the City of Escondido to implement adaptive traffic signal control technology along 9th Avenue between La Terraza Boulevard and Tulip Street prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to the segment of 9th Avenue between La Terraza Boulevard and Tulip Street to a less than significant level.
- **Mitigation Measure Tra-10** (Lincoln Avenue between Lincoln Parkway (SR-78) and Fig Street) requires the City of Escondido to implement adaptive traffic signal control technology along Lincoln Avenue between Lincoln Parkway (SR-78) and Fig Street prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-

of-day plans, such as accidents and road construction. This measure would reduce impacts to the segment of Lincoln Avenue between Lincoln Parkway (SR-78) and Fig Street to a less than significant level. As stated above, it would also reduce impacts to two segments of Escondido Boulevard (15th Avenue to Felicita Avenue and Felicita Avenue to Sunset Drive) to a less than significant level.

- **Mitigation Measure Tra-11** (Mission Avenue between Rose Street and Midway Drive) requires the City of Escondido to implement adaptive traffic signal control technology along Mission Avenue between Rose Street and Midway Drive prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction. This measure would reduce impacts to the segment of Mission Avenue between Rose Street and Midway Drive to a less than significant level.
- **Mitigation Measure Tra-12** (Interstate 15 Southbound Ramps/Valley Parkway Intersection) required the City of Escondido to provide a second right turn lane at the I-15 Northbound ramps to partially mitigate the impacts at this intersection. Future land developments would be required to contribute a fair share towards this improvement as well as any other improvements that may needed in the future to mitigate this impact to below a level of significance.

Facts in Support of Finding. The roadway improvements proposed in mitigation measures Tra-3 through Tra-12 would improve traffic flow on the roadway segments and intersections listed above to an LOS D or better. Impacts would be mitigated to a less than significant level.

UTILITIES AND SERVICE SYSTEMS

A-8 **Direct/Indirect Significant Effect – Adequate Wastewater Facilities (City of Escondido Wastewater Division)**: Implementation of the proposed project would have the potential to result in significant impacts related to wastewater facilities because the General Plan Update and Downtown Specific Plan Update would result in increased demand on existing wastewater systems due to increased sewage flows associated with the new development. Some E-CAP measures may also minimally increase wastewater flows within the proposed project area.

Mitigation Measures: The project includes the following mitigation measure which would reduce impacts to below a level of significance.

- **Mitigation Measure Util-2** requires the EWWD Wastewater Master Plan to be updated to accommodate the buildout of the proposed General Plan Update. This shall be achieved by increasing and/or expanding existing wastewater infrastructure and other measures/strategies that shall achieve the goal of providing adequate wastewater facilities to serve the buildout of the General Plan Update. The City shall also coordinate with VWD during its next Master Plan Update process to ensure that it provides the necessary wastewater facilities to adequately account for the growth identified in the General Plan Update.

Facts in Support of Finding: An increase in wastewater flows due to implementation of the proposed project could result in the Escondido Wastewater Division (EWWD) having inadequate capacity to serve the projected demand associated with the buildout of the General Plan Update, Downtown Specific Plan Update and implementation of the E-CAP. EWWD maintains a Wastewater Collections Master Plan that considers existing and proposed land uses as well as growth projections to evaluate system adequacy for wastewater service. The City is currently in the process of updating the Wastewater Collections Master Plan to incorporate the proposed project's growth projections. However, until the updated Master Plan is adopted, the current Master Plan would remain in effect, which may not provide adequate capacity to serve the buildout of the proposed project.

Several elements of the General Plan Update address wastewater facilities. Within the Economic Prosperity Element, Minimizing Infrastructure Impediments Policies 9.1, 9.2 and 9.3 require the City to plan for and coordinate sufficient wastewater infrastructure; work with agencies to develop and implement infrastructure improvements; and identify ways to obtain funding for infrastructure improvements. Within the Growth Management Element, Policies 2.1, 2.2, 3.1, 3.2, 3.3, 4.1 and 4.2 deal with public facility master plan policies, financing and phasing. Growth Management Monitoring Policies 6.1, 6.2 and 6.3 require interagency coordination and monitoring, capital improvement planning efforts, and development proposals to minimize their environmental impacts. Within the Mobility and Infrastructure Element, Wastewater System Policies 11.1 through 11.11 relate specifically to wastewater treatment services. Wastewater System Policy 11.1 requires regular updates to EWWD's Wastewater Master Plan.

While the proposed General Plan Update policies are intended to provide adequate wastewater facilities, specific measures are necessary to ensure that adequate facilities are available when needed. Therefore, mitigation measure Util-2 would be implemented to reduce the project's potentially significant impact associated with wastewater facilities to below a level of significant.

Section B – Finding 2

Pursuant to Section 15091(a)(2) of the State CEQA Guidelines, the Escondido City Council finds that, for each of the following significant effects as identified in the Final EIR, changes or alterations which would avoid or substantially lessen these significant effects are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency. The significant effects (impacts) and mitigation measures are stated fully in the Final EIR. The following are brief explanations of the rationale for this finding for each impact:

BIOLOGICAL RESOURCES

B-1 **Cumulative Significant Effect – Special Status Plant and Wildlife Species:** Implementation of the proposed project would have the potential to contribute to a significant cumulative impact associated with the loss of habitat supporting special status plant and wildlife species. The impact is attributable to the lack of a comprehensive Natural Community Conservation Plan (NCCP) in place for the long-term protection of special status plant and wildlife species for the entire San Diego

region. Without this plan in place, a cumulative loss of habitat supporting special status plant and wildlife species would occur, even after mitigation has been implemented for individual projects. A Multiple Habitat Conservation Plan (MHCP) has been developed for the northwest incorporated cities, but the City of Escondido is still developing its MHCP Subarea Plan. Adoption of the City's subarea plan would establish the City's contribution to the regional protection of biological resources and establish an implementation program to protect the resources identified in the plan, including requirements for new development. Therefore, until the City has adopted the MHCP Subarea Plan, the proposed project's contribution, in combination with other cumulative projects, would be cumulatively considerable.

Mitigation Measures: No feasible mitigation measures are available to mitigate this impact.

Facts in Support of Finding: Future development of land uses allowed under the General Plan Update and Downtown Specific Plan Update would have the potential to result in impacts to sensitive species. Compliance with existing regulations and the General Plan Update goals and policies would reduce the project's direct and indirect impacts to special status species to a less than significant level. However, until the City's MHCP Subarea Plan is adopted, the proposed project would contribute to a significant cumulative impact to species identified as a candidate, sensitive, or special status species. Adoption of the MHCP Subarea Plan, and subsequent compliance with the plan, would reduce the project's cumulative contribution to a less than significant level; however, adoption of the conservation plan requires approval at the federal and state levels, which the City cannot guarantee ahead of time. In addition, the timing of the MHCP Subarea Plan adoption may not coincide with General Plan Update impacts in these areas. Therefore, requiring adoption of the MHCP Subarea Plan cannot be considered feasible mitigation for the proposed project. Until the City's MHCP Subarea Plan is adopted, the project's cumulatively considerable contribution to a significant cumulative impact to sensitive species would be significant and unavoidable. None of the proposed project alternatives would reduce impacts associated with special status species to below a level of significance because any alternative that would accommodate new city-wide development would have the potential to result in a cumulative impact until the MHCP Subarea Plan is adopted.

Conclusion: Because there are no feasible measures that would a achieve a level less than significant; because application of all General Plan policies and existing regulations would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant; the project's cumulative impacts to special status species would remain significant and unavoidable.

B-2 **Cumulative Significant Effect – Riparian Habitat and Other Sensitive Natural Communities:** Implementation of the proposed project would have the potential to contribute to a significant cumulative impact associated with the loss of riparian habitat and other sensitive natural communities due to the lack of a comprehensive NCCP in place for the long-term protection of sensitive natural communities for the entire San Diego region. Without this plan in place, a

cumulative loss of riparian and other sensitive habitat would occur, even after mitigation has been implemented for individual projects. A MHCP has been developed for the northwest incorporated cities, but the City of Escondido is still developing its MHCP Subarea Plan. Adoption of the City's Subarea Plan would establish the City's contribution to the regional protection of biological resources and establish an implementation program to protect the resources identified in the plan, including riparian habitat and other sensitive natural communities. Therefore, until the City has adopted the MHCP Subarea Plan, the proposed project's contribution, in combination with other cumulative projects, would be cumulatively considerable.

Mitigation Measures: No feasible mitigation measures are available to mitigate this impact.

Facts in Support of Finding: Future development of land uses allowed under the General Plan Update and Downtown Specific Plan Update would have the potential to result in impacts to riparian habitat and other sensitive natural communities. Compliance with existing regulations, existing land use agreements, and the General Plan Update goals and policies would reduce the project's direct and indirect impacts to sensitive natural communities to a less than significant level. However, until the City's MHCP Subarea Plan is adopted, the proposed project would contribute to a significant cumulative impact to sensitive natural communities. Adoption of the MHCP Subarea Plan, and subsequent compliance with the plan, would reduce the project's contribution to this cumulative impact to a less than significant level; however, adoption of the conservation plan requires approval at the federal and state levels, which the City cannot guarantee ahead of time. In addition, the timing of the MHCP Subarea Plan adoption may not coincide with General Plan Update impacts in these areas. Therefore, requiring adoption of the MHCP Subarea Plan cannot be considered feasible mitigation for the proposed project. Until the City's MHCP Subarea Plan is adopted, the project's contribution to a significant cumulative impact to sensitive natural communities would be significant and unavoidable. None of the proposed project alternatives would reduce impacts associated with sensitive natural communities to below significant because any alternative that would accommodate new city-wide development would have the potential to result in a cumulative impact until the MHCP Subarea Plan is adopted.

Conclusion: Because there are no feasible measures that would a achieve a level less than significant; because application of all General Plan policies and existing regulations would not achieve a level of less than significant; and because there are no feasible Project alternatives that would achieve a level of less than significant, impacts to riparian habitat and other sensitive natural communities would remain significant and unavoidable.

B-3 **Cumulative Significant Effect – Wildlife Movement Corridors and Nursery Sites:** Implementation of the proposed project would have the potential to contribute to a significant cumulative impact associated with impacts to wildlife movement corridors and nursery sites due to the lack of a comprehensive NCCP in place for the long-term protection of wildlife movement

corridors and nursery sites for the entire San Diego region. Without this plan in place, a cumulative loss of wildlife movement corridors and nursery sites would occur, even after mitigation has been implemented for individual projects. A MHCP has been developed for the northwest incorporated cities, but the City of Escondido is still developing its MHCP Subarea Plan. Adoption of the City's Subarea Plan would establish the City's contribution to the regional protection of biological resources and establish an implementation program to protect the resources identified in the plan, including wildlife movement corridors and nursery sites. Therefore, until the City has adopted the MHCP Subarea Plan, the proposed project's contribution, in combination with other cumulative projects, would be cumulatively considerable.

Mitigation Measures: No feasible mitigation measures are available to mitigate this impact.

Facts in Support of Finding: Future development of land uses allowed under the General Plan Update and Downtown Specific Plan Update would have the potential to result in impacts to wildlife movement corridors and native wildlife nursery sites. Compliance with existing regulations and the General Plan Update goals and policies would reduce direct and indirect impacts to sensitive natural communities to a less than significant level. However, until the City's MHCP Subarea Plan is adopted, the proposed project would contribute to a significant cumulative e impact to wildlife movement corridors and nursery sites. Adoption of the MHCP Subarea Plan, and subsequent compliance with the plan, would reduce the project's cumulative contribution to a less than significant level; however, adoption of the conservation plan requires approval at the federal and state levels, which the City cannot guarantee ahead of time. In addition, the timing of the MHCP Subarea Plan adoption may not coincide with General Plan Update impacts in these areas. Therefore, requiring adoption of the MHCP Subarea Plan cannot be considered feasible mitigation for the proposed project. Until the City's MHCP Subarea Plan is adopted, the project's contribution to a significant cumulative impact to wildlife movement corridors and nursery sites would be significant and unavoidable. None of the proposed project alternatives would reduce impacts associated with wildlife movement corridors and nursery sites to below a level of significance because any alternative that would accommodate new city-wide development would have the potential to result in a cumulative impact until the MHCP Subarea Plan is adopted.

Conclusion: Because there are no feasible measures that would a achieve a level less than significant; because application of all General Plan policies and existing regulations would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant, impacts to wildlife movement corridors and nursery sites would remain significant and unavoidable.

TRANSPORTATION AND TRAFFIC

B-4 **Direct/Indirect Significant Effect – Traffic and Level of Service Standards:** Implementation of the proposed project would result in a significant impact to the segment of Montiel Road between Nordahl Road and Deodar Road (LOS E).

Mitigation Measures: The following mitigation measure would reduce this impact to a less than significant level. However, the City has determined that this measure would be infeasible, as described below.

- **Mitigation Measure Tra-2** (Montiel Road between Nordahl Road and Deodar Road) requires the City of Escondido to implement adaptive traffic signal control technology along Montiel Road between Nordahl Road and Deodar Road prior to the segment reaching an LOS of E or F. Adaptive traffic signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.

Rationale for Rejection. The mitigation for the proposed project's impact to the segment of Montiel Road between Nordahl Road and Deodar Road is considered to be infeasible because the timing and implementation of the mitigation measure is within the jurisdiction of another city and cannot be guaranteed by the City of Escondido. If and when the City of San Marcos desires to mitigate the impact to this segment, the City of Escondido would coordinate with San Marcos when significant traffic impacts to this segment are attributed to specific projects being processed in the City of Escondido. These projects would be required to undertake mitigation, such as a fair share contribution, pursuant to city direction. However, because the City of Escondido cannot guarantee the timing of implementation of the mitigation measure for this segment impact, the impact is considered to be significant and unavoidable.

Facts in Support of Finding. The proposed project would result in a roadway segment impact to Montiel Road between Nordahl Road and Deodar Road, which is located within the City of San Marcos. Mitigation measure Tra-2 would reduce this impact to a less than significant level. However, the City has determined that this measure would be infeasible as described above.

The General Plan Update includes policies that would reduce traffic and prevent the substantial deterioration of transportation resources within the proposed project area. Within the Mobility and Infrastructure Element, Transportation Demand Management (TDM) Policies 6.1, 6.2 and 6.3 require implementation of a TDM and complete streets program; employers to promote alternative transportation methods; and a TDM program for City employees. Street Network Policies 7.1, 7.2 and 7.3 require regulation of roadways in accordance with the Mobility and Infrastructure Element; specific alignment plans for unique situations; and the goal of meeting LOS C or better throughout the City and establishing LOS D as the threshold for determining significant impacts and appropriate mitigation. Due to physical design characteristics, implementation of pedestrian-oriented 'smart growth' and Complete Streets design improvements,

high density infill areas, environmental resource considerations, existing development, freeway interchange impacts, and incomplete system improvements, the policies recognize that alternative levels of service may be appropriate for isolated areas as determined by the City.

Street Network Policies 7.4, 7.5 and 7.6 require adequate safety measures on new roadways; CIP funding for roadway projects; and the timely development of the mobility system. Street Network Policies 7.7 through 7.10 require analysis of traffic impacts on the regional transportation system, synchronizing traffic signals, and street beautification programs.

Traffic Calming Policies 9.1, 9.2, and 9.3 require effective traffic management solutions, innovative traffic control methods, and implementation of traffic calming measures. Goods and Services Transport Policies 10.1, 10.2 and 10.3 require designation of truck routes; minimization of impacts from truck traffic; and discourage the use of public streets for freight loading and unloading. Goods and Services Transport Policies 10.4, 10.5, and 10.6 require deliveries during off-peak traffic hours and cooperation with railroad operators.

Within the E-CAP, reduction measure R1-T7, Goods Movement and Efficiency Measures, promotes system-wide efficiency improvements in goods movement. Reduction measure R2-T1, Land Use Based Trips and Vehicle Miles Traveled (VMT) Reduction Policies, identifies land use strategies, consistent with the proposed General Plan Update, which would reduce VMT within the proposed Project area. Reduction measure R2-T3, Transit Improvements, encourages coordination to improve public transit facilities and reduce VMT. Reduction measure R2-T4, Transportation Demand Management, encourages ride-sharing, carpooling and alternative modes of transportation to reduce automobile travel.

None of the project alternatives would reduce impacts associated with traffic and level of service standards to below a significant level because all of the alternatives would allow for future development that would result in increases in traffic on project area roadways. The Reduced Employment Alternative, Reduced Residential Alternative, and Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would reduce impacts as compared to the proposed project due to reduced growth allowed under these alternatives; however, these alternatives would still contribute to a significant increase in traffic and impacts would be significant and unavoidable.

Because the mitigation measure Tra-2 listed above has been found to be infeasible; because no additional feasible mitigation measures are available to mitigate the impacts to a level below significant; because application of all General Plan goals and policies would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant, impacts associated with traffic and level of service standards associated with Montiel Road between Nordahl Road and Deodar Road would be significant and unavoidable.

Section C – Finding 3

Pursuant to Section 15091(a)(3) of the State CEQA Guidelines, the City of Escondido City Council finds that, for each of the following significant effects identified in the Final EIR, specific economic, legal, social, technological, or other considerations make the mitigation measures or Project alternatives infeasible:

AIR QUALITY

C-1 **Direct/Indirect Significant Effect – Air Quality Violations:** Implementation of the proposed project would result in significant impacts related to the emission of volatile organic compounds (VOCs) and particulate matter less than 10 microns in diameter (PM_{10}) during construction. In addition, operational emissions of criteria air pollutants associated with future development occurring under the General Plan Update would exceed the significance thresholds for PM_{10} and particulate matter less than 2.5 microns in diameter ($PM_{2.5}$).

Mitigation Measures: The following mitigation measures identified in the Final EIR would partially mitigate the significant impacts as follows:

- **Mitigation Measure Air-1** (Construction Dust Control Measures) requires grading activities for any future development within the General Plan Update planning area boundary to implement standard best management practices to reduce the emissions of fugitive dust. Five measures are identified, including watering of exposed soils, temporary hydroseeding, vehicle speed limits, covering stockpiles and PM_{10}–efficient street sweepers. Application of best management practices would prevent the release of construction-related pollutants and substantially reduce the potential for air quality violations.
- **Mitigation Measure Air-2** (Air Quality Impact Assessment) requires an Air Quality Impact Analysis to be prepared for projects within the General Plan Update boundary that exceed one of the air quality study trigger criteria identified in the Final EIR. The air quality impact assessment would require the identification and implementation of measures to prevent the release of operational pollutants, which would and substantially reduce the potential for air quality violations.

Facts in Support of Finding: The proposed project would result in a significant impact associated with the violation of an air quality standard because emissions of criteria pollutants associated with construction and operation of new residential, commercial, and industrial land uses allowable under the General Plan Update would exceed the screening-level thresholds for air pollutants. Specifically, implementation of the proposed project would result in significant impacts related to the emission of VOCs and PM_{10} during construction and PM_{10} and $PM_{2.5}$ associated with operational emissions.

The General Plan Update identified goals and policies to reduce impacts associated with criteria air pollutants. Air Quality and Climate Protection goal 7, aims improve air quality in the City and the region to maintain the community's health and reduce greenhouse gas emissions that

contribute to climate change. This goal is supported by Air Quality and Climate Protection Policies 7.1 through 7.3 and 7.5 through 7.10. These policies require the City to participate in regional planning efforts to reduce air quality impacts and attain state and federal air quality standards; reduce regional greenhouse gas emissions through reducing vehicle trips and using non-polluting alternative energy; require that new development projects incorporate feasible measures that reduce construction and operational emissions; consider the development of park and ride facilities within the City in coordination with Caltrans; restrict the location of drive-through facilities in the City and require site layouts that reduce the amount of time vehicles wait for service; encourage businesses to alter local truck delivery schedules to occur during non-peak hours; encourage City employees to use public transit, carpool, and other alternate modes of transportation for their home to work commutes; require the City to purchase low-emission vehicles for the City's fleet and use clean fuel sources for trucks and heavy equipment; and require the City to educate the public about air quality, its effect on health, and efforts the public can make to improve air quality.

The proposed General Plan Update policies and mitigation measures listed above would reduce direct impacts to air quality violations; however, the construction schedules and specifications of future projects in the City are not known at this time. Realistically, yearly construction and operational emissions for all pollutants may be greater or lower depending on how development is implemented, where it is located, type of development, and how development is operated. Therefore, it cannot be determined with certainty whether the proposed mitigation measures, or any measures, would reduce impacts to a less than significant level. The proposed mitigation measures cannot guarantee that construction and operational emissions would be reduced to a less than significant level; therefore, this impact remains significant and unavoidable.

None of the proposed project alternatives would reduce impacts associated with air quality violations to below a significant level because any alternative that would allow for future development would result in construction and operational air pollutant emissions. The Reduced Employment Alternative, Reduced Residential Alternative, and Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would reduce impacts as compared to the proposed project due to reduced growth allowed under these alternatives; however, these alternatives would still result in new construction and new growth and the implementation of mitigation measures Air-1 and Air-2 as part of these alternatives cannot be guaranteed to reduce impacts to a less than significant level.

C-2 **Cumulative Significant Effect – Air Quality Violations:** As described above, implementation of the proposed project would result in a direct significant impact associated with the violation of an air quality standard during both construction and operation. In combination with other cumulative projects, the Project would have the potential to result in cumulatively considerable impacts.

Mitigation Measures: Mitigation measures Air-1 and Air-2 identified above would partially mitigate the project's significant cumulative impact associated with air quality violations, but not to below a level of significance.

Facts in Support of Finding: The potential exists for construction projects associated with the General Plan Update and those associated with other cumulative projects to take place in close proximity to each other and at the same time, particularly in the 15 project study areas where the greatest amount of growth and redevelopment would occur. The emissions of VOCs and PM_{10} during construction under the General Plan Update would potentially exceed the threshold of significance. Therefore, a potentially significant cumulative impact would occur when the project's construction emissions are combined with other cumulative projects.

Similarly, operation of future development under the General Plan Update would have the potential to result in significant direct impacts to air quality from particulate matter emissions (PM_{10} and $PM_{2.5}$) from vehicular sources. New stationary sources of criteria pollutants or projects that would increase vehicle trips may result in increases in pollutant emissions that result in significant unavoidable air quality impacts. In combination with other cumulative projects in the region, the proposed project would have the potential to exceed screening level thresholds for operational emissions. Therefore, the project's contribution to the regional air quality impacts related to particulate matter emissions (PM_{10} and $PM_{2.5}$) would be cumulatively considerable.

General Plan Update policies and mitigation measures would reduce cumulative impacts to air quality violations, but they cannot guarantee that impacts would be reduced to below a level of significance. Therefore, proposed project impacts to air quality violations would remain cumulatively considerable.

NOISE

C-3 **Direct/Indirect Significant Effect – Excessive Groundborne Vibration During Construction:** Implementation of the proposed project would result in significant impacts related to the exposure of vibration sensitive land uses to groundborne vibration from construction of new land uses that may result in groundborne vibration.

Mitigation Measures: The following mitigation measures identified in the Final EIR would reduce the proposed project's significant impacts associated with groundborne vibration. Mitigation measure Noi-1 would partially mitigate the project's groundborne vibration impacts from construction.

- **Mitigation Measure Noi-1** (Construction Vibration Best Management Practices) requires all general construction activities that take place within 100 feet of a building with the potential to be damaged by excessive vibration, or use pile-driving, blasting, or other high-impact construction equipment within 200 feet of a daytime noise sensitive land use to

implement the construction best management practices recommended by the Federal Railroad Administration in the High Speed Ground Transportation Noise and Vibration Impact Assessment (2005). This measure would minimize effects of groundborne vibration and noise during construction.

Facts in Support of Finding: Construction of new land uses under the proposed project would have the potential to result in impacts associated with excessive groundborne vibration. The proposed project would also result in a significant impact related to groundborne noise during construction resulting in potential damage to buildings that may be susceptible to vibration damage from construction equipment. Sections 17-234, 17-238, and 17-240 of the City's Noise Ordinance limit operation of construction equipment to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays. Grading activities on Saturday may not begin until 10:00 a.m. and must end by 5:00 p.m. Compliance with the Noise Ordinance would restrict construction groundborne vibration and noise impacts from disturbing sleep. Implementation of mitigation Measure Noi-1 would reduce project-related groundborne vibration impacts from construction; however, because it is unknown at this time where future projects would be located or the construction schedules and construction equipment required for future development under the General Plan Update, it cannot be determined with certainty that the recommended best management practices (BMPs), or any other measures, would reduce impacts to a less than significant level. Therefore, impacts from groundborne vibration during construction would be temporarily significant and unavoidable.

None of the proposed project alternatives would reduce impacts associated with groundborne vibration and noise during construction to below a significant level because any alternative that would allow for future development would result in potential construction impacts. The Reduced Employment Alternative, Reduced Residential Alternative, and Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would reduce impacts as compared to the proposed project due to the reduced growth and associated construction allowed under these alternatives. However, these alternatives would still result in new construction and implementation of the BMPs proposed in mitigation measure Noi-1 cannot be guaranteed to reduce impacts from this growth to a less than significant level.

C-4 **Cumulative Significant Effect – Excessive Groundborne Vibration:** the proposed project, in combination with other proposed cumulative projects, would result in a potentially significant cumulative groundborne vibration impact due to construction activities and potential increases in rail operations.

Mitigation Measures: Mitigation measures Noi-1 and Noi-2 identified above would partially mitigate the project's significant cumulative impact regarding groundborne vibration associated with construction, but not to below a level of significance.

Facts in Support of Finding: The potential exists for the proposed project, in combination with cumulative construction projects in the vicinity of the proposed project, to result in combined vibration impacts if occurring simultaneously. Additionally, construction in close proximity to the SPRINTER right-of-way or existing extraction operations could result in combined vibration impacts. Cumulative projects in the proposed project vicinity include potential increases in rail operations that would result in additional vibration. As discussed above, the proposed project would result in a significant direct impact associated with vibration from construction activities. Therefore, the proposed project, in combination with other proposed cumulative projects, would result in a potentially significant cumulative groundborne vibration impact due to construction activities and potential increases in rail operations.

General Plan Update policies and mitigation measures would reduce cumulative impacts to groundborne vibration impacts associated with construction, but they cannot guarantee that impact would be reduced to below a level of significance. Therefore, proposed project impacts to groundborne vibration and noise would remain cumulatively considerable.

C-5 **Cumulative Significant Effect – Permanent Increase in Ambient Noise Levels:** Implementation of the proposed project would result in a significant cumulative noise impact related to regional increases in traffic noise. Land use development proposed in accordance with the proposed project would contribute to cumulative future roadway traffic which would contribute to a cumulative increase in ambient noise levels.

Mitigation Measures: No feasible mitigation measures are available to mitigate this impact.

The following mitigation measures were considered to reduce impacts associated with the permanent increase of ambient noise levels to below a significant level. However, the City has determined that these measures would be infeasible, as described below. Therefore, the following mitigation measures will not be implemented.

(1) Require future development to construct walls or other barriers that would attenuate noise to the sensitive receptors behind the barrier for any potential increases in regional roadway noise for which no other mitigation is available.

Rationale for Rejection: This measure is considered to be infeasible because it would potentially require installation of noise walls within private property, within designated rights-of-way, or otherwise outside of the City's jurisdiction, which may not be allowed by a property owner or by the jurisdiction in which the sound barrier would be located. The feasibility of noise walls is also restricted by access requirements for driveways, presence of local cross streets, underground utilities, other noise sources in the area, and safety considerations. Breaks in the noise wall for access would not provide any noise attenuation and would render the wall ineffective. Additionally, for safety reasons, Caltrans states that noise barriers should not exceed 14 feet in

height[1]. Due to high existing noise levels, particularly along I-15, a noise barrier of more than 14 feet may be required to reduce noise levels along some roadway segments to an acceptable noise level for noise sensitive land uses. Finally, construction of a noise barrier would potentially wall off existing neighborhoods or individual residences from the surrounding community, which could result in adverse impacts to aesthetics, land use, and potentially public safety because the noise walls would limit the visibility of residences from the surrounding area[2]. Natural surveillance is one of the four principles of Crime Prevention through Environmental Design[3]. Therefore, for the reasons listed above, this mitigation measure would not be implemented.

(2) Implement a Citywide moratorium on building permits for projects that would result in a potentially significant increase in regional roadway noise for which no feasible mitigation is available.

Rationale for Rejection: This measure is considered to be infeasible because it would impede the City's ability to implement the General Plan Update and Downtown Specific Plan Update by prohibiting future development in areas identified for increased growth in the proposed project area. This mitigation measure would also conflict with the project objective to meet the housing needs of existing and future residents. Therefore, for the reasons listed above, this mitigation measure would not be implemented.

Facts in Support of Finding: The Final EIR prepared for the SANDAG 2050 RTP (SCH # 2010041061) determined that regional transportation improvements and increased regional traffic volumes associated with regional growth would have the potential to result in a substantial permanent increase in ambient noise levels. The EIR also concluded that impacts would be cumulatively considerable and unavoidable. Consistent with these findings, the EIR prepared for the proposed project determined that a significant cumulative impact related to regional increases in traffic noise would occur. Because the proposed project would allow for the development of future land uses that would result in increased future roadway traffic, the proposed project was determined to have a cumulatively considerable contribution to this significant cumulative noise impact.

Implementation of General Plan Noise Policy 5.6 from the Community Protection Element would require future development with the potential to substantially increase noise levels to prepare a noise technical report and attenuate increases in noise levels at nearby sensitive receptors. However, implementation of this policy would not reduce cumulative impacts to a less than significant level because it cannot be guaranteed that noise levels would be reduced to below the applicable threshold.

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[1] Caltrans 2011
[2] FHWA 2011
[3] NCPC 2003

None of the proposed project alternatives would reduce impacts associated with the permanent increase in ambient noise levels to below a significant level because all of the alternatives would allow for future development which would result in an increase in regional traffic noise. The Reduced Employment Alternative, Reduced Residential Alternative, and Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would reduce impacts as compared to the proposed project due to reduced overall growth under these alternatives; however, these alternatives would still contribute to an increase in regional traffic noise and impacts would be cumulatively considerable and unavoidable.

Because the measure listed above has been found to be infeasible; because application of all General Plan goals and policies would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant; impacts associated with the permanent increase in ambient noise levels would remain cumulatively considerable and unavoidable.

POPULATION AND HOUSING

C-6 **Direct/Indirect Significant Effect – Displacement of Housing and People:** Implementation of the proposed project would result in a significant impact associated with the potential future displacement of up to 142 existing residential dwelling units as a result of the General Plan land use designations and up to 300 homes and as a result of expansion or construction of the proposed circulation system.

Mitigation Measures: The following mitigation measure identified in the Final EIR would partially mitigate the project's direct significant impact associated with the displacement of housing and people, although not to below a level of significance.

- **Mitigation Measure Pop-1** requires the City of Escondido to coordinate with property owners that would experience displacement under the proposed General Plan Update to communicate the implications of the proposed project on their property and to address public concerns and comments. This mitigation measure would ensure communication with property owners regarding displacement of housing and people.

The following mitigation measure was also considered to reduce impacts associated with residential displacement to a less than significant level. However, the City has determined that this measure would be infeasible, as described below. Therefore, the following mitigation measure will not be implemented.

(1) The City shall retain the residential land use designation for each of the 142 residential parcels within the proposed project area that would receive a non-residential land use designation under implementation of the General Plan Update. Additionally, the City shall preclude the expansion or construction of roadways or pedestrian facilities identified for improvements in the

proposed General Plan Mobility and Infrastructure Element in all areas that would result in the displacement of residences or businesses.

Rationale for Rejection: This measure would effectively result in no displacement of residential homes or people within the General Plan Update area. However, this measure would impede the City's ability to implement the General Plan Update and Downtown Specific Plan Update because it would prohibit future commercial, office and industrial and transportation-related development in areas identified for mixed use, smart growth and employment lands in the proposed project area. Additionally, retaining the residential land use designation for these parcels would result in a land use compatibility conflict by allowing future residential development to occur immediately adjacent to new industrial, office or commercial development. This mitigation measure would also conflict with the project's objective to maintain areas for high quality, diversified and employee-intensive industrial, retail, technology, manufacturing and service-oriented businesses that create and sustain a strong economic based and provide employment opportunities, create an economically viable urban downtown and urban core with exciting activities and unique land uses that attract local residents and tourists, such as retail, office, high density residential, entertainment and cultural uses. For the reasons listed above, this mitigation measure is considered infeasible and would not be implemented.

Facts in Support of Finding: The proposed General Plan Update land use designations would result in the displacement of up to 142 existing residential dwelling units. Additionally, up to 300 homes and businesses have the potential to be displaced from the expansion or construction of the proposed project's circulation system. Compared to existing conditions, implementation of the General Plan Update would accommodate an additional 9,924 dwelling units by year 2035. Although this increase in new residences would more than offset the displacement of a combined maximum of 442 residences and businesses, the displacement of residences is still considered to be a significant impact because the City considers any residential housing displacement to be a significant impact.

Section I, General Plan Opportunity Areas, within the Land Use and Community Form Element of the proposed General Plan Update relates specifically to the preservation of existing housing within areas proposed for non-residential land uses. As stated in the Land Use and Community Form Element, criteria and standards for proposed grading, circulation, and utility extensions should avoid adverse impacts to existing residential properties and allow integration of adjacent SPA properties.

None of the project alternatives would reduce impacts associated with displacement of housing to below a significant level because all of the project alternatives would allow for future development that would potentially result in some residential displacement. The Reduced Employment Alternative would reduce this impact as compared to the proposed project because of the reduction in new employment land uses that would allowed under this

alternative; however, displacement of some housing would still occur under this alternative which would be considered significant and unavoidable.

Because the mitigation measure listed above has been found to be infeasible; because application of all General Plan goals and policies would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant, impacts associated with the displacement of housing and people would be cumulatively considerable and unavoidable.

TRANSPORTATION AND TRAFFIC

C-7 **Direct/Indirect Significant Effect – Traffic and Level of Service Standards:** Implementation of the proposed project would result in a significant impact to the following four roadway segments and six intersections throughout the proposed project area:

Roadway Segments

1. Mission Road between Barham Drive and Auto Park Way (LOS E)
2. Valley Parkway between Hickory Street and Fig Street (LOS F)
3. Valley Parkway between Fig Street and Date Street (LOS F)
4. Valley Parkway between Date Street and Ash Street (LOSF)

Intersections

1. Nordahl Road/Auto Park Way/Mission Road (LOS E, PM peak hour)
2. Centre City Parkway/Felicita Avenue (LOS F, PM peak hour)
3. Escondido Boulevard/Felicita Avenue (LOS E/F, AM/PM peak hours, respectively)
4. Ash Street/Valley Parkway (LOS E, both AM/PM peak hours)
5. I-15 SB Ramps/Via Rancho Parkway (LOS E/F, AM/PM peak hours, respectively)
6. El Norte Parkway/Centre City Parkway (LOS E/F, AM/PM peak hours, respectively)

Mitigation Measures: The following mitigation measure identified in the Final EIR would partially mitigate the project's significant impact to four roadway segments and six intersections, although not to below a level of significance. Even with implementation of the identified mitigation measure, these roadway segments and intersections would operate at an unacceptable LOS. No additional feasible mitigation measures are available to reduce impacts associated with these roadways and intersections to a less than significant level.

- **Mitigation Measure Tra-1** requested the City of Escondido to implement intersection improvement treatment and adaptive traffic signal control technology along the following roadway segments and at the following intersections prior to reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.

Roadway Segments

1. Mission Road between Barham Drive and Auto Park Way (LOS E)
2. Valley Parkway between Hickory Street and Fig Street (LOS F)
3. Valley Parkway between Fig Street and Date Street (LOS F)
4. Valley Parkway between Date Street and Ash Street (LOSF)

Intersections

1. Nordahl Road/Auto Park Way/Mission Road (LOS E, PM peak hour)
2. Centre City Parkway/Felicita Avenue (LOS F, PM peak hour)
3. Escondido Boulevard/Felicita Avenue (LOS E/F, AM/PM peak hours, respectively)
4. Ash Street/Valley Parkway (LOS E, both AM/PM peak hours)
5. I-15 SB Ramps/Via Rancho Parkway (LOS E/F, AM/PM peak hours, respectively)
6. El Norte Parkway/Centre City Parkway (LOS E/F, AM/PM peak hours, respectively)

Facts in Support of Finding. Implementation of the General Plan Update would result in four roadway segments and six intersections experiencing significant and unavoidable traffic impacts. To offset the impacts, these segments and intersections would undergo intersection improvement treatment and adaptive traffic signal control technology to improve traffic flow. However, even after implementing such treatment/technology improvements, these street segments and intersections would continue to operate at an unacceptable LOS.

The General Plan Update includes policies that would reduce traffic and prevent the substantial deterioration of transportation resources within the proposed project area. Within the Mobility and Infrastructure Element, Transportation Demand Management (TDM) Policies 6.1, 6.2 and 6.3 require implementation of a TDM and complete streets program; employers to promote alternative transportation methods; and a TDM program for City employees. Street Network Policies 7.1, 7.2 and 7.3 require regulation of roadways in accordance with the Mobility and Infrastructure Element; specific alignment plans for unique situations; and the goal of meeting LOS C or better throughout the City and establishing LOS D as the threshold for determining significant impacts and appropriate mitigation. Due to physical design characteristics, implementation of pedestrian-oriented 'smart growth' and Complete Streets design improvements, high density infill areas, environmental resource considerations, existing development, freeway interchange impacts, and incomplete system improvements, the policies recognize that alternative levels of service may be appropriate for isolated areas as determined by the City.

Street Network Policies 7.4, 7.5 and 7.6 require adequate safety measures on new roadways; CIP funding for roadway projects; and the timely development of the mobility system. Street Network Policies 7.7 through 7.10 require analysis of traffic impacts on the regional transportation system, synchronizing traffic signals, and street beautification programs.

Traffic Calming Policies 9.1, 9.2, and 9.3 require effective traffic management solutions, innovative traffic control methods, and implementation of traffic calming measures. Goods and

Services Transport Policies 10.1, 10.2 and 10.3 require designation of truck routes; minimization of impacts from truck traffic; and discourage the use of public streets for freight loading and unloading. Goods and Services Transport Policies 10.4, 10.5, and 10.6 require deliveries during off-peak traffic hours and cooperation with railroad operators.

Within the E-CAP, reduction measure R1-T7, Goods Movement and Efficiency Measures, promotes system-wide efficiency improvements in goods movement. Reduction measure R2-T1, Land Use Based Trips and Vehicle Miles Traveled (VMT) Reduction Policies, identifies land use strategies, consistent with the proposed General Plan Update, which would reduce VMT within the proposed Project area. Reduction measure R2-T3, Transit Improvements, encourages coordination to improve public transit facilities and reduce VMT. Reduction measure R2-T4, Transportation Demand Management, encourages ride-sharing, carpooling and alternative modes of transportation to reduce automobile travel.

None of the project alternatives would reduce impacts associated with traffic and level of service standards to below a significant level because all of the alternatives would allow for future development that would result in increases in traffic on project area roadways. The Reduced Employment Alternative, Reduced Residential Alternative, and Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would reduce impacts as compared to the proposed project due to reduced growth allowed under these alternatives; however, these alternatives would still contribute to a significant increase in traffic and impacts would be significant and unavoidable.

Because no feasible mitigation measures are available to mitigate the four segment impacts and six intersection impacts to a level below significant; because application of all General Plan goals and policies would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant, impacts associated with traffic and level of service standards would be significant and unavoidable.

C-8 **Cumulative Significant Effect – Traffic and Level of Service Standards:** Implementation of the proposed project would result in a significant cumulative impact to traffic and level of service standards associated with 14 deficient roadway segments and seven deficient intersections in the year 2035.

Facts in Support of Finding: The discussion provided above for the project's direct/indirect impacts to traffic and level of service standards also applies to the project's cumulative impact, since it analyzes the cumulative 2035 buildout scenario. The proposed General Plan Update, in combination with other cumulative projects, would result in a significant cumulative impact to 14 roadway segments and seven intersections in the project area. The proposed project's contribution to the significant impacts would be cumulatively considerable. General Plan Update policies and mitigation measures would reduce some cumulative impacts to a less than significant level, but not all. No feasible mitigation measures or alternatives are available to achieve an acceptable LOS at all project area intersections and roadway segments. Therefore,

project impacts to the specified traffic and level of service standards would remain cumulatively considerable.

UTILITIES AND SERVICE SYSTEMS

C-9 **Direct/Indirect Significant Effect – Adequate Water Supplies:** Implementation of the proposed project would result in a significant impact related to adequate water supplies due to an increase in water demand that would exceed existing entitlement and resources, or necessitate new or expanded entitlements.

Feasible Mitigation Measures: Implementation of the following feasible mitigation measure identified in the Final EIR would partially mitigate the proposed project's impact, although not to below a level of significance.

- **Mitigation Measure Util-1** requires the Escondido Water and Wastewater Division (EWWD) Water Distribution Master Plan to be updated to accommodate the buildout of the proposed General Plan Update. This would be achieved by increasing and/or expanding existing water infrastructure, providing recycled water distribution facilities throughout the City to offset potable water demand for landscaping and other purposes and other measures/strategies that achieve the goal of providing an adequate water supply to serve the buildout of the General Plan Update.

Infeasible Mitigation Measures

The following mitigation measure would fully reduce the proposed project's impact to adequate water supply to below a level of significance. However, this measure has been determined by the City to be infeasible, as discussed below.

(1) Implement a Citywide moratorium on building permits and development applications in any areas of the City that would have an inadequate imported water supply to serve future development until adequate supplies are procured.

Rationale for Rejection: This measure would effectively result in no increase in the amount of imported water demand within the General Plan Update area. However, this measure would impede the City's ability to implement the General Plan Update and Downtown Specific Plan Update because it would prohibit future development in areas identified for increased growth in the proposed project area. This mitigation measure would also conflict with the project objective to meet the housing needs of existing and future residents. Therefore, this mitigation measure would not be implemented.

Facts in Support of Finding: Implementation of the proposed project would accommodate an increase in population, housing and other development within the project area, which would increase water demand and potentially result in an inadequate water supply based on water

supply shortages predicted during multiple dry-water years in the San Diego County Water Authority (SDCWA) 2010 Urban Water Management Plan (UWMP).

While the City's allocation of water is controlled by the SDCWA and not within the jurisdiction of the City of Escondido, multiple policies in the Mobility and Infrastructure Element of the General Plan Update relate to the provision of an adequate water supply. In the Mobility and Infrastructure Element, Water System Policies 10.1 through 10.14 relate specifically to potable water infrastructure. Policies 10.1 through 10.4 require regular updates of the Water Master Plan; maintenance of an adequate water supply, treatment, and distribution system to meet normal and emergency situations; and design of the water supply and distribution system, including the Escondido-Vista Water Treatment Plant, to address the General Plan Update land use projections. Water System Policies 10.5 and 10.6 address financing of new water infrastructure and require new development to provide adequate water facilities or finance the costs of improvements. Water System Policies 10.7 through 10.14 require the proper construction of new water infrastructure; improvements to target areas; reduced costs and GHG emissions; adherence to federal and state drinking water quality standards; implementation of water conservation programs; incorporation of water conservation techniques into building and site design; increased recycled water use; and education about water conservation and reclamation.

The proposed E-CAP contains a number of reduction measures that would promote water conservation, which would subsequently reduce potable water demand. Reduction measure R2-W2, Water Conservation Strategies, aims to increase the use of recycled water and the incorporation of water efficient fixtures, drought tolerant landscaping, permeable hardscapes, and onsite stormwater capture and reuse facilities. Reduction measure R2-W3, Increased Recycled Water Use, promotes development that incorporates the use of recycled water. Reduction measure R3-W1, Water Efficiency and Conservation Education, promotes water conservation strategies.

The General Plan Update policies and E-CAP reduction measures listed above would minimize the proposed project's potentially significant impacts associated with adequate water supply. However, even with these policies and reduction measures in place, implementation of the proposed project would accommodate an increase in population, housing and other development within the project area, which would increase water demand and potentially result in inadequate water supplies. Impacts would remain significant and unavoidable, even with implementation of mitigation measure Util-1.

None of the project alternatives would reduce impacts associated with adequate water supply to below a significant level because all of the alternatives would increase future water demand by accommodating new growth. The Reduced Employment Alternative, Reduced Residential Alternative, and Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would reduce impacts compared to the proposed project due to reduced overall growth under these alternatives; however, these alternatives would still contribute to an

increase in water demand that would have the potential to exceed available supply and result in a significant and unavoidable impact.

Because mitigation measure Util-1 would not reduce the project's impact to a less than significant level; because the only mitigation measure that would fully mitigate the project's significant impact has been found to be infeasible; because application of all General Plan goals and policies would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant; impacts associated with adequate water supply would be significant and unavoidable.

C-10 **Cumulative Significant Effect – Adequate Water Supplies:** Implementation of the proposed project would result in a significant cumulative impact related to inadequate water supplies.

Facts in Support of Finding: The SDCWA 2010 UWMP predicts water shortages during multiple dry water year conditions. The proposed project, in combination with other cumulative projects, would increase the demand for potable water in the service area of SDCWA and would be subject to, and potentially exacerbate, the water shortage during multiple dry water years. Additionally, the proposed General Plan Update and Downtown Specific Plan Update growth projections are not accounted for in the various 2010 UWMPs prepared by water district's serving the proposed project area and would potentially be subject to inadequate water supplies. Therefore, the proposed project would result in a cumulatively considerable contribution to a significant cumulative impact related to future water demand. General Plan Update and E-CAP policies and mitigation measures would reduce future water demand, but not to below a level for which adequate water supply could be ensured. No feasible mitigation measures or alternatives are available to achieve a less than significant impact. Therefore, project impacts related to adequate water supply would remain cumulatively considerable.

C-11 **Direct/Indirect Significant Effect – Sufficient Landfill Capacity:** Implementation of the proposed project would result in a significant impact related to sufficient landfill capacity because the proposed project would allow for the development of land uses that would increase the demand for solid waste disposal, which may not be served by landfills with adequate capacity to accommodate the project's future solid waste disposal needs.

Feasible Mitigation Measures: No feasible mitigation measures are available to mitigate this impact to a less than significant level.

Infeasible Mitigation Measures: The following mitigation measures (and variations of these measures) were considered in attempting to reduce impacts associated with sufficient landfill capacity to below a level of significance. However, the City has determined these measures to be infeasible for the reasons listed below. Therefore, these mitigation measures would not be implemented.

(1) Require all proposed development to obtain written verification of sufficient landfill capacity for the next 20 years.

Rationale for Rejection: This mitigation measure would prove infeasible because existing landfill facilities are not projected to have sufficient capacity to serve future demand. Therefore, this measure would impede the City's ability to implement the General Plan Update and Downtown Specific Plan Update because it would prohibit future development in areas identified for increased growth in the proposed project area. This mitigation measure would conflict with the project objective to meet the housing needs of existing and future residents because new development would be unable to obtain verification of adequate landfill capacity for the next 20 years and, therefore, future growth in the City would be prohibited. For the reasons listed above, this mitigation measure would not be implemented.

(2) Require any proposed project that is expected to result in an increase in solid waste disposal demand to construct a solid waste disposal facility, concurrent with development, to meet the needs of the project.

Rationale for Rejection: This mitigation measure would prove infeasible because it places the burden of development of new solid waste disposal facilities on the developer, would require permits from local and state agencies, and would have the potential result in significant environmental impacts from the construction of multiple solid waste facilities throughout the proposed project area. Implementing multiple solid waste disposal sites would increase environmental degradation throughout the proposed project area.

Facts in Support of Finding: If additional landfills are not constructed and existing landfills are not expanded, the County's Integrated Waste Management Plan Siting Element estimates that the County of San Diego, including the proposed project area, will run out of physical landfill capacity by 2016. The horizon year of the General Plan is 2035 and land uses proposed under the General Plan Update could generate solid waste requiring disposal well beyond year 2035. Therefore, the development of future land uses as designated in the proposed General Plan Update and Downtown Specific Plan Update would have the potential to be served by landfills with insufficient capacity to accommodate future solid waste disposal needs. Solid waste generated from implementation of E-CAP reduction measures would also be potentially served by landfills with insufficient capacity. The siting of new landfills and/or expansion of existing landfills is outside of the jurisdiction of the City of Escondido.

While the siting of new landfills and/or expansion of existing landfills is outside of the jurisdiction of the City of Escondido, the General Plan Update contains several policies within the Mobility and Infrastructure Element to assist in ensuring adequate landfill capacity is available to the City. Solid Waste and Recycling Policy 13.1 requires the support of efforts to maintain adequate solid waste facilities and services by working with local service providers of solid waste collection, disposal, and recycling. Solid Waste and Recycling Policies 13.2 through 13.7 require regular updates of the Citywide Recycling Plan; continued support of residential, commercial, and construction recycling programs; consideration of commercial recycling programs; encouragement of construction waste recycling; provision of electronic waste drop off locations; and encouragement of recycled materials in new construction. Solid Waste and Recycling Policies 13.8 through 13.11 promote local businesses that manufacture, distribute,

and sell recycled materials; sponsor annual clean-up events; allow small solid waste collection facilities in commercial and industrial areas; and allow sites for solid waste transfer stations in designated areas.

The proposed E-CAP includes two reduction measures that would reduce solid waste generation and disposal. Reduction measure R2-S1, Waste Disposal Programs, sets a stringent target for Escondido waste disposal rates and reduction measure R3-S2, Waste-Related Education and Outreach, promotes public education efforts about residential and commercial waste reduction.

While proposed General Plan Update policies, E-CAP reduction measures and existing regulations are intended to provide adequate solid waste disposal facilities for the future and increase waste diversion, unless additional landfill facilities are provided, impacts would remain significant and unavoidable.

None of the project alternatives would reduce impacts associated with landfill capacity to a less than significant level because all of the alternatives would increase landfill demand by accommodating new growth. The Reduced Employment Alternative, Reduced Residential Alternative, and Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would reduce impacts compared to the proposed project due to overall reduced growth associated with these alternatives; however, these alternatives would still contribute to an increase in solid waste generation beyond 2016 that would result in a potentially significant and unavoidable impact.

Because the mitigation measures listed above have been found to be infeasible; because application of all General Plan Update and E-CAP goals and policies would not achieve a level of less than significant; and because there are no feasible project alternatives that would achieve a level of less than significant; impacts associated with landfill capacity would be significant and unavoidable.

C-12 **Cumulative Significant Effect – Sufficient Landfill Capacity:** Implementation of the proposed project would result in a significant cumulative impact related to sufficient landfill capacity.

Facts in Support of Finding: The proposed project, in combination with other cumulative projects, would increase the demand for solid waste disposal and management needs within the region. As discussed above under Direct/Indirect Significant Effect - Sufficient Landfill Capacity, if additional landfills are not constructed and existing landfills are not expanded, the County's Integrated Waste Management Plan Siting Element estimates that the County of San Diego, including the proposed project area, will run out of physical landfill capacity by 2016. Since the proposed project and many cumulative projects would be constructed and/or have an operational life that exceeds 2016, the expected year for regional landfills to reach capacity, the existing regional landfill facilities do not have adequate capacity to accommodate the increase in solid waste disposal needs that would occur from development of cumulative projects. Therefore, cumulative regional projects would result in a potentially significant cumulative

impact associated with insufficient landfill capacity and the proposed project's contribution would be cumulatively considerable.

The project would result in a cumulatively considerable contribution to a significant cumulative impact related to landfill capacity. General Plan Update policies and mitigation measures would reduce future solid waste generation, but not to below a level for which sufficient landfill capacity could be ensured. No feasible mitigation measures or alternatives are available to achieve a less than significant impact. Therefore, project impacts related to sufficient landfill capacity would remain cumulatively considerable.

Section D – Findings Regarding Alternatives

Section 15126.6(a) of the State CEQA Guidelines requires the discussion of "a reasonable range of alternatives to a project, or the location of a project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Seven alternatives to the proposed project were analyzed, including the No Project Alternative, Reduced Employment Alternative, Reduced Residential Alternative, Blended Reduced Downtown/Focused Smart Growth and Employment Alternative, Mobility and Infrastructure Element Downtown Couplet Alternative, Promenade Retail Center and Vicinity Alternative, and Nutmeg Street Alternative. The last three alternatives are planning alternatives that do not meet the purpose of an alternative as identified in CEQA Guidelines Section 15126.6 because they would not be capable of avoiding or substantially lessening the significant effect of the project. However, these alternatives were considered and evaluated due to interest identified by members of the public, City staff and/or the City Council. In addition, a number of alternatives were considered and ultimately rejected from further analysis, as described in Section 6.2 of the EIR, pursuant to CEQA Guidelines Section 15126.6(c).

These findings contrast and compare the alternatives where appropriate in order to demonstrate that the selection of the proposed project, while still causing certain unavoidable significant environmental impacts, would result in substantial environmental, planning, public safety, economic, and other benefits. In rejecting the alternatives that were analyzed in the EIR, the City of Escondido has examined the project objectives and weighed the ability of each of the various alternatives to meet the objectives. The City finds that the proposed project best meets the project objectives with the least environmental impact. The objectives that were adopted by the City, and which set the framework for the project, are as follows:

1. Establish General Plan boundaries that allow for the planning of quality, managed and sustainable growth, while meeting the housing needs of existing and future residents during the General Plan's planning horizon (year 2035).
2. Maintain residential densities in outlying areas to accommodate growth, preserve and enhance existing neighborhoods, guide additional growth towards downtown and along key transportation corridors and improve circulation and safety for vehicles and pedestrians.

3. Maintain areas for high quality, diversified and employee-intensive industrial, retail, technology, manufacturing and service-oriented businesses that create and sustain a strong economic base and provide opportunities for the full employment of a diverse set of skills.
4. Create an economically viable urban downtown and urban core with exciting activities and unique land uses that attract local residents and tourists, such as retail, office, residential, entertainment and cultural uses.
5. Achieve a sustainable and integrated system of land use and transportation in the City in a manner that will:
    a. Significantly decrease overall community consumption, specifically the consumption of non-local, non-renewable and non-recycled materials, water, and energy and fuels.
    b. Within renewable limits, encourage the use of local, non-polluting, renewable and recycled resources (water, wind, solar and geothermal energy and material resources).
    c. Create a multi-modal transportation system that minimizes and, where possible, eliminates pollution and motor vehicle congestion while ensuring safe mobility and access for all without compromising the ability to protect public health and safety.
    d. Facilitate a reduction in automobile dependency in favor of affordable alternative, sustainable modes of travel.
    e. Implement land use and transportation planning and policies to foster compact, mixed use projects, forming urban villages designed to maximize housing choices and encourage walking, bicycling and the use of existing and future public transit systems.
    f. Encourage residents to recognize that they share the local ecosystem with other living things that warrant respect and responsible stewardship.
6. Provide a list of specific actions that will reduce Greenhouse Gas (GHG) emissions, with the highest priority given to actions that provide the greatest reduction in GHG emissions and benefits to the community at the least cost, while establishing a qualified reduction plan from which future development within the City can tier.

The following provides a summary of each alternative fully analyzed in Chapter 6 of the Final EIR. The summary includes rationale as to why each alternative has been rejected.

No Project Alternative

The No Project Alternative (refer to Subchapter 6.3.1 of the Final EIR) assumes that the proposed project, including the General Plan Update, Downtown Specific Plan Update and Climate Action Plan, would not be adopted or implemented and the currently adopted City of Escondido General Plan (1990) would be the applicable planning document for the proposed project area. Development and redevelopment would continue to occur in the proposed project area under the existing General Plan; however, when compared to the proposed project, this alternative would not incorporate higher density development in the downtown and urban core area, accommodate greater residential, commercial and industrial development in the 15 project study areas or implement smart growth concepts. Under the

No Project Alternative, land use designations within the proposed project area would occur as designated in the adopted General Plan.

Whereas the proposed project would guide future development toward a higher quality of life by incorporating smart growth principles and encouraging sustainability, the No Project Alternative would accommodate growth in the City, but would not encourage multi-modal transportation, increased energy and water efficiency, or preservation of existing communities by focusing new growth in suitable areas of the city. Under the No Project Alternative, community-wide GHG emissions in the City would continue to increase as a result of new development allowed under the existing General Plan (1990) but the proposed E-CAP reduction measures would not be implemented. Without implementation of the E-CAP reduction measures or additional mitigation measures, future development under the No Project Alternative would conflict with the goals of Assembly Bill (AB) 32. Moreover, the No Project Alternative does not include any of the mitigation measures for future development described in the EIR and the Mitigation Monitoring and Reporting Program (MMRP) for potentially significant impacts related to growth that cannot be avoided under this alternative, including air quality, noise and traffic.

The No Project Alternative would only partially meet four of the proposed project objectives (1, 2, 3 and 4) and would not meet the other two objectives (5 and 6). The No Project Alternative would partially meet Objectives 1 and 2 because this alternative would preserve and enhance existing neighborhoods and improve circulation and safety but would not guide additional growth towards downtown or along key transportation corridors and would not adjust the existing General Plan boundaries to allow for the planning of quality, managed and sustainable growth or meet the housing needs of future residents. The No Project Alternative would partially meet Objectives 3 and 4 because it would provide employment uses (Objective 3) and promote a developed downtown and urban core (Objective 4), although not to the same extent as the proposed project. Objectives 5 and 6 would not be met by the No Project Alternative because the E-CAP measures to reduce energy usage and associated GHG emissions would not be implemented. In addition, SANDAG's smart growth strategies that promote multi-modal transportation and the alternative transportation concepts identified in the Complete Streets Assessment (LLG 2011c) would not be implemented. For these reasons, the No Project Alternative would only partially meet three of the proposed project objectives and would not meet the other two project objectives.

Therefore, the No Project Alternative has been rejected because it fails to fully meet any of the six project objectives, would not substantially avoid the potentially significant impacts of the proposed project, and would not encourage sustainable growth, resulting in conflicts with AB 32.

Reduced Employment Alternative

The Reduced Employment Alternative (refer to Subchapter 6.3.2 of the Final EIR) would implement the proposed General Plan Update goals and policies; the Downtown Specific Plan Update goals and policies; and the E-CAP. However, under the Reduced Employment Alternative, multiple areas identified for employment land uses under the proposed project would be reduced or eliminated entirely. The Reduced Employment Alternative would accommodate the same total number of dwelling units as the proposed project. However,

the Reduced Employment Alternative would accommodate a total of 7,457,000 square feet (sf) of employment land uses, which is 6,193,000 sf fewer employment land uses than would be accommodated by the proposed project.

This alternative would promote sustainable development, a variety of housing, and some economic development; however, this alternative would not provide the same jobs and housing balance promoted by the proposed project to serve future residents. Additionally, this alternative would result in generally the same environmental impacts as the proposed project, although impacts that are proportionately related to growth would be somewhat reduced compared to the proposed project, such as impacts to air quality, public services, and traffic. None of the potentially significant impacts of the proposed project would be avoided under this alternative.

The Reduced Employment Alternative would meet Objectives 1, 2, 5 and 6. This alternative would be consistent with Objective 1 because it would establish the same General Plan boundary as the proposed project, meeting the housing needs of future residents. The Reduced Employment Alternative would meet Objective 2 because it would maintain residential densities in outlying areas to accommodate growth, preserve existing neighborhoods, guide additional growth towards the downtown and along key transportation corridors and improve circulation and safety. This alternative would achieve Objectives 5 and 6 by implementing the E-CAP measures to reduce energy usage and associated GHG emissions. In addition, this alternative would implement SANDAG's smart growth strategies that promote multi-modal transportation and the alternative transportation concepts. The Reduced Employment Alternative would not meet Objectives 3 or 4. A reduction in employment land uses under this alternative would result in its inability to create and sustain a strong economic base for the community (Objective 3) or create an economically viable urban downtown and urban core (Objective 4).

Therefore, the Reduced Employment Alternative has been rejected because it fails to meet two of the six project objectives and would not substantially lessen or avoid the potentially significant impacts of the proposed project.

Reduced Residential Alternative

The Reduced Residential Alternative (refer to Subchapter 6.3.3 of the Final EIR) would implement the proposed General Plan Update goals and policies; the Downtown Specific Plan Update goals and policies; and the E-CAP. However, under the Reduced Residential Alternative, multiple areas identified for smart growth residential land uses under the proposed project would be reduced or eliminated entirely. When compared to the proposed project, the Reduced Residential Alternative would accommodate a total of 5,899 dwelling units, or 4,025 less dwelling units than would be accommodated by the proposed project. The Reduced Residential Alternative would accommodate the same square footage of employment land use as the proposed project.

This alternative would promote sustainable development through the E-CAP measures and would provide a variety of economic development; however, this alternative would not promote smart growth or provide a variety of housing to the extent of the proposed project. The Reduced Residential Alternative would not

generate the housing needed to attract the desired mix of entertainment and activities that rely on a denser, higher populated urban core. Additionally, this alternative would result in generally the same environmental impacts as the proposed project, although impacts that are proportionately related to growth would be somewhat reduced compared to the proposed project, such as impacts to air quality, public services, and traffic. None of the potentially significant impacts of the proposed project would be avoided under this alternative.

The Reduced Residential Alternative would meet Objectives 2, 3 and 6 and partially meet Objectives 1, 4 and 5. The Reduced Residential Alternative would partially meet Objective 1 because it would establish the same General Plan boundary as the proposed project; however, it would not meet the long-term housing needs of future residents identified in Objective 1. The Reduced Residential Alternative would meet Objective 2 because it would preserve existing neighborhoods, guide additional growth towards the downtown and along key transportation corridors, and improve circulation and safety for vehicles and pedestrians. Although this alternative would result in a reduction in residential land uses, it would still result in the ability to create and sustain a strong economic base for the community by proposing the same amount of employment lands as the proposed project (Objective 3). This alternative would partially meet Objective 4, because it would create an economically viable urban downtown and core but would not provide the needed residential development in the downtown area to support those economic uses. This alternative would partially meet Objective 5, because it would achieve a sustainable and integrated system of land use and transportation. However, it would not create compact, mixed use projects, forming urban villages designed to maximize affordable housing to the same extent as the proposed project because multiple areas identified for smart growth residential land uses under the proposed project would be reduced or eliminated entirely under this alternative. The Reduced Residential Alternative would achieve Objective 6 by implementing the E-CAP measures to reduce energy usage and associated GHG emissions. In addition, this alternative would implement strategies that promote multi-modal transportation and the alternative transportation concepts identified in the Complete Streets Assessment prepared by LLG Engineers (Appendix I3 in Volume II of the Final EIR).

Therefore, the Reduced Residential Alternative has been rejected because it would only partially meet three of the six project objectives and would not substantially lessen or avoid the potentially significant impacts identified for the proposed project.

Blended Reduced Downtown/Focused Smart Growth and Employment Alternative

The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative (refer to Subchapter 6.3.4 of the Final EIR) would implement the proposed General Plan Update goals and policies; the Downtown Specific Plan Update goals and policies; and the E-CAP. However, under this alternative multiple areas identified for smart growth residential land uses and employment land uses under the proposed project would be reduced or eliminated entirely. The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would accommodate 2,625 less dwelling units than the proposed project, for a total of only 7,299 dwelling units by 2035. The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would accommodate a total of 10,575,000 sf of employment land uses, which is

3,075,000 sf less than would be accommodated by the proposed project. The primary areas where residential and/or employment land uses would be reduced are the Downtown SPA, Felicita Avenue and Centre City Parkway, Transit Station Target Area, Centre City Parkway/ Brotherton Road Target Area, East Valley Parkway Target Area and Imperial Oaks SPA.

This alternative would promote sustainable development through the E-CAP measures and some variety of residential and economic development; however, this alternative would not promote smart growth, improve the jobs to housing balance, or provide a variety of housing and employment opportunities to the extent of the proposed project. The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would not generate the housing needed to attract the desired mix of entertainment and activities that rely on a denser, higher populated urban core. Additionally, this alternative would result in generally the same environmental impacts as the proposed project, although impacts that are proportionately related to growth would be somewhat reduced compared to the proposed project, such as impacts to air quality, public services, and traffic. None of the potentially significant impacts of the proposed project would be avoided under this alternative.

The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would meet Objectives 2 and 6, partially meet Objectives 1 and 5, and not meet Objectives 3 and 4. This alternative would partially meet Objective 1 because it would establish the same General Plan boundary as the proposed project; however, it would not meet the long-term housing needs of future residents identified in Objective 1. The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would meet Objective 2 because it would maintain residential densities in outlying areas, preserve and enhance existing neighborhoods, guide some growth towards downtown and along key transportation corridors, and improve circulation and safety for vehicles and pedestrians. The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would not meet Objective 3 or Objective 4. A reduction in employment land uses under this alternative would result in its inability to create and sustain a strong economic base for the community (Objective 3) or create an economically viable urban downtown and urban core because it would not provide as much residential, retail and office development in the downtown area as the proposed project (Objective 4). This alternative would partially meet Objective 5, because it would achieve a sustainable and integrated system of land use and transportation. However, it would not create compact, mixed use projects, forming urban villages designed to maximize affordable housing to the same extent as the proposed project because multiple areas identified for smart growth residential land uses under the proposed project would be reduced under this alternative. The Blended Reduced Downtown/Focused Smart Growth and Employment Alternative would achieve Objective 6 by implementing the E-CAP measures to reduce energy usage and associated GHG emissions. In addition, this alternative would implement strategies that promote multi-modal transportation and the alternative transportation concepts identified in the Complete Streets Assessment prepared by LLG Engineers (Appendix I3 in Volume II of the Final EIR).

Therefore, the Blended Reduced Downtown/Focused Smart Growth and Employment Alternative has been rejected because it would only fully meet two project objectives, would partially meet two project

objectives and would not meet two project objectives. In addition, this alternative would not substantially lessen or avoid the potentially significant impacts of the proposed project.

Mobility and Infrastructure Element Downtown Couplet Alternative

The Mobility and Infrastructure Element Downtown Couplet Alternative (refer to Subchapter 6.4.1 of the Final EIR) would implement the proposed General Plan Update land use plan, goals and policies, the Downtown Specific Plan Update land use plan, goals and policies, and the E-CAP. However, under this alternative the Mobility and Infrastructure Element of the proposed General Plan Update would be realigned so that the existing Valley Parkway and 2nd Avenue one-way couplet would accommodate two-way traffic. Proposed two-way circulation would require the reduction in lanes along each roadway. The roadways would be reduced to one-lane in either direction (two-lane roadways) with on-street parking and bike lanes. Four-lane roadways could not be accommodated because of the limited curb-curb width of approximately 52 feet along most of the couplet. While four-lanes could physically fit, left-turn pockets could not be provided, nor could parking or bike lanes.

The Downtown Couplet Alternative would meet all of the proposed project's objectives because under this alternative, the land use plan, goals and policies proposed in the General Plan Update would remain the same and only the Valley Parkway/2nd Avenue Couplet would be realigned to accommodate two-way traffic. However, this alternative would not reduce or eliminate any of the potentially significant impacts of the proposed project. This alternative would result in increased impacts compared to the proposed project related to air quality, traffic level of service, road safety, emergency access, and alternative transportation because more congestion would occur under this alternative.

Therefore, the Mobility and Infrastructure Element Downtown Couplet Alternative has been rejected because it would not lessen or avoid the potentially significant impacts of the proposed project, and would result in greater air quality and transportation impacts compared to the proposed project.

Promenade Retail Center and Vicinity Alternative

The Promenade Retail Center and Vicinity Alternative (refer to Subchapter 6.4.2 of the Final EIR) would implement the proposed General Plan Update goals and policies, the Downtown Specific Plan Update goals and policies, and the E-CAP reduction measures. However, under this alternative, mixed use office land uses south of 9th Avenue within the Promenade Retail Center and Vicinity Target Area would be increased by 100,000 sf. Total employment land uses throughout the proposed project planning area would be increased to 13,750,000 sf under this alternative. The same number of dwelling units would be accommodated in the Promenade Retail Center and Vicinity Target Area (628 dwelling units) and throughout the entire proposed project planning area (9,924 dwelling units) as the proposed project.

The Promenade Retail Center and Vicinity Alternative would meet all of the objectives identified for the proposed project. An increase in office employment uses under this alternative would result in the increased ability of this alternative to create and sustain a strong economic base for the community (Objective 3) and create an economically viable urban downtown and core (Objective 4). The

Promenade Retail Center and Vicinity Alternative would also result in the establishment of a General Plan boundary that accommodates the goals of Objective 1 and would guide additional growth towards downtown and along key transportation corridors, as stated in Objective 2. Further, under this alternative, smart growth strategies and the E-CAP would be implemented, which would result in the accomplishment of Objectives 5 and 6. However, this alternative would not reduce or eliminate any of the potentially significant impacts of the proposed project. This alternative would result in increased impacts compared to the proposed project related to air quality, noise, public services, and traffic because more growth would occur under this alternative.

The Promenade Retail Center and Vicinity Alternative does not meet the requirements of an alternative as identified in Section 15126.6 of the CEQA Guidelines because it would not avoid or substantially lessen any of the significant impacts of the proposed project. The Promenade Retail Center and Vicinity Alternative would result in similar, and in some cases marginally greater, significant impacts as the proposed project; therefore, the findings made under Sections A, B and C above for the proposed project also apply to this alternative.

Nutmeg Street Alternative

The Nutmeg Street Alternative (refer to Subchapter 6.4.3 of the Final EIR) would implement the proposed General Plan Update goals and policies, the Downtown Specific Plan Update goals and policies, and the E-CAP reduction measures. Under this alternative, new office employment land uses would replace proposed residential land uses within the Nutmeg Street Study Area. The proposed project identifies the development of 40 residential dwelling units within this study area. The Nutmeg Street Alternative would accommodate 100,000 sf of new office employment land uses in this study area, which would be developed instead of the 40 dwelling units. Therefore, this alternative would result in a total of 13,750,000 sf of employment land uses and 9,884 dwelling units throughout the entire proposed project planning area.

The Nutmeg Street Alternative would meet all six of the objectives identified for the proposed project. An increase in employment land uses under this alternative would result in the increased ability to create and sustain a strong economic base for the community (Objective 3) and create an economically viable urban downtown and core (Objective 4). The Nutmeg Street Alternative would result in the establishment of a General Plan boundary that accommodates the goals of Objective 1 and would guide additional growth towards downtown and along key transportation corridors as outlined in Objective 2. Further, under this alternative, smart growth strategies and the E-CAP reduction measures would be implemented, which would result in the accomplishment of Objectives 5 and 6. However, this alternative would not reduce or eliminate any of the potentially significant impacts identified for the proposed project. This alternative would result in increased impacts compared to the proposed project related to air quality, noise, public services, and traffic because more growth would occur under this alternative.

The Nutmeg Street Alternative does not meet the requirements of an alternative as identified in Section 15126.6 of the CEQA Guidelines because it would not avoid or substantially lessen any of the significant impacts of the proposed project. The Nutmeg Street Alternative would result in similar, and in some cases marginally greater, significant impacts as the proposed project; therefore, the findings made under Sections A, B and C above for the proposed project also apply to this alternative.

Environmentally Superior Alternative

According to Section 15126.6(e)(2) of the CEQA Guidelines, an EIR is required to identify the environmentally superior alternative, which is the alternative having the potential for the fewest significant environmental impacts, from among the range of reasonable alternatives that are evaluated in the EIR. The Reduced Employment Alternative is identified as the Environmentally Superior Alternative. Because the overall employment land use development in the project area would be decreased compared to the proposed project, impacts associated with scenic vistas; scenic resources; visual character and quality; lighting and glare; direct conversion of agricultural resources; indirect conversion of agricultural and forestry resources; air quality violations; sensitive receptors; special status plant and wildlife species; riparian habitat and other sensitive natural communities; wildlife movement corridors and nursery sites; historical resources; archeological resources; excessive noise levels; excessive groundborne vibration; permanent and temporary ambient noise levels; displacement of housing and people; fire and police protection; traffic and level of service standards; wastewater treatment requirements; new water and wastewater treatment facilities; sufficient stormwater drainage facilities; adequate water supplies; adequate wastewater facilities; sufficient landfill capacity; solid waste regulations; and energy would be proportionately less than those identified for the proposed project. However, as discussed above under the Reduced Employment Alternative heading, this alternative would not provide the jobs and housing balance needed to serve future residents and none of the potentially significant impacts of the proposed project would be avoided under this alternative. The significant and unavoidable impacts identified for the proposed project would also be significant and unavoidable under this alternative. Additionally, the Reduced Employment Alternative would not meet Objective 3 or Objective 4. A reduction in employment land uses under this alternative would result in its inability to create and sustain a strong economic base for the community (Objective 3) or create an economically viable urban downtown and urban core (Objective 4). Therefore, the Reduced Employment Alternative has been rejected because it fails to meet two of the six project objectives and would not substantially lessen or avoid the potentially significant impacts of the proposed project.

STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE ESCONDIDO CLIMATE ACTION PLAN PHG 09-0020 SCH # 2010071064

The Findings required under the California Environmental Quality Act ("CEQA") (Public Resources Code Sections 21000 *et seq.*) and the CEQA Guidelines (California Code Regulations, Title 14, Section 15000 *et seq.*) supporting the approval of the City of Escondido (City) Climate Action Plan (hereinafter referred to as the "project") conclude that the City's approval of the project would result in significant impacts that cannot be substantially lessened or avoided. Despite these impacts, the Escondido City Council chooses to approve the project because specific economic, social and other benefits of the project outweigh and override these significant and unavoidable impacts.

The City has adopted all feasible mitigation measures with respect to the significant unavoidable environmental impacts listed below. In addition, the City has analyzed a reasonable range of alternatives to the proposed project. Based on the analysis, the City has determined that the project as proposed is preferable to the project alternatives. Therefore, the City is adopting the Escondido Climate Action Plan and sets forth this Statement of Overriding Considerations for its adoption despite the following significant and unavoidable environmental impacts identified in the Final Environmental Impact Report (EIR) prepared for the General Plan Update, Downtown Specific Plan Update and Climate Action Plan.

Significant Unavoidable Environmental Impacts

Final EIR Section	**Environmental Issue (Type of Impact)**
4.3.3.2, 4.3.4	Air Quality Violations (Direct and Cumulative Impact)
4.4.4	Special Status Plant and Wildlife Species (Cumulative Impact)
4.4.4	Riparian Habitat and Other Sensitive Natural Communities (Cumulative Impact)
4.4.4	Wildlife Movement Corridors and Nursery Sites (Cumulative Impact)
4.12.3.2, 4.12.4	Excessive Groundborne Vibration (Direct and Cumulative Impact)
4.12.4	Permanent Increase in Ambient Noise Levels (Cumulative Impact)
4.13.3.2	Displacement of Housing and People (Direct Impact)
4.16.3.1, 4.16.4	Traffic and Level of Service Standards (Direct and Cumulative Impact)
4.17.3.4, 4.17.4	Adequate Water Supplies (Direct and Cumulative Impact)
4.17.3.6, 4.17.4	Sufficient Landfill Capacity (Direct and Cumulative Impact)

Each of the reasons for approval cited below is a separate and independent basis that justifies approval of the proposed project. Thus, even if a court were to set aside any particular reason or reasons, the City Council finds that it would stand by its determination that each reason, or any combination of reasons, is a sufficient basis for approving the Climate Action Plan, notwithstanding the significant and unavoidable impacts that may occur. The substantial evidence supporting the various benefits can be found in the CEQA Findings Regarding Significant Effects, the Final EIR and the Record of Proceedings.

Statement of Overriding Considerations

The City finds that the project would have the following economic, social, legal and other benefits:

1. The project, in association with the updated General Plan, identifies Greenhouse Gas (GHG) emission reduction targets pursuant to Assembly Bill (AB) 32 requirements during the General Plan's planning horizon (year 2035).
2. The project includes a program for reducing GHG emissions through a companion document 'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables' that provides flexibility for development applications in the city's AB 32 compliance requirements.
3. The project provides a strategic framework for reducing GHG emissions that accommodates a reasonable share of projected regional population growth at intensities that are appropriate with respect to existing development and community character.
4. The project provides a program for reducing GHG emissions that accounts for existing development, physical constraints, hazards, and incompatible uses and assigns densities and use types accordingly to ensure that communities and neighborhoods remain safe and livable.
5. The project, in association with the updated General Plan, improves air quality for all residents through the implementation of the 'Greenhouse Gas Emissions CEQA Thresholds and Screening Tables' that supports community development patterns, limits traffic congestion, promotes public and alternative transportation methods, and supports the goals of adopted regional transportation plans.
6. The project, in association with the updated General Plan, maintains areas for high quality, diversified and employee-intensive industrial, retail, technology, manufacturing and service-oriented businesses that create and sustain a strong economic base and provide opportunities for the full employment of a diverse set of skills.
7. The project, in association with the updated General Plan, creates an economically viable urban downtown and urban core with exciting activities and unique land uses that attract local residents and tourists, such as retail, office, residential, entertainment and cultural uses.
8. The project, in association with the updated General Plan, enhances the local economy and provides opportunities for future jobs and business development commensurate with forecasted growth by planning for commercial development near existing businesses, transportation hubs and walkable residential areas. Moreover, the project promotes continued agricultural production as an integral part of the region's economy by placing appropriate densities and compatible use types in prime farmland areas.
9. The project, in association with the updated General Plan, would achieve a sustainable and integrated system of land use and transportation in the City in a manner that would:
    a. Significantly decrease overall community consumption, specifically the consumption of non-local, non-renewable and non-recycled materials, water, and energy and fuels.
    b. Within renewable limits, encourage the use of local, non-polluting, renewable and recycled resources (water, wind, solar and geothermal energy and material resources).

c. Create a multi-modal transportation system that minimizes pollution and motor vehicle congestion while ensuring safe mobility and access for all without compromising the ability to protect public health and safety.

d. Facilitate a reduction in automobile dependency in favor of affordable alternative, sustainable modes of travel.

e. Implement land use and transportation planning and policies to foster compact, mixed use projects, forming urban nodes designed to maximize housing choices and encourage walking, bicycling and the use of existing and future public transit systems.

f. Encourage residents to recognize that they share the local ecosystem with other living things that warrant respect and responsible stewardship.

10. The project, in association with the updated General Plan, addresses adverse environmental effects associated with global climate change by facilitating sustainable development, promoting energy efficiency, and reducing greenhouse gas (GHG) emissions consistent with the state-wide goals of Assembly Bill 32, the California Global Warming Solutions Act of 2006.

11. The project, in association with the updated General Plan, provides policies aimed at developing a list of specific actions that will reduce GHG emissions, with the highest priority given to actions that provide the greatest reduction in GHG emissions and benefits to the community at the least cost, while establishing a qualified reduction plan from which future development within the City can tier.

12. The project, in association with the updated General Plan, is based on thorough research and analysis of existing conditions, changing local and regional circumstances, evolving trends in urban planning and a collaborative partnership with community members through an extensive public participation process.

13. The project, in association with the updated General Plan, establishes Quality of Life Standards to establish minimum thresholds of service levels for various public improvements and facilities. The timing of future development would rely upon the provision of facilities and services based upon these standards and will be used as the basis for capital improvement programs, impact fees, and other financing mechanisms established to provide facilities and services. The thresholds ensure the City's ability to accommodate growth, sustain its quality of life, and enhance the community's desirability.

14. The project, in association with the updated General Plan, implements a Growth Management Element to establish policies for balancing the timing of infrastructure improvements with current and anticipated demands for service through the adoption of specific implementation techniques. The Growth Management Element integrates General Plan goals and objectives with adopted Quality of Life Standards to facilitate the orderly development of public and private improvements. The element implements a framework for effective growth management that would establish parameters for periodically monitoring the impacts that growth has on the community and define the methods by which impacts are addressed, allowing decision makers to efficiently prioritize capital improvements.

15. The project brings the City into compliance with AB 32, which requires that a City identify its GHG reduction target and implement a program for achieving that target.

For the foregoing reasons, the City finds that the project's unavoidable potential significant environmental impacts are outweighed by these considerable benefits.

Mitigation Monitoring and Reporting Program for the Escondido Climate Action Plan

City File: PHG 09-0020

SCH # 2010071064

The City of Escondido adopts this Mitigation Monitoring and Reporting Program (MMRP) in accordance with Public Resources Code (PRC) Section 21081.6 and Section 15097 of the California Environmental Quality Act (CEQA) Guidelines. The purpose of the MMRP is to ensure that the Escondido Climate Action Plan (proposed project), which is the subject of the Final Program Environmental Impact Report (EIR), complies with all applicable environmental mitigation requirements.

The mitigation described in the EIR and summarized below provides a broad purpose and overview of actions that will occur in order to reduce identified environmental impacts. These measures are provided at the program EIR level and allow for future refinement or development of more specific measures as needed to further reduce impacts. Mitigation measures applicable to the proposed project include avoiding certain impacts altogether, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying impacts by repairing, rehabilitating, or restoring the affected environment, and/or reducing or eliminating impacts over time through preservation and maintenance operations over the life of the proposed project.

For each project that is subject to CEQA, PRC Section 21081.6 requires the Lead Agency to monitor performance of the mitigation measures included in any environmental document to ensure that the specified mitigation is implemented. The City of Escondido is the designated Lead Agency for the proposed project. The City is responsible for review of all monitoring reports, enforcement actions, and document disposition related to implementation of the MMRP.

After review and approval by the Lead Agency, minor changes to the MMRP are permitted but can only be made by the City of Escondido. No deviations from this MMRP shall be permitted unless it continues to satisfy the requirements of PRC Section 21081.6, as determined by the City of Escondido.

The organization of the MMRP follows the subsection formatting style presented within the Final Program EIR. Only those subsections of the environmental issues presented in the EIR that have mitigation measures are provided below in the MMRP table. All other subsections in the EIR do not contain mitigation measures. For each specified mitigation measure, the MMRP table identifies the following: 1) Implementation Action; 2) Method of Verification; 3) Timing of Verification; 4) Responsible Agency/Party; and 5) Verification Date.

Mitigation Monitoring and Reporting Program

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
AIR QUALITY					
Air-1 Construction Dust Control Measures. During grading activities for any future development within the General Plan Update planning area boundary, the onsite construction superintendent shall ensure implementation of standard best management practices to reduce the emissions of fugitive dust, including but not limited to the following actions: i. Water any exposed soil areas a minimum of twice per day, or as allowed under any imposed drought restrictions. On windy days or when fugitive dust can be observed leaving the construction site, additional water will be applied at a frequency to be determined by the onsite construction superintendent. ii. Temporary hydroseeding with irrigation will be implemented on all graded areas on slopes, and areas of cleared vegetation will be revegetated as soon as possible following grading activities in areas that will remain in a disturbed condition (but will not be subject to further construction activities) for a period greater than three months during the construction phase. iii. Operate all vehicles on the construction site at speeds less than 15 miles per hour. iv. Cover all stockpiles that will not be utilized within three days with plastic or equivalent material, to be determined by the onsite construction superintendent, or spray them with a non-toxic chemical stabilizer. v. If a street sweeper is used to remove any track-out/carry-out, only PM_{10}-efficient street sweepers certified to meet the most current South Coast Air Quality Management District Rule 1186 requirements shall be used. The use of blowers for removal of track-out/carry-out is prohibited under any circumstances.	Require that the specified measures be implemented during grading activities for future development projects.	Plan check and Site inspection	Prior to the issuance of any grading or building permit and At site inspection	City of Escondido Engineering Services-Field Engineering Section	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
Air-2 Air Quality Impact Assessment. An Air Quality Impact Analysis shall be prepared for projects within the General Plan Update boundary that exceed one of the air quality study trigger criteria in Table 4.3 12, Air Quality Impact Analysis Trigger Criteria.	Require that an Air Quality Impact Analysis be prepared for projects exceeding the trigger criteria, as specified.	Department review and approval	Prior to project approval	City of Escondido Community Development Department – Planning Division	

Table 4.3-12 Air Quality Impact Analysis Trigger Criteria

Land Use	Project Size that would Trigger an AQIA[3]	Single Family Dwelling Unit Equivalent[4]
Single Family Residential[1]	300 du	1 du/1 du
Apartments: 6-20 du/acre[1]	370 du	1 du/1.23 du
Apartments: – > 20 du/acre[1]	420 du	1 du/1.4 du
Condominiums[1]	370 du	1 du/1.23 du
Mobile Home Park[1]	400 du	1 du/1.33 du
Supermarket[2]	25,000 sf	1 du/83.33 sf
Restaurant, Fast Food w/drive through[2]	6,500 sf	1 du/21.67 sf
Restaurant, Quality Sit Down[2]	43,000 sf	1 du/143.33 sf
Neighborhood/County Park (undeveloped)[2]	880 acres	1 du/2.93 acre
Motel[2]	480 rooms	1 du/1.6 room
Standard Commercial Office (<100,000 sf per office site)[2]	190,000 sf	1 du/633.33 sf
Neighborhood shopping center[2]	35,000 sf	1 du/116.67 sf

(1) Limited by VOC emissions; for these residential units it is assumed that 5 percent of the units have active fireplaces burning 0.25 cord of wood over a period of 82 days and 10 percent of the units have active natural gas fireplaces that are used for 3 hours per day over a period of 90 days (note: hours per day and days per year are the URBEMIS defaults).
(2) Limited by CO emissions
(3) du = dwelling unit, sf = square feet, du/acre = dwelling units per acre
(4) Single family units per land use unit of measure
Source: County of San Diego 2007b

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
Air-3 Siting Sensitive Receptors near Waste Transfer Facility. A Health Risk Assessment (HRA) shall be prepared by a qualified air quality professional for development of new sensitive receptors proposed in the General Plan Update planning area within 500 feet of a waste transfer facility. Sensitive receptors include day care centers, schools, retirement homes, hospitals, medical patients in residential homes, or other facilities that may house individuals with health conditions that would be adversely impacted by changes in air quality. The project shall not be considered for approval until an HRA has been completed and approved by the City. The methodology for the HRA shall follow the Office of Environmental Health Hazard Assessment and SDAPCD guidelines for the preparation of HRAs. If a potentially significant health risk is identified, the HRA shall identify appropriate measures to reduce the potential health risk to below a significant level, or the sensitive receptor shall be sited in another location.	Require that a health risk assessment be prepared, as specified, for development of new sensitive receptors within 500 feet of a waste transfer facility.	Department review and approval	Prior to project approval	City of Escondido Community Development Department – Planning Division	
Air-4 Siting Sensitive Receptors near Industrial, Medical, or Research and Development Facilities. A Health Risk Assessment (HRA) shall be prepared by a qualified air quality professional for development of new sensitive receptors in the General Plan Update planning area proposed within one mile of industrial land uses, medical facilities, or research and development facilities that generate a potential source of Toxic Air Contaminants (TACs). Sensitive receptors include day care centers, schools, retirement homes, hospitals, medical patients in residential homes, or other facilities that may house individuals with health conditions that would be adversely impacted by changes in air quality. An HRA shall also be required for such facilities proposed within one mile of a sensitive receptor. The project shall not be considered for approval until an HRA has been completed and approved by the City. The methodology for the HRA shall follow the Office of Environmental Health Hazard Assessment and SDAPCD guidelines for the preparation of HRAs. If a potentially significant health risk is identified, the HRA shall identify appropriate measures to reduce the potential health risk to below a significant level, or the sensitive receptor or proposed facility shall be	Require that a health risk assessment be prepared, as specified, for development of new sensitive receptors within one mile of industrial land uses, medical facilities or research and development facilities that generate TACs.	Department review and approval	Prior to project approval	City of Escondido Community Development Department – Planning Division	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
sited in another location.					
CULTURAL RESOURCES					
Cul-1 Enhance community appreciation of the importance of the City's historic sites and buildings, and protect and preserve significant historical resources to the extent feasible through the identification of features of cultural and historical significance to the community and designation as landmark features, structures and sites of historic, aesthetic, and special character. The incorporation of historical resources into historical parks and multiple use recreation parks shall be encouraged.	Identify features of cultural and historical significance to the community and designate them as landmark features.	Department review and approval	On-going	City of Escondido Community Development Department – Planning Division	
Cul-2 Ensure landmarking and historical listing of City-owned historic sites.	Require landmarking and historical listing of City-owned sites.	Department review and approval	On-going	City of Escondido Community Development Department – Planning Division	
Cul-3 Require that significant archaeological resources be preserved in-situ, as feasible. The incorporation of resources into historical parks and multiple use recreation parks shall be encouraged. When avoidance of impacts is not possible, data recovery mitigation shall be required for all significant resources. Any significant artifacts recovered during excavation, other than cultural material subject to repatriation, shall be curated with its associated records at a curation facility approved by the City. Excavation of deposits of Native American origin shall be coordinated with and monitored by local Native American representatives.	Require that the significant archaeological resources be preserved or adequately mitigated.	Department review and approval	Prior to project approval	City of Escondido Community Development Department – Planning Division	
Cul-4 Develop management and restoration plans for identified and acquired properties with cultural resources.	Require that management plans and restoration plans be developed for properties with cultural resources when said properties are proposed for significant alterations.	Department review and approval	Prior to project approval	City of Escondido Community Development Department – Planning Division	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
Cul-5 Support the dedication of easements that protect important cultural resources by using a variety of funding methods, such as grant or matching funds, or funds from private organizations.	Identify funding sources to protect cultural resources.	Department review and approval	On-going	City of Escondido Community Development Department – Planning Division	
Cul-6 Protect significant cultural resources through coordination and consultation with the NAHC and local tribal governments, including SB-18 review.	Require that future development projects coordinate and consult with the NAHC and local tribal governments.	Department review and approval	Prior to project approval	City of Escondido Community Development Department – Planning Division	
NOISE					
Noi-1 Construction Vibration Best Management Practices. All general construction activities that take place within 100 feet of a building with the potential to be damaged by excessive vibration, or use pile-driving, blasting, or other high-impact construction equipment within 200 feet of a daytime NSLU (public and private educational facilities, churches, libraries, museums, cultural facilities, golf courses and passive recreational parks) shall implement the following construction BMPs recommended by the Federal Railroad Administration in the High Speed Ground Transportation Noise and Vibration Impact Assessment (2005): 1. Sequence of operations: a. Phase demolition, earthmoving, and ground-impacting operations so as not to occur in the same time period. 2. Alternative construction methods: a. Avoid impact pile driving where possible in vibration-sensitive areas. Drilled piles or the use of a sonic or vibratory pile driver causes lower vibration levels where the geological conditions permit their use. b. Select demolition methods not involving impact, where possible. For example, sawing bridge decks into sections that	Require that the specified measures be implemented, as applicable, during construction activities for future development projects.	Plan check and Site inspection	Prior to the issuance of any grading or building permit and At site inspection	1) Plan Check: City of Escondido Community Development Department – Building Division 2) Inspection: City of Escondido Engineering Services Department – Field Engineering Section	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
can be loaded onto trucks results in lower vibration levels than impact demolition by pavement breakers, and milling generates lower vibration levels than excavation using clam shell or chisel drops. c. Avoid vibratory rollers and packers near sensitive areas.					
Noi-2 Setback of Vibration-sensitive Land Uses from SPRINTER alignment. Future development of vibration-sensitive land uses within 450 feet of the SPRINTER right-of-way or places where people sleep within 230 feet of the SPRINTER right-of-way shall require a site-specific groundborne vibration analysis conducted by a qualified vibration analyst to determine that vibration levels generated by the SPRINTER at the proposed project site would not exceed the Federal Transit Administration's groundborne vibration standards for vibration sensitive equipment and sleep disturbance. If necessary, mitigation shall be required for land uses in compliance with the standards listed in EIR Table 4.12-10, General Plan Update Groundborne Vibration Impact Criteria.	Require that a site specific groundborne vibration analysis be conducted, as specified, for vibration-sensitive land uses and places where people sleep.	Department review and approval	Prior to project approval	City of Escondido Community Development Department – Planning Division	
POPULATION AND HOUSING					
Pop-1 The City of Escondido shall coordinate with property owners that would experience displacement under the proposed General Plan Update to communicate the implications of the proposed project on their property and to address public concerns and comments.	Require coordination with property owners that would experience displacement as a result of future infrastructure or development projects.	Department review	Prior to approval of any future infra-structure or development project that would displace homes or businesses.	City of Escondido Community Development Department – Planning Division	
TRANSPORTATION AND TRAFFIC					
Tra-1 The City of Escondido shall implement intersection improvement treatment and adaptive traffic signal control technology along the following roadway segments and at the following intersections prior to reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be	Require that the specified improvements be implemented prior to the segment or intersection reaching an	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment or	City of Escondido Engineering Services Department – Traffic Division	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
anticipated by traditional time-of-day plans, such as accidents and road construction. Roadway Segments ■ Mission Road between Barham Drive and Auto Park Way (LOS E) ■ Valley Parkway between Hickory Street and Fig Street (LOS F) ■ Valley Parkway between Fig Street and Date Street (LOS F) ■ Valley Parkway between Date Street and Ash Street (LOSF) Intersections ■ Nordahl Road/Auto Park Way/Mission Road (LOS E, PM peak hour) ■ Centre City Parkway/Felicita Avenue (LOS F, PM peak hour) ■ Escondido Boulevard/Felicita Avenue (LOS E/F, AM/PM peak hours, respectively) ■ Ash Street/Valley Parkway (LOS E, both AM/PM peak hours) ■ I-15 SB Ramps/Via Rancho Parkway (LOS E/F, AM/PM peak hours, respectively) ■ El Norte Parkway/Centre City Parkway (LOS E/F, AM/PM peak hours, respectively)	LOS of E or F.		intersection reaching an LOS E or F		
Tra-2 Montiel Road between Nordahl Road and Deodar Road. The City of Escondido shall implement adaptive traffic signal control technology along Montiel Road between Nordahl Road and Deodar Road prior to the segment reaching an LOS of E or F. Adaptive traffic signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Following the City of San Marcos' decision to mitigate impacts to this segment, require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F, following City of San Marcos decision to mitigate this impact	City of Escondido Engineering Services Department–Traffic Division	
Tra-3 Escondido Boulevard between 13th Avenue and 15th Avenue. The City of Escondido shall implement adaptive traffic signal control technology along Escondido Boulevard between 13th Avenue and 15th Avenue prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching	City of Escondido Engineering Services Department–Traffic Division	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.			an LOS E or F		
Tra-4 Centre City Parkway between 13th Avenue and Felicita Avenue. The City of Escondido shall implement adaptive traffic signal control technology along Centre City Parkway between 13th Avenue and Felicita Avenue prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	
Tra-5 Escondido Boulevard between 15th Avenue and Felicita Avenue. The City of Escondido shall implement adaptive traffic signal control technology along Escondido Boulevard between 15th Avenue and Felicita Avenue prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	
Tra-6 Escondido Boulevard between Felicita Avenue and Sunset Drive. The City of Escondido shall implement adaptive traffic signal control technology along Escondido Boulevard between Felicita Avenue and Sunset Drive prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	
Tra-7 Citrus Avenue between Washington Avenue and Valley Parkway. The City of Escondido shall implement adaptive traffic signal control technology along Citrus Avenue between Washington Avenue and Valley Parkway prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	
Tra-8 Citrus Avenue between Bear Valley Parkway and Glen Ridge Road. The City of Escondido shall implement adaptive traffic signal	Require that the specified improvements	Plan check	Prior to the issuance of any grading or building	City of Escondido Engineering	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
control technology along Citrus Avenue between Bear Valley Parkway and Glen Ridge Road prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	be implemented prior to the segment reaching an LOS of E or F.		permit for a project that would result in the segment reaching an LOS E or F	Services Department–Traffic Division	
Tra-9 9th Avenue between La Terraza Boulevard and Tulip Street. The City of Escondido shall implement adaptive traffic signal control technology along 9th Avenue between La Terraza Boulevard and Tulip Street prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	
Tra-10 Lincoln Avenue between Lincoln Parkway (SR-78) and Fig Street. The City of Escondido shall implement adaptive traffic signal control technology along 9th Avenue between Lincoln Avenue between Lincoln Parkway (SR-78) and Fig Street prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	
Tra-11 Mission Avenue between Rose Street and Midway Drive. The City of Escondido shall implement adaptive traffic signal control technology along Mission Avenue between Rose Street and Midway Drive prior to the segment reaching an LOS of E or F. Adaptive signal control technologies shall use real-time traffic data to adjust signals to events that cannot be anticipated by traditional time-of-day plans, such as accidents and road construction.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	

Mitigation Measures	Implementation Action	Method of Verification	Timing of Verification	Responsible Agency/Party	Verification Date
Tra-12 Interstate 15 Southbound Ramps/Valley Parkway Intersection. The City of Escondido shall provide a second right turn lane at the I-15 Northbound ramps to partially mitigate the impacts at this intersection. Future land developments would be required to contribute a fair share towards this improvement as well as any other improvements that may needed in the future to mitigate this impact to below a level of significance.	Require that the specified improvements be implemented prior to the segment reaching an LOS of E or F.	Plan check	Prior to the issuance of any grading or building permit for a project that would result in the segment reaching an LOS E or F	City of Escondido Engineering Services Department–Traffic Division	
UTILITIES AND SERVICE SYSTEMS					
Util-1 The EWWD Water Distribution Master Plan shall be updated to accommodate the buildout of the proposed General Plan Update. This shall be achieved by increasing and/or expanding existing water infrastructure, providing recycled water distribution facilities throughout the City to offset potable water demand for landscaping and other purposes and other measures/strategies that will achieve the goal of providing an adequate water supply to serve the buildout of the General Plan Update.	Require that the EWWD Water Distribution Master Plan be updated to accommodate buildout of the General Plan Update.	Department review and approval	Within five years of General Plan Update approval	City of Escondido Utilities Department–Utility Engineering Division	
Util-2 The EWWD Wastewater Master Plan shall be updated to accommodate the buildout of the proposed General Plan Update. This shall be achieved by increasing and/or expanding existing wastewater infrastructure and other measures/strategies that will achieve the goal of providing adequate wastewater facilities to serve the buildout of the General Plan Update. The City shall also coordinate with VWD during its next Master Plan Update process to ensure that it provides the necessary wastewater facilities to adequately account for the growth identified in the General Plan Update.	Require that the EWWD Wastewater Master Plan be updated to accommodate buildout of the General Plan Update. Coordinate with VWD during its next Master Plan Update.	Department review and approval	Within five years of General Plan Update approval	City of Escondido Utilities Department–Utility Engineering Division	

City of Escondido

Draft Climate Action Plan

File: PHG 09-0020

December 4, 2013

Prepared for:

ESCONDIDO
City of Choice

City of Escondido
Community Development Department
City Hall, First Floor
201 North Broadway
Escondido, California 92025

Prepared by:

ATKINS

3570 Carmel Mountain Road, Suite 300
San Diego, California 92130

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For Councilmembers, a set is available in the Council reading file.

City of Escondido

Greenhouse Gas Emissions
CEQA Thresholds and Screening Tables

August 22, 2012

Prepared for:

City of Escondido
Community Development Department
City Hall, First Floor
201 North Broadway
Escondido, California 92025

Prepared by:

3570 Carmel Mountain Road, Suite 300
San Diego, California 92130

DUE TO THE NUMBER OF PAGES OF EXHIBIT(s) A COMPLETE SET IS AVAILABLE IN THE OFFICE OF THE CITY CLERK OR CITY ATTORNEY.
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ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 16
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Barbara J. Redlitz, Director of Community Development

SUBJECT: Proposed Development Agreement for Tract 894 (PHG 13-0027)

STAFF RECOMMENDATION:

It is requested that Council adopt Ordinance No. 2013-14 approving a Development Agreement with a five-year term to authorize construction of the previously approved 11-lot residential subdivision within the North Broadway Deficiency Area.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission voted unanimously (7-0) to recommend approval of the proposed Development Agreement on November 12, 2013.

PROJECT DESCRIPTION:

A proposed Development Agreement with a five-year term to authorize construction of the previously approved 11-lot, Tract 894 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 11 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements.

LOCATION:

The project site is a 3.15-acre parcel located on the northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 1026 Lehner Avenue.

FISCAL ANALYSIS:

In return for being allowed to proceed with residential construction prior to improving infrastructure in the area, the Development Agreement includes a term that requires the owner to pay $17,000 per approved residential lot ("Deficiency Fee") to finance traffic and drainage improvements in the vicinity of the project. The total value of the fee for 11 lots is $187,000. The agreement also obligates the

City to provide approximately $64,000 in water connection fee credits to the developer in return for the "public benefit" portion of the 24" water line to be constructed in Conway Drive.

GENERAL PLAN ANALYSIS:

The Growth Management Element (Section VIII) of the Escondido General Plan notes there could be situations where development is delayed in areas with critical deficiencies until adequate facilities are available. Options available to accelerate or ensure the timely provision of infrastructure improvements in these areas can include development impact fees, assessment and maintenance districts, development agreements and other financing programs required for completing the identified infrastructure improvements. The General Plan recognizes that these options are key components of the capital improvement planning process; and Public Financing Policy 3.3 (Pg. VIII-9) encourages the use of development agreements to ensure the timely provision of facilities necessary to support the demands of development.

In order to approve a development agreement, the Council must find that the agreement is consistent with the objectives, policies and programs of the General Plan. Payment of the deficiency fee as proposed in the Development Agreement would provide a funding mechanism to insure that infrastructure development occurs in an orderly manner to meet present and future needs as envisioned in the Growth Management Goals and Policies of the General Plan.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (ER 2004-31) was issued for the Tract 894 project, including annexation and a related Development Agreement on June 2, 2006. Pursuant to CEQA Section 15162, no additional environmental review needs to be prepared for the project since there are no substantial changes in the project that require major revisions to the previous environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

BACKGROUND:

On August 16, 2006, the City Council approved an 11-lot residential subdivision on 3.15 acres (TR 894) in conjunction with a Development Agreement (2004-57-DA). The City Council approval also authorized annexation of the subject property as part of a larger 22-acre annexation area (2004-02-AN).

At the time the project and associated annexation were approved in 2006, it was noted that the site was in the North Broadway Deficiency Area and that the Development Agreement was required to address known infrastructure deficiencies per Section 33-1431 of the Escondido Zoning Code. The applicant could have developed the property under County 1-acre zoning in effect at that time which would have likely yielded three lots, but chose to go through the Development Agreement process to assist with infrastructure needs in return for a significant increase in residential density. The property was annexed as part of a larger reorganization in 2006. The Development Agreement was approved for a term of five years and subsequently expired on September 22, 2011. The Tentative Map benefitted from three separate two-year extensions granted by the California State Legislature and

now expires on September 22, 2017. The proposed Development Agreement would allow the project to proceed with recording the Final Map and the start of construction.

PLANNING COMMISSION RECOMMENDATION AND SUMMARY:

The Planning Commission voted unanimously (7-0) to recommend approval of the proposed Development Agreement on November 12, 2013. Much of the discussion during the hearing focused on the one-year sewer connection guarantee and the $64,000 fee credit. Commissioner Spann questioned whether the sewer connection guarantee included a waiver of sewer fees. Staff responded that the guarantee was for connection rights only and still requires full payment of sewer connection fees when building permits are issued. The commission was also informed that the $64,000 water connection fee credit was to offset the public benefit cost arising from an upgraded 24" water line over the 12" size that was needed to serve the project. The applicant's representative, Dave Ferguson, stated that he generally concurred with the staff recommendation with the exception of the Deficiency Fee amount, which has been set at $17,000 per lot as described below. Mr. Ferguson felt the fee was excessive and noted that he would be discussing this issue with the City Council. The Planning Commission generally agreed that the fee amount was a matter that should be resolved by the City Council and voted to recommend approval of the Development Agreement with the understanding that the fee would be set by the City Council.

ANALYSIS OF PROPOSED TERMS:

The North Broadway Deficiency Area allows the timely processing and development of residential projects in areas where known infrastructure deficiencies exist when accompanied by a Development Agreement. The Development Agreement facilitates the construction of public infrastructure necessary to upgrade deficiencies and/or includes a proportionate share payment towards neighborhood infrastructure. The previously approved Development Agreement (now expired) for Tract 894 obligated the developer to pay $12,200 per lot to finance street and drainage improvements in the North Broadway area, and pay $22,246 per lot to finance needed water infrastructure improvements. In return, the agreement obligated the City to freeze all development fees to 2006 levels through the term of the agreement, guarantee utility connection rights, and allow the developer to grade the site and build up to two model homes prior to approval of a final map.

Several critical infrastructure upgrades have been completed or are in the planning stages since the last Development Agreement was approved for the project. These include the channelization of Reidy Creek at North Broadway, construction of a 36" water line in El Norte Parkway, and the planned construction of two new Vista Verde water tanks that will enhance water service in the northern part of the city. As a result of these improvements, the water deficiency fee has been eliminated, and infrastructure needs have shifted to localized water line improvements that are now required to serve the project.

The proposed Development Agreement would be in effect for five years and would extend the life of the Tentative Map for that same period. The proposed terms in the agreement list specific obligations that are the responsibility of both the developer ("Owner") and the City. The key terms include the following:

1. Owner required to pay current fee rates in effect at the time fees are incurred.

2. Owner agrees to pay City $17,000 per approved residential lot ("Deficiency Fee") to finance priority traffic and drainage improvements in the North Broadway Deficiency Area.

3. Owner agrees to construct approximately 750 lineal feet of 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. A public benefit (valued at approx. $64,000) occurs from the upgrade to a 24" pipe over the 12" pipe size required for the subdivision.

4. City agrees to provide water connection fee credits to Owner up to the value of the Conway Drive water line public benefit (approx. $64,311).

5. Owner to construct a pedestrian path on one side of Ash Street from Vista Avenue to Hubbard Avenue, and another pathway on the eastern side of Conway Drive from Rincon Avenue to the project site.

6. City shall allow Owner to perform on-site project grading and off-site road and water line construction prior to approval of a final map, subject to approval of customary plans and bonds.

7. City guarantees sewer connection rights for a period of one year.

Following the Planning Commission meeting, staff had a discussion with Mr. Ferguson regarding the proposed terms and whether this represented an inferior deal for the applicant when compared to the expired agreement. Staff feels that it is not as shown in the table below which depicts costs per lot.

	Previous DA	Current DA
Water Deficiency Fee / Improvements:	$22,246	$10,543*
Traffic / Drainage Deficiency Fee:	$12,200	$17,000
TOTAL:	$34,446 per lot	$27,543 per lot

** Improvements are limited to what is required to serve development. Does not include a credit of $64,311 for upsizing of water main.*

The table shows the deficiency fees payable under the expired agreement were set at $34,446 per lot ($12,200 traffic/drainage, $22,246 water) for the 11 lots. The proposed Development Agreement includes deficiency fees totaling $27,543 per lot, which is $6,903 less per lot than the previous agreement.

The $17,000 per unit Deficiency Fee was established based on a recent cost estimate for the highest priority traffic and drainage improvements in the area that are needed to accommodate anticipated development. Priority drainage needs include construction of the environmental channel for Reidy Creek from Broadway to Centre City Parkway where existing homes lie within the floodway, and construction of a box culvert at Centre City Parkway. Priority street projects needed to resolve vehicular and pedestrian related infrastructure deficiencies include the following segments and intersections:

Segments (Construction to Classification Standards)

• Ash Street	Sheridan to Rincon Ave.	Local Collector
• Conway Drive	Vista Ave. to Rincon Ave.	Local Collector
• Vista Avenue	Conway to Broadway	Collector
• Stanley Avenue	Ash Street to Broadway	Local Collector

Intersections (New Traffic Signals)

- Rincon Avenue and Conway Drive
- Ash Street and Vista Avenue
- Ash Street and Sheridan Avenue

The total cost for the improvements identified above as high priority street and drainage facilities has been estimated to be approximately $11.3 million dollars. Based on a General Plan residential yield calculation that indicates approximately 668 potential dwelling units could still be constructed within the North Broadway Deficiency Area, a per unit cost of $17,000 was established as the Deficiency Fee. This fee will be required in each residential Development Agreement in the area to provide for needed traffic and drainage infrastructure improvements. Staff feels the Deficiency Fee and other terms proposed in the Development Agreement are reasonable and prudent since the agreement will allow the construction of the residential development and water line improvements in a coordinated fashion that will result in reduced costs while maximizing public and private resources to construct necessary public infrastructure at the earliest practicable time.

Respectfully Submitted,

for Barbara J. Redlitz
Director of Community Development

Bill Martin
Principal Planner

improvements associated with Lehner Avenue. He also stated that he would prefer having more access points between Lehner Avenue and Stanley Avenue.

Commissioner Caster was in favor of the cul-de-sac being proposed for the project. He also stated that he had no basis for the fee amounts, noting this was a decision better made by City Council.

Chairman Weber expressed concern with developers being overburdened with fees.

ACTION:

Moved by Chairman Weber, seconded by Commissioner Winton, to approve staff's recommendation. Motion carried unanimously. (7-0)

2. DEVELOPMENT AGREEMENT – PHG 13-0027:

REQUEST: A proposed Development Agreement with a five-year term to authorize construction of the previously approved 11-lot, Tract 894 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 11 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements. The project includes the use of a previously adopted Mitigated Negative Declaration (ER 2004-31) in accordance with CEQA Section 15162.

PROPERTY SIZE AND LOCATION: The project site is a 3.15-acre parcel located on the northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 1026 Lehner Avenue.

Bill Martin, Principal Planner, referenced the staff report and noted staff recommended approval of the proposed Development Agreement for Tract 894.

Commissioner Spann and staff discussed the timing for purchasing sewer connections.

Dave Ferguson, Escondido, representing Pacific Land Investors, noted that the projects would be spending substantial funds on public improvements and that a one-year guarantee for sewer connection rights was warranted and

provided extra incentive to move the projects forward. He also noted that the 24-inch waterline was a transmission line, which the City would provide a partial credit for.

Commissioner Caster asked if the developer would be receiving a $64,000 fee credit for the increase in size for the transmission line. Mr. Ferguson replied in the affirmative.

ACTION:

Moved by Commissioner Caster, seconded by Chairman Weber, to approve staff's recommendation. Motion carried unanimously. (7-0)

CURRENT BUSINESS: None.

ORAL COMMUNICATIONS: None.

PLANNING COMMISSIONERS: No comments.

ADJOURNMENT:

Chairman Weber adjourned the meeting at 7:44 p.m. The next meeting was scheduled for December 10, 2013, at 7:00 p.m. in the City Council Chambers, 201 North Broadway, Escondido, California.

Bill Martin, Secretary to the Escondido Planning Commission

Ty Paulson, Minutes Clerk

ESCONDIDO
City of Choice

PLANNING COMMISSION

Agenda Item No.: G.2
Date: Nov. 12, 2013

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Proposed Development Agreement for Tract 894 (PHG 13-0027)

STAFF RECOMMENDATION:

Recommend Approval of the proposed Development Agreement

PROJECT DESCRIPTION:

A proposed Development Agreement with a five-year term to authorize construction of the previously approved 11-lot, Tract 894 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 11 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements.

LOCATION:

The project site is a 3.15-acre parcel located on the northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 1026 Lehner Avenue.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (ER 2004-31) was issued for the Tract 894 project and a related Development Agreement on June 2, 2006. Pursuant to CEQA Section 15162, no additional environmental review need be prepared for the project since there are no substantial changes in the project that require major revisions to the previous environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

BACKGROUND:

On August 16, 2006, the City Council approved an 11-lot residential subdivision on 3.15 acres (TR 894) in conjunction with a Development Agreement (2004-57-DA). At the time the project was approved, it was noted that the site was in the North Broadway Deficiency Area and that the Development Agreement was required to address known infrastructure deficiencies per Section 33-1431 of the Escondido Zoning Code. The Development Agreement was approved for a term of five-years and subsequently expired on September 22, 2011. The Tentative Map benefitted from three separate two-year extensions granted by the California State Legislature and now expires on September 22, 2017. The proposed Development Agreement would allow the project to proceed with recording the Final Map and the start of construction.

DISCUSSION:

Proposed Development Agreement Terms

The North Broadway Deficiency Area allows the timely processing and development of residential projects in areas where known infrastructure deficiencies exist when accompanied by a Development Agreement. The Development Agreement facilitates the construction of public infrastructure necessary to upgrade existing deficiencies and/or includes a proportionate share payment towards neighborhood infrastructure. The previously approved Development Agreement (now expired) for Tract 894 obligated the developer to pay $12,200 per lot to finance street and drainage improvements in the North Broadway area, and pay $22,246 per lot to finance needed water infrastructure improvements. The City was authorized to withhold residential occupancy until water infrastructure improvements to the City's channel crossing and bridge at Ash Street had been completed, or September 1, 2008, whichever occurred first. In return, the agreement obligated the City to freeze all development fees to 2006 levels through the term of the agreement, guarantee utility connection rights, and allow the developer to grade the site and build up to two model homes prior to approval of a final map.

Several critical infrastructure upgrades have been completed since the time the last Development Agreement was approved for the project. These include the channelization of Reidy Creek at North Broadway, and construction of a 36" water line in El Norte Parkway that enhanced water service in the northern part of the city. The Utilities Department has recently indicated that the water service issues related to the upgrade at the Ash Street bridge over Escondido Creek been alleviated and that water upgrades closer to the project site are now needed.

The proposed Development Agreement would be in effect for five years and would extend the life of the Tentative Map for that same period. The proposed terms in the agreement list specific obligations that are the responsibility of both the developer ("Owner") and the City. The key terms include the following:

1. Owner required to pay current fee rates in effect at the time fees are incurred.

2. Owner agrees to pay City $17,000 per approved residential lot ("Deficiency Fee") to finance traffic and drainage improvements in the vicinity of the project.

3. City shall allow Owner to perform on-site project grading and off-site road and water line construction prior to approval of a final map, subject to approval of customary plans and bonds.

4. City guarantees sewer connection rights for a period of one year.

5. Owner agrees to construct approximately 750 lineal feet of 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. A public benefit (valued at approx. $64,000) occurs from the upgrade to a 24" pipe over the 12" pipe size required for the subdivision.

6. City agrees to provide water connection fee credits to Owner up to the value of the Conway Drive water line public benefit (approx. $64,311).

7. Owner to construct a pedestrian path on one side of Ash Street from Vista Avenue to Hubbard Avenue.

The $17,000 per unit Deficiency Fee has recently been evaluated and increased from the $12,000 fee that was included in the 2006 Development Agreement for the project. The former Water Deficiency Fee ($22,246/lot) has been eliminated in favor constructing water line improvements. The new Deficiency Fee was established based on a recent cost estimate for the highest priority traffic and drainage improvements in the area that are needed to resolve known deficiencies. Priority drainage needs include construction of the environmental channel for Reidy Creek from Broadway to Centre City Parkway where existing homes lie within the floodway, and construction of a box culvert at Centre City Parkway. Priority street projects needed to resolve vehicular and pedestrian related infrastructure deficiencies include the following segments and intersections:

<u>Segments (Construction to Classification Standards)</u>

- Ash Street Sheridan to Rincon Ave. Local Collector

• Conway Drive	Vista Ave. to Rincon Ave.	Local Collector
• Vista Avenue	Conway to Broadway	Collector
• Stanley Avenue	Ash Street to Broadway	Local Collector

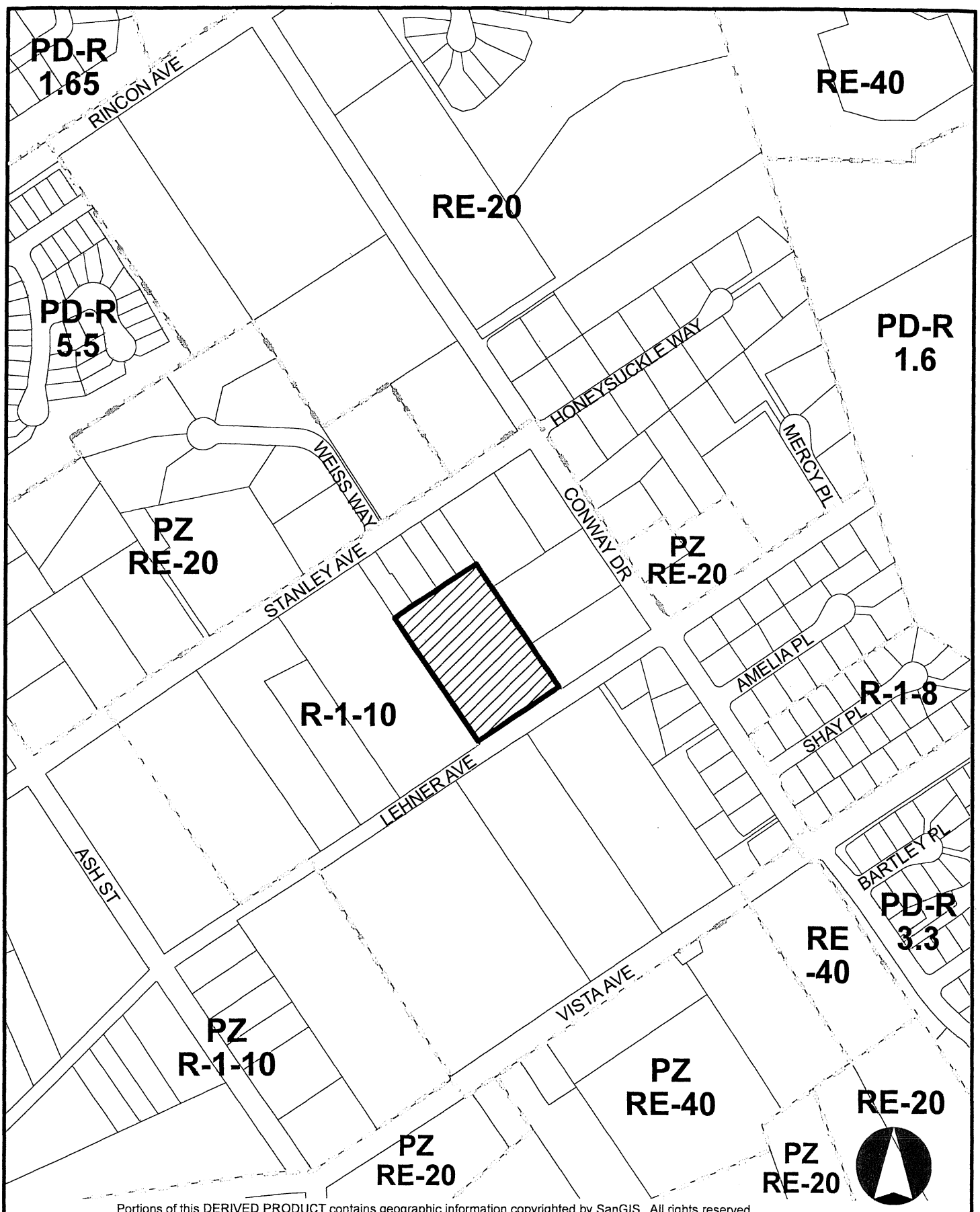
Intersections (New Traffic Signals)

- Rincon Avenue and Conway Drive
- Ash Street and Vista Avenue
- Ash Street and Sheridan Avenue

The total cost for the improvements identified above as high priority street and drainage facilities has been estimated to be approximately $11.3 million dollars. Based on a General Plan residential yield calculation that indicates approximately 668 potential dwelling units could still be constructed within the North Broadway Deficiency Area, a per unit cost of $17,000 was established as the Deficiency Fee. This fee will be required in each residential Development Agreement in the area to resolve traffic and drainage infrastructure issues. Staff feels the Deficiency Fee and other terms proposed in the Development Agreement are reasonable and prudent since the agreement will allow the construction of the residential development and water line improvements in a coordinated fashion that will result in reduced costs while maximizing public and private resources to construct necessary public infrastructure at the earliest practicable time.

Respectfully Submitted,

Bill Martin
Principal Planner

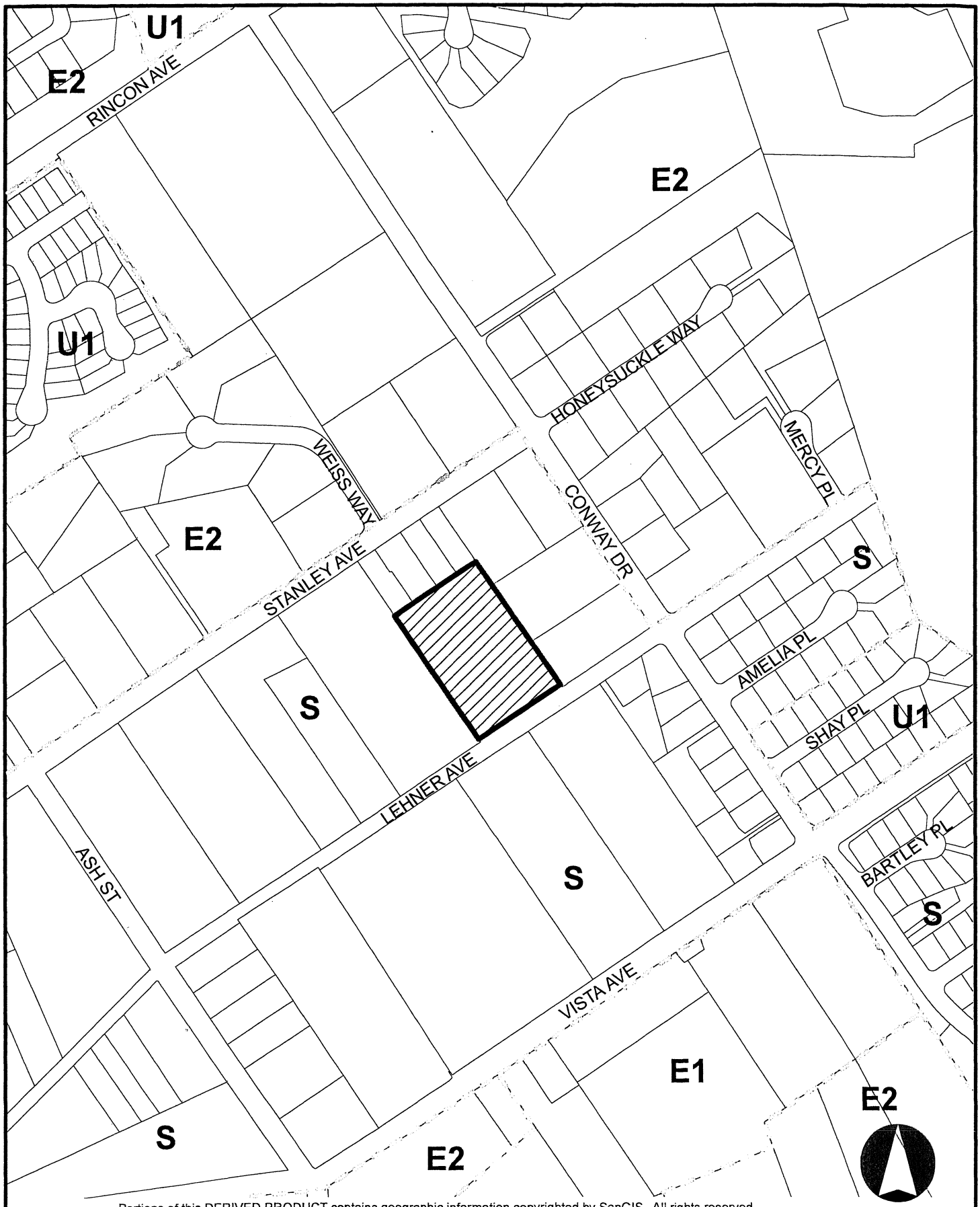


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PROPOSED PROJECT
PHG 13-0027

L

LOCATION/ZONING

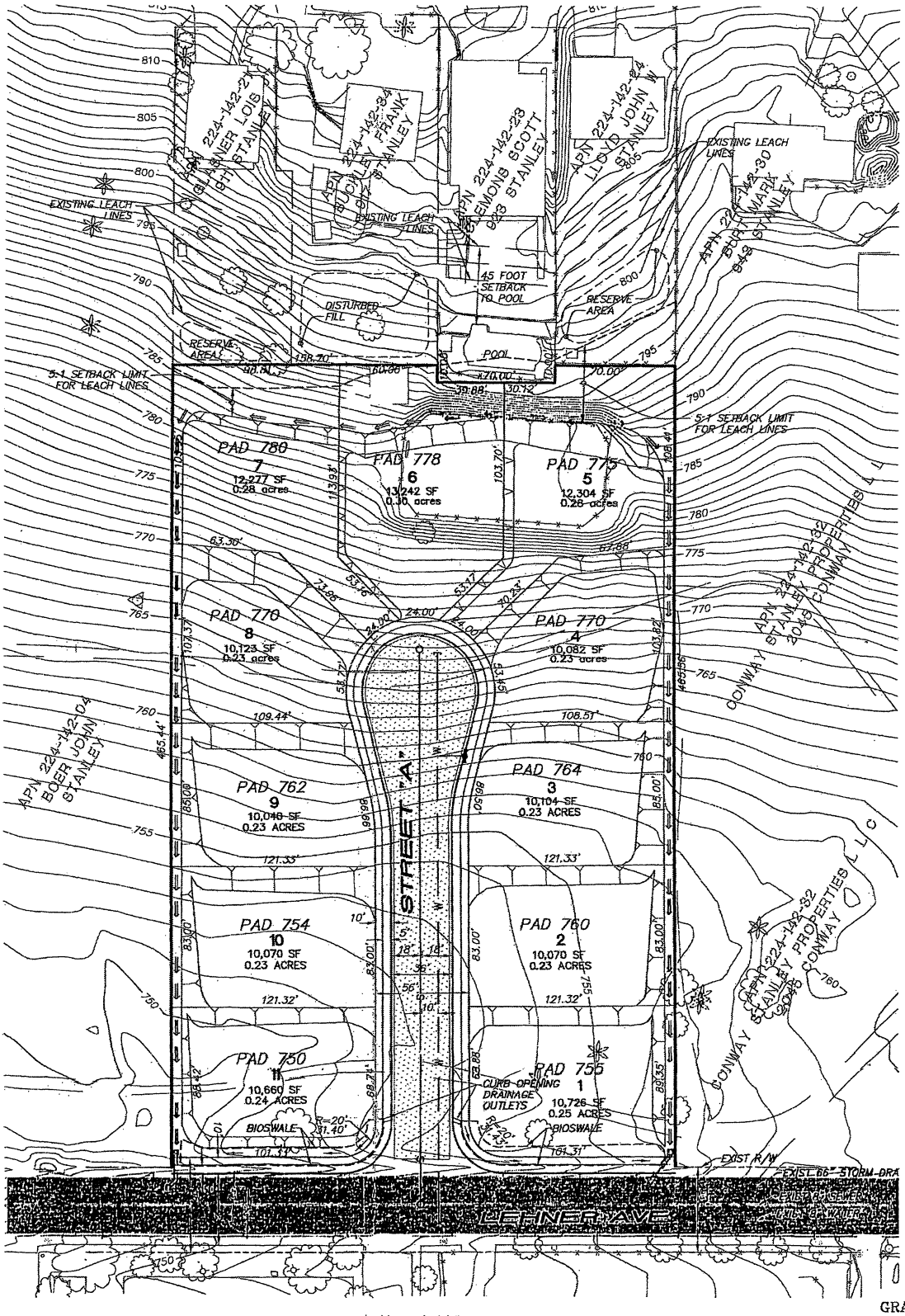


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PROPOSED PROJECT
PHG 13-0027

GP
GENERAL PLAN

TR 894 APPROVED TENTATIVE MAP



PROPOSED PROJECT
PHG 13-0027

S

SITE PLAN

SUPPLEMENT TO STAFF REPORT/DETAILS OF REQUEST

A. SUPPLEMENTAL DETAILS OF REQUEST

1. Property Size:	3.15 acres
2. Number of Lots:	11
3. General Plan Designation:	Suburban (up to 3.3 units per acre)
3, Residential Density:	3.44 dwelling units per acre (Approved by City Council in conformance with Subdivision Ordinance Section 32.202.03.
4. Lot Size:	Minimum of 10,000 SF required. Project lot sizes range from 10,040 SF to 13,242 SF.
5. Lot Width:	Minimum of 80 feet required.
6. Required Setbacks:	
Front:	15 feet (20 feet for front-facing garage)
Side:	5 feet one side; 10 feet on the other (10 feet for corner lots).
Rear:	20 feet

FINDINGS OF FACT
PHG 13-0027
EXHIBIT "A"

Development Agreement

1. The proposed Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan since there are no changes proposed to the General Plan land use designations or policies that affect development of the site, a Citywide Facilities Plan has been adopted to address infrastructure deficiencies on a citywide basis and the agreement has a provision for a community benefit that could not otherwise be required of the developer.

2. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the property is located since the General Plan land use designation for the site is Suburban, which allows the number of dwelling units approved for the development in conformance with Subdivision Ordinance Section 32.202.03.

3. The proposed Development Agreement is in conformity with the public convenience and general welfare since the proposed agreement provides for construction of a water line upgrade in Conway Drive and payment of a fee needed to construct future improvements that resolve traffic and drainage infrastructure issues in the North Broadway area.

4. The proposed Development Agreement will not be detrimental to the health, safety and general welfare of the community since the agreement provides for the construction of a 24"' water line in Conway Drive from Lehner Avenue to Stanley Avenue and the payment of a deficiency fee need to construct street and drainage improvement in the vicinity of the project site.

5. The proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values since the project will be developed in conformance with the existing General Plan designation on the property.

6. The proposed Development Agreement is consistent with Government Code Section 65864, which states that the lack of certainty in the approval of development projects can result in a waste of resources and escalated housing costs while discouraging comprehensive planning since the proposed agreement provides for a five-year term and provides certainty as to the payment and construction obligations for associated public improvements.

CITY OF ESCONDIDO
PLANNING DIVISION
201 NORTH BROADWAY
ESCONDIDO, CA 92025-2798
(760) 839-4671

MITIGATED NEGATIVE DECLARATION

Lehner Avenue Eleven-Lot Residential Subdivision

FILED
Gregory J. Smith, Recorder/County Clerk
JUN 02 2006
BY DEPUTY

Case Number: ER 2004-31, 2004-57-GE/ DA, TR 894

Date Issued: June 2, 2006

Public Review Period: June 2 – June 22, 2006

Location: The project is located on Lehner Avenue west of Conway Drive, east of North Ash Street and south of Stanley Avenue (APN 224-142-35).

Address: 1026 Lehner Avenue

Project Description: The project involves a proposed 11-lot residential subdivision for a 3.2-acre site located at 1026 Lehner Avenue. The property is located within the North Broadway/Tier 2A designation of the General Plan and has a Land Use Designations of S (Suburban). The project also includes a request for a grading exemption to allow three cut slopes of up to 22 feet in height, and one fill slope up to 12 feet in height. The project also includes a Development Agreement because the proposal is located within the critical infrastructure deficiency area for water.

Applicant: Cornerstone Engineering, Inc.

An Initial Study has been prepared to assess this project as required by the California Environmental Quality Act and Guidelines as well as Ordinances and Regulations of the City of Escondido. The Initial Study is on file at the City of Escondido Planning Division.

Findings: The finding of this review are that the Initial Study identified traffic/circulation, biological, cultural resources and hazardous material impacts that may be potentially significant, but mitigation measures would reduce potential impacts to a less than significant level.

Diana Delgadillo
Associate Planner

FILED IN THE OFFICE OF THE COUNTY CLERK
San Diego County on JUN 02 2006
Posted JUN 02 2006 Removed
Returned to agency on
Deputy

Lehner Avenue 11-Lot Subdivision Project
Initial Study Part II
ER 2004-31
Tract 894
2004-57-GE/DA

Project Description:

The following section evaluates the potential environmental impacts associated with 11-lot residential subdivision, grading exemption, and development agreement. The attached environmental Initial Study is consistent with the California Environmental Quality Act (CEQA) Guidelines, and has been used to focus this study on physical factors that may be impacted by the proposed project. This Initial Study will serve to identify and evaluate any effects determined to be potentially significant.

The project involves a proposed 11-lot residential subdivision for a 3.2-acre site located at 1026 North Lehner Avenue. The property is located within the Broadway/Tier 2 designation of the General Plan and has a Land Use Designation of S (Suburban). The subject project is part of an annexation that was initiated by the City Council on The project proposes to construct a small single-family residential tract on a vacant parcel of land adjacent to the Rincon Elementary School. The site consists of gently rolling slope of very mild gradient (approximately 10%). The Prezone of R-1-10 is consistent with the S land use designation.

Environmental Setting:

The approximately 3.2-acre property is vacant with access to the site from Lehner Avenue. The site has a mild gradient with drainage to private drainage easements. Elevations range from approximately 645 to 655 feet above mean sea level. The entire site has a slope gradient of less than 15%. There is a palm tree located near the center of the subject site with disturbed grasses on the remainder of the site. The site is also bordered by pine trees and ornamental shrubs. Adjacent land uses are as follows:

- North: Single-family dwellings (RE-20)
- South: Elementary School (R-1-10)
- West: Vacant (RE-20)
- East: Vacant (RE-20)

I. Land Use and Planning

City of Escondido Significance Criteria

Significant land use impacts would occur if the project substantially conflicted with established uses, disrupted or divided an established community or resulted in a substantial alteration to the present or planned land uses. Consistency with the City of Escondido General Plan and zoning and other applicable environmental plans and policies, is evaluated in making a determination of potential significant land use impacts. Aesthetic impacts would be significant if the project resulted in the obstruction of any scenic view or vista open to the public; damage of significant scenic resources within a designated State scenic highway, create an aesthetically offensive site open to the public, and/or substantial degradation of the existing visual character or quality of the site and its surroundings. Significant aesthetic impacts would also occur if the project generated new sources of light or glare that adversely affected day or nighttime views in the area, including that which would directly illuminate or reflect upon adjacent properties or could be directly seen by motorists or persons residing, working or otherwise situated within sight of the project.

The City of Escondido General Plan designates the proposed site as Suburban, allowing single-family residential development. The objective of the Suburban category is to promote single-family development with a maximum density of 3.3 units/acre and a minimum of lot size 10,000 square feet. This designation promotes a traditional neighborhood character of detached single-family units. Public water and wastewater collection and treatment are required in these areas.

The extent of dwelling units permitted on the proposed development by Suburban is dependent on the topography of the site. The General Plan indicates that the maximum development yield of Suburban lands shall be sensitive to topography and be calculated according to the following slope categories:

0-25%:	2 dwelling units per 1 acre
25-35%	1 dwelling unit per 1 acre
35+	1 dwelling unit per 20 acres

Based on the variable slope provisions of the Suburban designation contained in the City's General Plan, 11 dwelling units would be allowed for the 3.2 acres. The zoning is R-1-10 which is consistent with the General Plan.

The applicants for the project are proposing to develop in accordance with the City's General Plan designation. The project is characterized as "in-fill" because development is planned within an established residential neighborhood and the project is virtually surrounded by development. Because the proposed project would be consistent with existing adopted City of Escondido land use policies, no significant land use impact would occur as a result of the proposed project.

The project site is not located on a ridgeline identified in the Community Open Space/Conservation Element of the General Plan. The site has a slope of approximately 10% and no grading exemptions are proposed.

The subject site is currently zoned R-S-1 within the County of San Diego. This zoning allows for single-family residences with a minimum lot size of one acre. The County designation is for larger lots than what is allowed with the City's General Plan designation; however, the lots to the north of the subject site are approximately 14,000 SF and there are proposals surrounding the subject site of similarly sized lots. The traffic and air quality study has been based on the denser proposal and as such, would be a "worst-case scenario" for these potential impacts. With the proposed mitigation, the traffic study indicates that the project would not create a significant negative impact on the environment.

Residential projects typically do not directly illuminate or reflect glare upon adjacent properties, therefore no significant light or glare impact would result from the proposed project. Development of the proposed project will also not obstruct scenic views or vistas open to the public since neither the City nor the State designates Lehner Avenue as a scenic resource.

II. Agricultural Resources

City of Escondido Significance Criteria

Project impacts to agricultural resources would be significant if they lead to direct or indirect loss of Prime Farmland, Unique Farmland or Farmland of Statewide Importance, defined by the California Department of Conservation, or conflicted with the City's existing agricultural zoning or Williamson Act Contract.

The project site is not listed as Prime Agricultural Lands as identified in the General Plan Final Environmental Impact Report, which was prepared for the City's most recent General Plan revisions in 2000. Although the subject site has been used sporadically for agricultural purposes in the past, such as orchards, these uses may be incompatible with the current surrounding residential community. The property is also not involved in a Williamson Act Contract or other agricultural land contract.

The California Department of Conservation, which publishes farmland conservation reports, classifies the subject area as "Other Land" which is defined as:

> "Rural development, marginal agricultural lands, tracts not suitable for grazing, government lands not available for agricultural use, road systems and vacant land surrounded on all sides by urban development."

The development of a residential community on the subject site would therefore not result in significant individual or cumulative impacts to agricultural resources.

III. Transportation/Traffic

City of Escondido Significance Criteria

According to the City of Escondido Environmental Quality Regulation (Article 47, Sec. 33-924), impacts would be considered significant if the project:

1. *Caused the level of service (LOS) of a circulation element street to fall below a mid-range of LOS "D" and /or added more than 200 ADT to a circulation element street with*

a LOS below the mid-range "D" yet above LOS "F". According to the Escondido General Plan, the minimum acceptable LOS is "C".

2. *Exceeded, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads and highways.*

3. *Resulted in a change of air traffic patterns, including either an increase in traffic levels or in a location that results in substantial safety risks or increased hazards due to a design feature.*

4. *Results in inadequate emergency access or parking capacity, or the project conflicts with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).*

A traffic impact study for the proposed project was performed on August 11, 2004 and revised April 19, 2006 by Linscott, Law and Greenspan and is summarized below. The scope of the analysis was developed with input from the City of Escondido. The analysis methods and study scenarios are based on Escondido Traffic Impact Study Guidelines and using SANTEC/ITE Guidelines for Traffic Impact studies in the San Diego Region. For a complete description please refer to the consultant document available at the Planning Division in City Hall (201 North Broadway, Escondido).

Access to the site for the proposed 11-unit single-family dwellings will be provided by Lehner Avenue, approximately 265 feet east of the existing Ash Street intersection. The study included the following roadway segments and intersections:

Roadway	Intersection
North Broadway • North of Stanley Avenue • Stanley to Vista Avenue	Broadway / Stanley Avenue
North Ash Street • Lehner Avenue to Vista Avenue • South of Vista Avenue	North Ash Street / Lehner Avenue
Stanley Avenue • North Broadway to North Ash Street	North Ash Street / Vista Avenue

All intersections area calculated to operate at mid LOS D or better during both the AM and PM peak hours except for the following unsignalized intersections:

- North Broadway/Vista Avenue (LOS F during both AM and PM peak hour)
- North Ash Street/Lehner Avenue (LOS F during the AM peak hour)
- North Ash Street/Vista Avenue (LOS F during the AM peak hour)

This is primarily the result of school traffic co-mingling with residential peak hour commuter traffic. The high percentage of turning school-related vehicles at these locations causes the Levels of Service, and the poor operations is limited to directly before and after school. The acceptable PM peak hour Levels of Service demonstrate the capacity of the intersections to accommodate regular

peak hour commuter traffic. Since the project does not contribute a delay by more than 2.0 seconds, there is no significant impact.

The traffic study indicates that all roadway segments within the study area are calculated to operate at LOS C or better.

The project is within the North Broadway Critical Deficiency Area. Mitigation for this infrastructure improvement involves a Development Agreement that specifies a negotiated payment to off-set the future construction of North Broadway between Stanley and Vista Avenues. .

The proposed project site is located near the Rincon Middle School. Since vehicular and pedestrian traffic is heavy in the area surrounding the school directly before and after school, a review of the area was conducted and the mitigation incorporated to the project which would reduce the impacts to a level of insignificance. Construction of the walkways would not have a significant impact since all work would take place within an existing right-of-way, no stream courses would be impacted and any tree removal would be required to be replaced.

Based on the analyses of intersections and segments in the project study area, and the established significance criteria, the intersections of Ash Street/Lehner Avenue, and Broadway/Vista Avenue were considered to have significant impacts. Since each of these locations already operate below City standards (Mid LOS D) under existing conditions, the impacts are considered cumulative and the follow corresponding mitigation measures.

MITIGATION MEASURES:

1. *Install temporary signs on westbound Vista Avenue alerting driver to possible congestion during the 30 minutes directly before and after the school day and suggest alternate routes.*
2. *Provide tubular delineators on Vista Avenue at the school Pickup-Drop-off area to prohibit eastbound to westbound U-turns. This, in conjunction with the school implementing a more stringent one-way traffic pattern, could alleviate some of the existing congestion.*
3. *Provide pedestrian walkways at the following locations:*

    - *Ash Street from Sheridan Avenue to Vista Avenue*
    - *North side of Vista from Ash Street to rear access driveway to Rincon Middle School*
    - *South side of Lehner Avenue from vista Avenue to Ash Street*
    - *East side of Conway from Rincon Avenue to project site.*

IV. Air Quality

City of Escondido Significance Criteria

Project impacts exceeding any of the following South Coast Air Quality Management District (SCAQMD) daily emissions criteria can be considered significant:

• *Carbon Monoxide*	*550 lbs.*
• *Reactive Organic Gases*	*55 lbs.*
• *Oxides of Nitrogen*	*55 lbs.*

- *Fine Particulate Matter* *150 lbs.*

An Air Quality Report was prepared by Recon on August 19, 2004 and analyzes the potential local and regional air quality impacts associated with the proposed Lehner Avenue residential project.

The project area is within the San Diego Air Basin (SDAB). Air quality at a particular location is a function of the kinds and amounts of pollutants being emitted into the air locally, and throughout the basin, and the dispersal rates of pollutants within the region. The major factors affecting pollutant dispersion are wind, speed and direction, the vertical dispersion of pollutants (which is affected by inversions) and the local topography. The air basin currently is designated a state and federal non-attainment area for ozone and particulate matter. However, in the SDAB, part of the ozone contamination is derived from the South Coast Air Basin (located in the Los Angeles area). This occurs during periods of westerly winds (Santa Ana condition) when air pollutants are windborne over the ocean, drift to the south and then, when the westerly winds cease, are blown easterly into the SDAB. Local agencies can control neither the source nor transportation of pollutants from outside the basin. The Air Pollution Control District (APCD) policy therefore, has been to control local sources effectively enough to reduce locally produced contamination to clean air standards.

For long-term emissions, the direct impacts of a project can be measured by the degree to which the project is consistent with regional plans to improve and maintain air quality. Local air-quality impacts are directly related to the number of vehicle trips and operation levels on adjacent streets and intersections. For planning purposes, the APCD assumed the City's General Plan designation of Suburban in calculating air quality impacts. According to CEQA Guidelines, a project normally is considered to have a significant air quality impact if it violates any ambient air quality standard, contributes substantially to an existing or projected air-quality violation or exposes sensitive receptors to substantial pollution concentrations.

Construction emissions were calculated using the URBEMIS2002 computer program assuming that construction would take place in January 2005. The following table depicts the daily emission levels for each criteria pollutant

CONSTRUCTION EMISSIONS
(pounds per day)

Pollutant	Maximum Daily Emissions (pounds)	Average Daily Emissions (pounds)*	City of Escondido Significance Threshold (pounds/day)	APCD Significance Threshold (pounds/day)
CO	81	31	550	550
ROG	10	4	55	--
NO_x	77	31	55	250
SO_x	0.0	0.0	250	--
PM_{10}	27	4	150	100

AVERAGE DAILY PROJECT EMISSIONS TO THE SAN DIEGO AIR BASIN
(pounds per day)

Season/Pollutant	Area Emissions[1]	Mobile Emissions (vehicle)	Total Emissions[2]	City of Escondido Threshold	APCD Threshold	Do Emissions Exceed Thresholds?
Summer						
CO	0.2	16.6	16.8	550	550	No/No
NO_x	0.1	1.6	1.8	55	250	No/No
ROG	9.6	1.3	1.9	55	-	No/-
SO_x[3]	0.0	0.01	0.02	250	250	No/No
PM_{10}	0.0	1.4	1.4	150	100	No/No
Winter						
CO	1.2	18.2	19.4	550	550	No/No
NO_x	0.2	1.5	2.6	55	250	No/No
ROG	1.6	1.5	3.1	55	-	No/-
SO_x[3]	0.0	0.01	0.02	250	250	No/No
PM_{10}	0.2	1.4	1.6	150	100	No/No

Source: San Diego APCD, Rule 20.2 (12/17/98); Escondido Municipal Code § 33-924(a)(1)(G)(i).
[1]Area emissions include emissions from on-site stationary sources such as natural gas combustion (e.g., heating systems), landscaping maintenance, etc.
[2] Totals may differ due to rounding.
[3]Emissions calculated by URBEMIS2002 are for SO_2.

With respect to criteria air pollutants, no significant air quality impacts are identified for either the construction phase or operation of the proposed project. Accordingly, no mitigation is required.

While the proposed project would have an incremental impact to basin-wide air-quality issues result from the cumulative impacts of thousands of sources, the individual impacts attributed to the proposed project are immeasurably small on a regional scale and will not cause ambient air quality standards to be exceeded. Since the project would not materially degrade the levels of service on adjacent streets and intersections, and would not violate daily emissions thresholds, the project will not have a significant impact on air quality and no mitigation measures are required.

Construction-Related Emissions

Construction-related activities are temporary, short-term sources of air emissions. Sources of construction-related air emission include:

- Fugitive dust from grading activities;
- Construction equipment exhaust;
- Construction-related trips by worker, delivery trucks and material-hauling trucks; and
- Construction-related power consumption.

Dust from grading and other site preparation would generate particulate matter emission. Due to the small amount of grading, and with appropriate use of grading and operation procedures (in conformance with APCD Best Management Practice for dust control), the project would not generate significant particulate matter or dust. The City of Escondido Grading Ordinance and

erosion control requirements include provisions for dust control to reduce impacts to air quality during grading and construction activities. At a minimum, these ordinances and provisions require projects to perform regular watering and timely revegetation of disturbed areas to minimize the dust and airborne nuisance impacts to off-site receptors. Emissions from construction equipment, worker and delivery and material-hauling trucks, and construction-related power consumption would be temporary and would result in an extremely small contribution to the SDAB and therefore would not result in a significant impact.

V. Biological Resources

City of Escondido Significance Criteria

Project impacts upon biological resources may be significant if the project generates impacts that create any of the following results:

- *Substantial direct or indirect-effect on any species identified as a candidate, sensitive, or special status in local/regional plans, policies or regulations, or by the State of California Department of Fish and Game (F & G) or U.S. Fish and Wildlife Service (U.S. FWS);*
- *Substantial effect upon sensitive natural communities identified in local/regional plans, policies, regulations or by the agencies (F & G-U.S. FWS);*
- *Substantial affects (e.g. fill, removal, hydrologic interruption) upon federally protected wetlands under Section 404 of the Clean Water Act;*
- *Substantial interference with movement of native resident or migratory wildlife corridors or impeding the use of native wildlife nursery sites;*
- *Conflict with any local policies/ordinance that protect biological resources (e.g. tree preservation policy or ordinance)*
- *Conflict with provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved habitat conservation plan.*

A biological assessment was conducted for the subject site by Rincon Consultants, Inc. on September 14, 2004. According to the assessment the site is disturbed with non-native vegetation, which is consistent with the vegetation characterization listed for the site on the SanGIS website. The site contains approximately 2.8 acres of mowed and maintained non-native vegetation and 0.4 acres of developed (an abandoned tennis court and shed) land. The undeveloped open space on the site consists primarily of mowed and maintained upland non-native vegetation dominated by common species such as wild oats and ripgut grass and western ragweed and would be consistent with a designation of disturbed land. Numerous non-native Japanese black pines are located along the eastern and southern property boundaries. Two persimmon trees were identified adjacent to the tennis court and shed, and landscape palms and pecan trees are also located in the southeastern corner. Remnant stumps, presumably from the past citrus groves exist adjacent to the tennis court and shed in the northwest portion of the site. No water, riparian vegetation, or Ordinary High Water Mark as defined by the Army Corps of Engineers was apparent in the swale area or at the storm drain inlet at the time of the site visit. In addition, no wetland indicators such as hydrophytic vegetation, inundation, and low chroma soils were present in the vegetated drainage swale or elsewhere onsite. Therefore, no mitigation is required for wetland impacts.

The off-site improvements that are proposed as part of the project would not have any impact on biological resources since the improvement consists of placing a water line on an existing bridge. No disturbances of earth would result from the water line and therefore could not create any biological resource impacts.

Since the site includes several mature trees, a preconstruction bird survey shall be required if construction activities occur between March and September.

MITIGATION MEASURES:

1. *If construction (or grading) is to occur during the nesting season, a preconstruction nesting bird survey shall be conducted.*

VI. Cultural Resources

City of Escondido Significance Criteria

A significant impact to cultural resources would occur if implementation of the project causes substantial change to a historical or archaeological resource pursuant to Section 15064.5 of the California Environmental Quality Act Guidelines, the destruction of unique paleontological resources or unique geologic feature, or disturb any human remains.

A cultural resources study was prepared by Kyle Consulting dated August, 2004. A field survey was conducted on the subject site on August 1, 2004 by Carolyn and Robert Kyle. No cultural resources have been previously identified within the study area. Research included a review of early maps and the 1928 aerial photographs for the area. The presence of old landscaping trees and plants, two small concrete foundations, remnants of an old wooden fence and agate, and an old well shaft suggest that historic buildings may have been present on or within the study area. A citrus orchard and what appears to be a residence is present on the 1928 aerial photograph just to the east of the study area. The 1941 USGS quadrangle map shows a citrus orchard present on the study area and to the west of the parcel.

Based on the presence of what appear to be historic trees and plants, foundations, fencing, and well mechanism and the presence of a citrus orchard in 1941, recommendations for future work include monitoring of construction grading by a qualified archaeologist and historic research. Archaeological monitoring is recommended because of the potential for significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area should be identified and the boundaries marked to avoid further ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.

The off-site improvements that are proposed as part of the project would not have any impact on cultural resources since the improvement consists of placing a water line on an existing bridge. No disturbances of earth would result from the water line and therefore could not create any cultural resource impacts.

MITIGATION MEASURE:

1. *The project applicant shall provide archaeological monitoring for the significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area shall be identified and the boundaries marked to avoid further ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.*

VII. Geology and Soils

City of Escondido Significance Criteria

A significant geologic impact would occur if a project exposed people or structures to major geologic hazards such as earthquake damage (rupture, ground shaking, ground failure, and landslides), slope and/or foundation instability, erosion, soil instability or other problems of a geologic nature.

The site is not located on any active or potentially active fault. The nearest active fault to the site is the Rose Canyon Fault, located approximately 17 miles to the west. The fault with the greatest seismic impact to the site is the Elsinore-Julian fault. Other nearby faults include the Elsinore-Temecula Fault, and the Newport-Inglewood Fault (offshore). According to the geotechnical investigation, the site is not considered to possess a significantly greater seismic risk than that of the surrounding area in general.

The project would be constructed in conformance with the recommendations in the geology reports and therefore a significant geology and soils impact would not occur.

VIII. Hazards and Hazardous Materials

City of Escondido Significance Criteria

A significant impact to the environment and the public associated with hazards and hazardous materials would result from a project if any of the following occurred:

1. *Creation of a significant hazard to the public or the environment though routine transport, use or disposal of hazardous materials or from reasonably foreseeable upset and accident;*

2. *Emission and/or handling of hazardous materials substances or waste within one-quarter mile of an existing or proposed school;*
3. *Location of a project on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5;*
4. *Location within an airport land-use plan or within two miles of a public airport. Or the project is located within the vicinity of a private air strip;*
5. *Impairment/interference with an adopted emergency response plan or emergency evacuation plan; and*
6. *Expose people or structures to a significant risk of loss, injury or death involving wild fires.*

Neither the site nor its adjacent properties mapped within a 1/8-mile radius were listed on the most recent list of identified hazardous waste sites consolidated by the Office of Planning and Research. Additionally, a Phase I and II assessment was performed by Environmental Business Solutions on December 1, 2004. The results of the assessment indicate that with the exception of small retail quantities of paint, paint solvents, gasoline, and pesticides, no obvious indication of the use or storage of hazardous materials or petroleum products were observed at the site at the time of reconnaissance.

According to the research conducted for the Phase I and II assessment there is a moderate likelihood that residual concentrations of organo-chlorine pesticides are present in the shallow surface soil beneath the subject site since it has been used for agricultural purposes. Assuming the legal and permitted application of these pesticides, it is likely that the levels of organo-chlorine pesticides would be de minimis as defined by the American Standard of Testing and Materials. However, since the site is proposed for residential use, soil sampling prior to grading should be conducted to ensure that future occupants of the site, construction workers, or any others be exposed to elevated concentrations of pesticides.

The site is not adjacent or within two miles of an airport. The proposed development would not impair the City's emergency response plan according to discussions with the City Fire Department. The two areas will not expose people or structures to a significant risk of loss, injury or death involving wild fires since the site is in an urban setting and will be irrigated. Therefore, no significant hazards and hazardous materials impact would occur as a result of the project.

MITIGATION MEASURES:

1. *Prior to grading or export of soil, soil sampling shall be performed to determine if unsafe concentrations of pesticides exist in the soil.*

2. *Prior to grading, the observed paint, solvents, etc. observed on-site shall be removed and disposed of by a California licensed hazardous waste recycler.*

IX. Hydrology and Water Quality

City of Escondido Significance Criteria:

Significant impacts associated with hydrology and water quality would result from the project if water quality standards or waste discharge requirements were violated; groundwater and

surface water quality and quantity were substantially altered; drainage patterns were substantially altered so as to increase erosion/siltation and increase surface runoff; increased runoff would exceed the capacity of existing or planned drainage systems or add a substantial source of pollution; the project were located in a 100-year floodplain and cannot be protected; and, if the project exposed people to hydrological hazards, such as flooding or inundation by seiche, tsunami, or mudflow.

The site topography slopes moderately to gently downward to the south and southwest. The site is approximately 3.2 acres and consists of gently slope of very mild gradient (approximately 10%). The drainage flows trend from northeast to southwest across the property. Four existing residences on large (1/3 acre) lots are adjacent to the northern side of the property. Vacant lands are fronting on the east and west frontages. These vacant lands are also, with this property, the subject of a current annexation request to the City of Escondido.

Site grading and drainage improvements maintain the existing drainage pattern of the site which is northeast to southwest, via a combination of overland flow (landscape, hardscape, curbs, gutters etc.) and closed conduit conditions (storm drain piping, inlets, etc.). A small detention basin is proposed to be located at the southwest corner of the property. This basin will control discharges and not exceed the predevelopment drainage condition.

The Engineering Department has determined that runoff from the project would not be considered significant and the project would not materially degrade the existing drainage facilities. The City would provide sewer and water service from mains within the adjacent street or easements; consequently, no significant impact is expected to occur to the groundwater table. The project is outside the 500-year flood plain area as identified on current Flood Insurance Rate Maps (FIRM). Therefore, the project site is not subject to potential flooding, landslides or mudflows.

X. Mineral Resources

Significance Criteria

Impacts to mineral resources would be substantial if the proposed project resulted in the loss of significant state or locally important mineral resources.

The proposed project would not substantially impact mineral resources as only a portion of the small site includes granitic rock. The limited size of the project would not substantially increase the use of, or result in the depletion of any nonrenewable natural resources.

XI. Noise

City of Escondido Significance Criteria

Significant noise impacts would occur if the project; exposed persons to, or generated noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies; exposed persons to, or generated excessive ground-borne vibration or ground-borne noise levels. Significant noise effects would also occur if the project resulted in substantial permanent or temporary/periodic increase in ambient noise levels

in the project vicinity above noise levels existing without the project. According the General Plan Noise Policy E1.4, projects that increase noise levels by 5 dB or greater should be considered as generating a significant impact and should be mitigated.

The City's General Plan Noise Element contains noise policies, which outline acceptable noise levels associated with each type of land use. A 60 CNEL exposure is considered normally acceptable for residential land uses based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements. The City requires that noise levels be presented in terms of Community Noise Equivalent Level (CNEL). CNEL is a weighted sound level during a 24-hour period, after the addition of 5 decibels (dB) to average sound levels at evening hours (7 PM to 10 PM) and 10dB to the average night hours (10 PM to 7AM). The addition of 5 and 10 dB is applied to account for noise sensitivity during evening and nighttime hours.

In order to assess future noise generation associated with the improvement of the City's circulation system, a Noise Contour map was prepared for the Noise Element of the General Plan. The Noise Exposure Map-Future Conditions Map contained in the General plan does not depict the subject site as exposed to 60 CNEL or more. The August 2000 Final Environmental Impact Report prepared for the Escondido General Plan Update illustrates existing and future noise contours. Noise levels depicted for Sunset Drive and Juniper Street fall below the 60 CNEL standard contained in the Noise/Land Use Compatibility Guidelines of the General Plan. Therefore no significant noise impact from vehicular traffic would occur.

Grading and construction within the project would create temporary noise impacts. Modern construction equipment, properly used and maintained, meet the noise limits contained in the City's Noise Ordinance. All noise generated by the project would be required to comply with the City's Noise Ordinance. Upon completion of the project, all construction noise from the project will cease. Because construction operations would be required to conform to the City's Noise Ordinance and because construction noise is temporary, no significant impact from construction noise would occur.

XII. Population and Housing

City of Escondido Significance Criteria

Significant population and housing impacts would occur if the proposed project; induced substantial population growth in an area; and, displaced substantial numbers of people or existing housing.

Population within the City would incrementally increase as a result of developing the proposed 11 dwelling units. The City's General Plan anticipates single-family residential use on the project site and the density of the proposal is consistent with the City's General Plan Land Use Designation of Suburban. The proposed development would contribute 11 units toward the goal of 1,110 units in the above moderate-income category identified in the City's Regional Share Housing requirements therefore the project would not result in a significant population and housing impact.

XIII. Public Services

City of Escondido Significance Criteria

Impacts would be significant if the project resulted in demands for wastewater treatment requirements in excess of the capacity of existing facilities. Or if the project triggered the need for construction of new water or wastewater treatment facilities or the expansion of existing facilities, the construction of which could cause significant environmental effects. The project would cause significant impacts if the project required/resulted in, the construction of new storm water drainage facilities or expansion of existing facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. Significant impacts would also occur if the project resulted in a determination by the wastewater treatment provider and/or a landfill operator, which serve, or may serve, the project that capacity of existing facilities to serve the project's projected demand in addition to the provider's existing commitments is inadequate.

Sewer Service – An 8 inch sewer line, which is currently under Lehner Avenue, would be extended to "Street A" serve the project. Interviews with City Public Utilities staff have confirmed that treatment capacity exists at the wastewater treatment plant located on Hale Avenue.

Water Service – The subject site is within the City's Municipal Water District and the North City Critical Water Deficiency Area. To address the issues of water deficiency the project will require a Development Agreement. The Development Agreement includes the provision that the developer be responsible for building the Ash/Channel waterline prior to occupancy. Interviews with City Public Utilities staff have confirmed capacity exists in the City's reservoir and treatment facilities to adequately serve the project once the water line is extended.

Storm Water/Refuse Collection – The Engineering Division indicated the proposed project would not require the construction of significant new storm drain facilities or adversely impact existing facilities. Escondido Disposal currently provides solid waste service to the site and the project would not result in a significant increase in solid waste. The proposed amendment would not result in any individual or cumulative impacts to utilities and service systems.

Fire -The City Fire Department has indicated their ability to adequately serve the proposed project. The project site would be served by Fire Station No. 3, which is located at 2165 Village Road.

Law Enforcement - The City of Escondido Police Department has indicated the ability to provide adequate service to the proposed development. Additional conditions of approval will be made a part of project approvals to improve security.

Schools - The site is within the Escondido Union School District and the Escondido Union High School District. Secondary students would likely attend Escondido High School. Elementary students would likely attend North Broadway School (K-5th) and Rincon Middle School (6th-8th). The incremental impact of the proposed residential developments on the school system would be offset by the impact fees collected upon issuance of building permits.

XIV. Recreation

City of Escondido Significance Criteria

Significant impact would occur if the project resulted in an increase of 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. A significant impact would also occur if the project includes or requires the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment.

Development of the project would result in an incremental demand on the City's recreational facilities. However the development fees paid by this project would offset the anticipated impact on the existing facilities. The proposed project would not affect existing recreational opportunities since the site is not used for recreational activities and is not listed as a park site in the City's Master Plan of Parks, Trails and Open Space. Therefore no significant impact to recreational resources would occur as a result of the project.

XV. Mandatory Findings of Significance

No significant impacts to the environment as a result of this project have been identified. Approval of the project is not expected to have any significant impacts, either long-term or short-term, nor will it cause substantial adverse effect on human beings, either directly or indirectly.

ATTACHMENT "A"
MITIGATION MONITORING REPORT

PROJECT NAME: David Buckmaster 11-Unit Single-Family Residential Subdivision
PROJECT DESCRIPTION: A Tentative Map, and Development Agreement, for an 11-lot Residential Subdivision
PROJECT LOCATION: Between Conway Drive, Lehner Avenue, & Stanley Ave.
CONTACT PERSON: Steve Barger, Cornerstone Engineering
PHONE NUMBER: (760) 722-3495

ENVIRONMENTAL CASE NO: ER 2006-08
ASSOCIATED CASE NO: TR 894, 2004-57-DA/GE

APPROVAL BODY/DATE: City Council (TBD)
PROJECT PLANNER: Diana Delgadillo, Associate Planner

lo.	Mitigation Measure	Location in Document	Responsibility for Implementation	Signature/ Date Completed	Phase of Implementation	Comments
1.	A qualified biologist shall determine if any active raptor nests occur on or in the immediate vicinity of the project site if construction is set to commence or continue into the breeding season of raptors (January 1 to June 15). If active raptor nests are found, their situation shall be assessed based on topography, line of site, existing disturbances and proposed disturbance activities to determine an appropriate distance or temporal buffer.	Biological Resources	Applicant		Prior to issuance of grading permit	
2.	Should any artifacts be found during the grading process, the project applicant shall provide archaeological monitoring for the significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area shall be identified and the boundaries marked to avoid further ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be	Cultural Resources	Applicant		Prior to issuance of grading permit	

	obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.					
3.	Prior to grading or export of soil, soil sampling shall be performed to determine if unsafe concentrations of pesticides exist in the soil.	Hazardous Materials	Applicant		Prior to issuance of grading permit	
4.	Install temporary signs on westbound Vista Avenue alerting driver to possible congestion during the 30 minutes directly before and after the school day and suggest alternate routes.	Traffic/Circulation	Applicant		Prior to issuance of grading permit	
5.	Provide tubular delineators on Vista Avenue at the school Pickup-Drop-off area to prohibit eastbound to westbound U-turns. This, in conjunction with the school implementing a more stringent one-way traffic pattern, could alleviate some of the existing congestion.	Traffic/Circulation	Applicant		Prior to issuance of grading permit	
6.	Provide pedestrian walkways at the following locations: a. Ash Street from Sheridan Avenue to Vista Avenue b. North side of Vista from Ash Street to rear access driveway to Rincon Middle School. c. South side of Lehner Avenue from Vista Avenue to Ash Street. d. East side of Conway from Rincon Avenue to project site.	Traffic/Circulation	Applicant		Prior to issuance of grading permit	

ACKNOWLEDGEMENT OF ENFORCEABLE COMMITMENT

ER 2004-31

2004-57-DA/GE, TR 894 11-Lot Single-Family Residential Subdivision
On Lehner Avenue Between Conway Drive and Stanley Avenue

The items listed on the attached Mitigation Monitoring Program constitute an enforceable commitment pursuant to Section 21081.6(b) of the California Environmental Quality Act (Public Resources Code Sections 21000-21178.) The applicant will be required to provide and comply with all of the mitigation measures listed herein. These mitigation measures have also been included as conditions of the project approval.

5/30/04 — Date

Steve Barger, Cornerstone Engineering

Steve Barger — Applicant's Signature

Agenda Item No.: 16
Date: December 4, 2013

ORDINANCE NO. 2013-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN MERIT GROUP, INC. AND THE CITY OF ESCONDIDO TO AUTHORIZE CONSTRUCTION OF THE PREVIOUSLY APPROVED 11-LOT TRACT 894 RESIDENTIAL SUBDIVISION IN THE NORTH BROADWAY DEFICIENCY AREA

PLANNING CASE NO.: PHG 13-0027

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. That the City Council has reviewed and considered the Mitigated Negative Declaration (City Log No. ER-2004-31) and Mitigation Monitoring Report originally prepared for the Tract 894 project and has determined that all environmental issues associated with the project have been addressed and no significant environmental impacts will result from approving this agreement.

SECTION 3. That upon consideration of the staff report, Planning Commission recommendation and all public testimony presented at the hearing held on this agreement, this City Council finds that the Development Agreement is consistent with the Escondido General Plan and the Growth Management Ordinance (Article 68) of the Zoning Code.

SECTION 4. That the City Council desires at this time and deems it to be in the best public interest to approve the Development Agreement with Merit Group, Inc. attached as Exhibit "A" and incorporated by this reference.

SECTION 5. That the City Council hereby consents to the future assignment of the Development Agreement to Pacific Land Investors, LLC.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 7. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation in the City of Escondido.

RECORDING REQUESTED BY:

CITY CLERK, CITY OF ESCONDIDO

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF ESCONDIDO
201 N. BROADWAY
ESCONDIDO, CA 92025

THIS SPACE FOR RECORDER'S USE ONLY

APN: 224-142-35-00

Recording Fees Exempt Per Government Code Section 27383

DEVELOPMENT AGREEMENT
for Tract 894
(Buckmaster)

between

CITY OF ESCONDIDO

and

MERIT GROUP, INC.,
A California corporation

_____, 2013

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the CITY OF ESCONDIDO, a municipal corporation ("City"), and MERIT GROUP, INC., a California corporation ("Owner")(collectively, "the Parties").

ARTICLE I

Recitals

The Agreement is entered into on the basis of the following facts, understanding and intentions of the Parties:

1. **Code Authorization.** Government Code Sections 65864 through 65869.5, Article 58 of the City's Zoning Code (the "Development Agreement Legislation") and Article 68 of the City's Zoning Code ("Growth Management Ordinance") authorize the City to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the purpose of establishing certainty in the development process for both the City and the property owner, and to enable specific terms regarding property development, to be negotiated and agreed upon.

2. **Interest of Owner.** Owner is the legal and/or equitable owner of certain real property totaling approximately 3.19 acres, with the current address of 1026 Lehner Avenue, located in the County of San Diego, State of California (the "Property"), as further described in Exhibit A , and more specifically within the North Broadway Region of Influence identified in the City's Growth Management Ordinance. Owner intends to subdivide the Property into eleven (11) lots for single-family residential units and to construct such other improvements as are required by the conditions of approval of the Entitlements, Future Entitlements and the Agreement (collectively, the "Project").

3. **Sale of Property.** Owner has entered into an agreement to sell the Property to Pacific Land Investors, LLC, ("PLI") and by letter dated July 20, 2013 on file with the City, has authorized Mark Ferraro of PLI to act on its behalf with respect to this Agreement.

4. **Intent of Parties.** By the Agreement, the City and Owner intend to accomplish the following:

a. Eliminate uncertainty in the planning and development of the Project by assuring Owner that it may develop the Property, in accordance with Existing Laws, subject to the terms and conditions contained in the Agreement;

b. Assure the orderly installation of necessary improvements and the provision for public services appropriate for the development of the Project; and

c. Enable the City to obtain substantial public benefits by virtue of the Agreement.

5. **Execution.** The execution of the Agreement by the City and Owner shall constitute conclusive evidence that duly noticed public hearings before the Planning Commission and the City Council required by the Development Agreement Legislation have been held, and that the City Council has introduced (first reading) and adopted (second reading) an Ordinance approving the Agreement and containing the findings required by the Development Agreement Legislation.

6. **Effective Date.** The effective date ("Effective Date") of the Agreement shall be January 10, 2014, which is the date 30 days after the adoption of the development agreement ordinance.

7. **Entitlements.** The City has also approved or certified the following entitlements, attached hereto as Exhibit B, which are necessary to implement the Project:

a. Tentative Subdivision Map, No. 894 (the "Tentative Map"), by City Council Resolution No. 2006-156 on August 16, 2006, including grading exemptions. Owner and the City understand that the Tentative Map has been modified to comply with the stormwater

regulations as stated in Article II, Section 3. Owner and the City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-156.

b. Mitigated Negative Declaration (Tract 894) ER 2004-31, certified by City Council Resolution No. 2006-156 on August 16, 2006.

8. **Amendment.** The Tentative Map is set to expire on September 22, 2015 pursuant to Article IV, Section 10 of the Development Agreement as extended by California Government Code Sections 66452.22 and 66452.23. The Parties desire to extend the Term of the Tentative Map to align with the term of this Agreement by the terms and conditions herein.

NOW THEREFORE, in consideration of the Recitals and the mutual covenants conditions set forth herein, the Parties agree as follows:

ARTICLE II

Definitions

1. **"Entitlements"** refers to all approvals and permits necessary or incidental to the development of the Project or any portion thereof, whether discretionary or ministerial, including but not limited to, those listed in Article I, Section 6 above, final tract map approvals, whether standard or vesting, project plans, grading permits, building permits, and the Agreement.

2. **"Exaction"** refers to any fee, tax, requirement, condition, dedication, restriction, or limitation imposed by the City upon the development of the Property at any time in accordance with the Existing Laws.

3. **"Existing Laws"** refers to the ordinances, resolutions, codes, rules, regulations, stormwater regulations and official policies of the City governing the development of the Property, including, but not limited to the permitted uses of the Property, the density or intensity of use, the design, improvement and construction standards and specifications for the Project,

including the maximum height and size of proposed buildings, and the provisions for reservation and dedication of land for public purposes, in effect on the Effective Date of this Agreement.

4. **"Future Exaction"** refers to Exactions imposed after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise.

5. **"Future Laws"** refers to all ordinances, resolutions, codes, rules, regulations, and official policies implemented by the City after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise. "Future Laws" includes changes to the Existing Laws.

6. **"Future Entitlements"** refers to all Entitlements approved or adopted by the City after the Effective Date.

7. **"General Fees"** refers to all general development fees which the City may levy pursuant to the Government Code Sections 66000 et seq. ("the Mitigation Fee Act"), including, but not limited to, application fees, processing fees, utility connection fees, inspection fees, capital facilities fees, development impact fees, traffic impact fees, park fees and such other similar fees as may be enacted from time to time and generally applied throughout the City.

8. **"General Plan"** refers to the City's General Plan in effect on the Effective Date.

9. **"North Broadway Deficiency Area"** refers to the region specified in the City's Growth Management Ordinance No. 94-16, and to surrounding unincorporated areas within the City's Sphere of Influence, of which the Property is a part.

10. **"Project"** shall mean and refer to all improvements described in the Entitlements, Future Entitlements, and the Agreement.

11. **"Public Benefits"** shall refer to the consideration given by Owner to the City, as described in Exhibit C attached hereto, in return for the City's good faith performance of all applicable terms and conditions in the Agreement.

ARTICLE III

General Provisions

1. **Term of Agreement.** The term of the Agreement (the "Term") shall commence on the Effective Date of this Agreement and shall continue until the fifth (5^{th}) anniversary thereof, January 10, 2019, unless terminated, modified, or extended as permitted by the Agreement.

Following the expiration of the Term, the Agreement shall be deemed terminated and of no further force or effect; provided, however, such termination shall not affect any right or duty arising from the City approvals, including, without limitation, the Entitlements, the Future Entitlements and any reimbursement agreement that may be entered into pursuant to the terms of the Existing Laws or the Agreement.

The Agreement shall terminate with respect to any lot and such lot shall be released and no longer is subject to the Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the building(s) on the lot.

2. **Assignment**. The rights and obligations of Owner under the Agreement may be assigned by Owner as part of an assignment of all or a portion of the Property. Except for Owner's assignment of the Agreement to PLI, which the City approves by execution of this Agreement, no assignment shall be effective unless (1) such assignment is in writing and expressly provides that the assignment shall be subject to the Agreement; (2) the Assignee assumes all of Owner's rights and obligations with respect to the Property, or portion thereof, assigned; and, (3) the City has determined that the assignment will not affect the timely completion or fulfillment of any

requirements in the Entitlements, the Future Entitlements or the Agreement relating to the Public Benefits. Owner shall provide Thirty (30) days advance written notice to the City of any assignment. In determining whether an assignment will affect the timely completion or fulfillment of any requirements relating to the Public Benefits, the City agrees (a) not to unreasonably withhold its determination that the assignment will not affect the timely completion or fulfillment of requirements relating to the Public Benefits and (b) to approve any assignment where it can reasonably be demonstrated that the proposed assignee has the financial capability to complete in a timely fashion and fulfill any uncompleted requirements relating to the Public Benefits.

During the Term, any assignee shall have all rights, benefits, and obligations of Owner under the Agreement with respect to the portion of the Property assigned. Following an assignment, Owner shall be released from its obligations with respect to the Property which has been assigned. Upon any transfer of any portion of the Property and the express assumption of Owner's obligations under the Agreement by such transferee, the City agrees to look solely to the transferee for compliance by such transferee with the provisions of the Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Owner's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee, and any amendment to the Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee.

3. **Amendment of Agreement.** The Agreement may be amended by the mutual consent of the Parties in the manner provided by the Development Agreement Legislation. The Agreement shall include any amendment properly approved and executed. Minor modifications in the manner of performance, including, but not limited to changes which relate to the form or timing of payment of Public Benefits or the design of the Project shall not constitute an Amendment to the Agreement and may be accomplished through an "Operating Memorandum" subject to Article IV, Section 10 of the Agreement.

4. **Enforcement.** Unless amended or terminated as provided herein, the Agreement is enforceable by either Party or its successors and assigns, notwithstanding any Future Laws, which alter or amend the Existing Laws.

5. **Hold Harmless.**

a. Owner agrees to indemnify, hold harmless, and provide and pay all costs for a defense for the City in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of the Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of the City, its officers, agents, employees, or representatives.

b. Owner shall further indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01) of the California Regional Water Quality Control Board Region 9, San Diego, as amended or extended, which the City might suffer, incur, or

become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

6. **Third Party Challenges.** In the event the validity, applicability, or implementation of the Agreement is challenged by means of legal proceedings by any party other than the City and Owner, it shall be the City's option, at its sole and absolute discretion, whether to undertake the defense of such challenge. If the City determines not to defend such challenge, it shall be the option of Owner, at its sole and absolute discretion, to defend the validity, applicability, or implementation of the Agreement in the proceeding at Owner's expense. If the City opts to defend a challenge against the validity, applicability, or implementation of the Agreement, Owner shall not be responsible for the defense of any of the City's actions brought in such a challenge or for the expense of defending such City actions. The City and Owner agree to cooperate in the defense of any such challenges.

7. **Notices.** All notices or communication between the City and Owner pursuant to the Agreement shall be in writing and shall be given by personal delivery (including commercial express delivery services providing acknowledgments of receipt), registered, certified, express mail, facsimile or telecopy, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:

a. For personal delivery, upon actual receipt;

b. For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and

c. For facsimile, upon transmission of the facsimile or, if transmitted after business hours, then the next business day.

Notices shall be addressed as follows:

To the City: City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025
FAX (760) 741-7541

With Copy to: Jeffrey R. Epp, Esq.
City Attorney
City of Escondido
201 N. Broadway
Escondido, CA 92025
FAX (760) 741-7541

To Owner: Pacific Land Investors, LLC
Attn: Mark Ferraro
101 Pacifica, Ste. 200
Irvine, CA 92618
FAX 949-789-0006

With copy to: David W. Ferguson, Esq.
Lounsbery Ferguson Altona & Peak, LLP
960 Canterbury Place, Suite 300
Escondido, CA 92025
FAX (760) 743-9926

The addresses to which notices shall be sent may be changed by giving Ten (10) days written notice of change of address in the manner set forth above.

8. **Conflict of State or Federal Laws.** If state or federal laws or regulations enacted after the Effective Date prevent compliance with any provision of the Agreement or require changes in the Entitlements or any Future Entitlements, those laws or regulations shall be controlling and the Parties shall make a good faith, reasonable attempt to modify the Agreement to comply both with the intent of the Agreement and with the new laws or regulations.

The City shall timely assist Owner in securing any permits, including permits from other public agencies, which may be required as a result of the modifications, suspensions, or alternate course of action.

ARTICLE IV

Development of the Property

1. **Applicable Rules, Regulations, and Policies.** Owner shall have the vested right, to the fullest extent allowed under the Development Agreement Legislation, to develop the Property in accordance with the Entitlements, Future Entitlements and the Existing Laws. During the Term, the Entitlements, Future Entitlements, Existing Laws and the Agreement shall control the overall design, development and construction of the Project. Notwithstanding the foregoing, nothing in the Agreement shall preclude the City from applying changes occurring from time to time in the uniform codes published in Title 24 of the California Code of Regulations and adopted by the City of Escondido, including local amendments, in effect when the building permits are issued. In the event of any inconsistency between the Existing Laws and the Agreement, the provisions of the Agreement shall control.

2. **Future Laws.** Future Laws shall not apply to the Project except as expressly provided in the Agreement. Owner may give the City written notice of its election to have any Future Law applied to the Property, in which case such Future Law shall be deemed to be an Existing Law.

3. **Future Discretionary Reviews.** Except as set forth in the Agreement, the City shall retain its discretionary rights in reviewing applications for Future Entitlements. Owner's applications for Future Entitlements and the City's review thereof, must comply with the Existing Laws and with the terms and conditions of the Agreement. Upon granting any Future Entitlement, such Future Entitlement shall become part of the Existing Laws. The City shall not

impose any conditions upon any Existing Entitlements that are more restrictive than or inconsistent with the terms of this Agreement or the Existing Laws, except as expressly required (as opposed to permitted) by state or federal law. The City may conduct, in accordance with CEQA and the Existing Laws, an environmental review for Future Entitlements. The City may impose, if required by CEQA, additional mitigation measures to mitigate significant adverse environmental effects that were not previously considered, or were found to be infeasible, to mitigate at the time of approval of this Agreement.

4. **Permitted Uses and Density.** The Agreement shall vest the right to develop the Property to the fullest extent allowed under the Development Agreement Legislation with respect to the permitted uses of land, density and intensity of uses, and timing and phasing of development as described in the Entitlements and Future Entitlements. The permitted uses, density, and intensity of use of the Project, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes, shall substantially conform to those specified in the Entitlement and Future Entitlement conditions of approval, Existing Laws and the Agreement. All other aspects of the Project that are not specified in the Entitlement or Future Entitlement conditions of approval shall be determined by the Existing Laws, except as expressly provided herein.

To the extent the City retains discretion in the Future Entitlements concerning future permitted land uses, density, and intensity of use(s), the City agrees, absent conditions that the City determines are dangerous to the health or safety of the residents of the City, not to exercise that discretion in such a way as to reduce the allowed number of residential units, alter the timing of development or modify the height and design features of the Project as described in the Entitlements, Future Entitlements and the Agreement.

5. **Application of Future Laws.** Subject to Article V of the Agreement, Future Laws may be applied to the Project if they are not in conflict with the Existing Laws and will not prevent, hinder, delay, or adversely economically impact the Project.

6. **Permitted Fees.** Except as otherwise provided in the Agreement, and specifically excluding fees set by entities not controlled by the City that are collected by the City, the City shall only charge and impose those General Fees and Exactions described as "Processing Fees," "Permit/Inspection Fees," "Connection Fees," and "Development Fees" in the amounts and of the type which are in effect at the time they are incurred by Owner or any successor-in-interest as described in the Escondido Fee Guide For Development Projects. The Project shall be subject to City-wide fees only and nothing in this Agreement shall impose on the Project any additional City special or district fees or taxes that do not currently exist.

Notwithstanding the above, in return for Owner's construction of Public Benefits in the North Broadway Deficiency Area as described in Exhibit C, the City will waive SIXTY-FOUR THOUSAND, THREE HUNDRED AND ELEVEN DOLLARS and FIFTY CENTS ($64,311.50) of the total water connection fees.

7. **Required Financial Contribution to City Capital Improvement Projects.** Prior to the City's grant of the first building permit for the Project, Owner agrees to pay the City SEVENTEEN THOUSAND DOLLARS ($17,000.00) per approved residential lot ("Deficiency Fee"), which funds the City shall use to finance certain roadway and drainage improvements in the vicinity of the Project.

8. **Time for Construction and Completion of the Project.** Owner cannot predict when or the rate or the order in which the Property or the parcels will be developed, if at all. Such decisions depend upon numerous factors that are not within the control of the Owner, such as

market orientation and demand, interest rates, absorption, completion, and other similar factors. Therefore, Owner or its assignees shall have the right to develop the Property in phases, in such order, at such rate, and at such times as Owner or its assignees deems appropriate in Owner's or its assignees' business judgment, subject only to the provisions of the Agreement. Owner or its assignees shall be entitled to apply for and receive approval of permits, building permits, and other Entitlements and Future Entitlements for use at any time and for any or all portions or phases of the Project, provided that application is made in a manner consistent with the Agreement.

Owner shall be allowed to perform onsite Project grading and offsite road construction and water line installation prior to approval of a Final Map. The City may require, and will process, all customary plans and agreements generally applicable to developers in the City for similar works of onsite or offsite improvements. Once Owner has obtained approval of the Final Map, it may commence construction of the single-family residences.

9. **Moratorium.** No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of the City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within the City, or portions of the City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with the Agreement; provided, however, the provisions of this Section shall not affect the City's compliance with

moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

10. **Operating Memoranda.** The Parties acknowledge that the provisions of the Agreement require cooperation between the City and Owner, and that the refinements and further development of the Project hereunder may demonstrate that changes are appropriate with respect to the details of performance of the Parties hereunder. The Parties desire, therefore, to retain a certain degree of flexibility with respect to those items covered in general terms under the Agreement. If and when, from time to time during the Term, the Parties find that such changes or adjustments are necessary or appropriate, they shall effectuate such changes or adjustments through Operating Memoranda approved by the Parties, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary with further approval by the City and Owner. No such Operating Memoranda shall require prior notice or hearing, or constitute an amendment to the Agreement; and in the case of the City, such Operating Memoranda may be acted upon by the City Manager, Director of Community Development or by their designee. Failure of the Parties to enter into any such Operating Memoranda shall not affect or abrogate any of the rights, duties or obligations of the Parties hereunder or the provisions of the Agreement. An Operating Memoranda may be recorded as an Addendum to the Agreement.

11. **Term of Map(s) and Other Project Approvals.** Pursuant to California Government Code Section 66452.6(a), the term of the subdivision map that is processed on all or any portion of the Property and the term of each of the Entitlements and Future Entitlements shall be extended for a period of time through the Term of the Agreement as specified in Article III Section 1.

12. **Infrastructure Capacity.** Subject to Owner's proportionate contribution to infrastructure and the Public Benefits provided by Owner, in accordance with the requirements of the Entitlements and Future Entitlements, the City hereby acknowledges that it will have sufficient capacity in its infrastructure services and utility systems, including, without limitation, traffic circulation, flood control, sewer collection, sewer treatment, sanitation service and, except for reasons beyond the City's control, water supply, treatment, distribution and service, to accommodate the Project. To the extent that the City renders such services or provides such utilities, the City hereby agrees that it will serve the Project and that there shall be no restriction on connections or service for the Project except for reasons beyond the City's control. Notwithstanding the foregoing, the City acknowledges that sufficient capacity for sewer collection, sewer treatment and sanitation service for the Project exists as of the Effective Date. Owner acknowledges that the City cannot guarantee sufficient capacity for sewer collection, sewer treatment and sanitation service during the Term of this Agreement. The City shall guarantee sufficient capacity for sewer collection, sewer treatment and sanitation service for the Project for one (1) year from the Effective Date.

13. **Termination or Modification.** Notwithstanding the provisions of Section 33-1149 of the City's Zoning Code, the City's right to terminate or modify the Agreement may be exercised pursuant to the terms of Section 33-1149 after a public hearing only if the City determines that the failure of the City to terminate or modify the Agreement would place the residents of the City in an immediate condition dangerous to their health or safety. Upon approval of the Agreement by the Escondido City Council, Owner shall have 45 days to sign the Agreement or the Agreement shall automatically expire.

14. **Easements.** Easements dedicated for pedestrian use shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities so long as they do not unreasonably interfere with pedestrian use.

15. **Conditions of Approval.** Owner agrees to construct the following roadway improvements:

STREET	IMPROVEMENT
Street "A" (located within Project)	Full width
Lehner Avenue frontage	Half width plus 10 feet
Ash Street (one side)	Complete pedestrian walkway from Sheridan Avenue to Vista Avenue
Conway	Pedestrian walkway on the east side of Conway from project site to Rincon*

*Remaining pedestrian walkways required by Condition 7 of the Street Improvements and Traffic section of the Conditions of Approval have been completed.

Work to be performed based upon Escondido Design Standards and Standard Drawings (Effective Date: June 23, 1999).

ARTICLE V

Provision of Public Benefits

1. **Description of Public Benefits.** Owner or its assignees shall compensate the City with the following Public Benefits, as further described in Exhibit C attached hereto, as consideration for the City's good faith performance of all applicable terms and conditions in the Agreement:

a. Fulfilling long-term economic goals for the City.

b. Providing fiscal benefits to the City.

c. Providing short-term construction employment within the City.

d. Providing housing which will help to satisfy the City's obligation to meet the City's share of regional housing needs.

e. Advancement of the City's planned construction of roadway and drainage infrastructure needed in the future to serve areas near or surrounding the Project, and Owner's payment of a Community Benefit Fee SEVENTEEN THOUSAND DOLLARS ($17,000.00) per unit to be developed, pursuant to Article IV, Section 6.

2. **Occupancy Contingent on Construction of Public Improvements.** Owner acknowledges that the City shall not grant a certificate of occupancy for residences constructed on the Property until Owner constructs all Public Benefits listed in Exhibit C. This contingency for occupancy shall survive the termination of the Agreement.

3. **Recordation of Final Map Contingent on Security for Public Benefits.** Prior to recordation of the Final Map, Owner must enter into an "Agreement for Completion of Improvements," which will detail Owner's construction obligations for project-required improvements and the Public Benefits, and will require Owner to provide financial security for completion of construction and shall be in substantially the form attached at Exhibit D.

4. **Other Governmental Bodies.** To the extent that the City, the City Council, the Planning Commission or any other City board, agency or commission that constitutes and sits as any other board, agency or commission, it shall not take any action that conflicts with the City's obligations under the Agreement.

5. **Processing During Third Party Litigation.** The filing of any third party lawsuit(s) against the City or Owner relating to the Agreement, the Entitlements, any Future Entitlements or to other development issues affecting the Property shall not delay or stop the development,

processing or construction of the Project or approval of Future Entitlements, unless the third party obtains a court order preventing the activity. The City shall not stipulate to or cooperate in the issuance of any such order.

ARTICLE VI

Annual Review

1. **City Responsibilities.** At least every twelve (12) months during the Term, the City shall review the extent of good faith substantial compliance by Owner with the terms of the Agreement (the "Annual Review"). At the conclusion of the Annual Review, the City's finding of good faith substantial compliance by Owner with the terms of the Agreement shall be conclusive up to the date of such finding for the purposes of future Annual Reviews or legal action between the Parties.

2. **Owner Responsibilities.** At the annual review, it shall be the responsibility of Owner to demonstrate good faith substantial compliance with the major provisions of the Agreement and to provide, to the best extent possible, the status and timing of development of the Project and related public improvements. If requested by the City, Owner shall provide any additional detail or information necessary to demonstrate good faith compliance with any particular provision of the Agreement identified by the City.

3. **Opportunity to be Heard.** Owner shall be permitted an opportunity to be heard orally and in writing at any noticed public hearing regarding its performance under the Agreement. Owner shall be heard before each appropriate board agency or commission and the City Council at any required public hearing concerning a review of performance under the Agreement.

4. **Information to be Provided to Owner.** The City shall mail to Owner a copy of staff reports and related exhibits concerning Agreement performance, a minimum of ten (10) calendar

days prior to consideration and review by the City Council as required by the Development Agreement Legislation.

5. **Annual Review Letter.** If Owner is found to be in substantial compliance with the Agreement after the Annual Review, the City shall issue, upon written request by Owner, a letter to Owner (the "Review Letter") stating that, based upon information known or made known to the City Council, the City Planning Commission, and/or the City Manager, the Agreement remains in effect and Owner is in compliance. Owner may record the Review Letter in the Official Records of the County of San Diego.

6. **Estoppel Certificates.** Either Party may at any time, and from time to time, deliver written notice to the other Party requesting that the other Party certify in writing that to the knowledge of the certifying Party:

a. The Agreement is in full force and effect and is a binding obligation of the Parties.

b. The Agreement has not been amended or modified orally or in writing or, if so amended, identifying the amendments.

c. There exists no material default in the performance of the requesting Party's obligations under the Agreement or, if in default, the nature and amount of any material default.

A Party receiving a request under this Section shall execute and return a certificate within Thirty (30) days following receipt of the request. The failure to deliver such certificate within such time shall be conclusive upon the party which fails to deliver such certificate that the Agreement is in full force and effect without modification and that there are no uncured defaults in the performance of the requesting party. A certificate given pursuant to this Section may be relied upon by assignees and mortgagees.

7. **Failure of Annual Review.** The City's failure to perform the Annual Review of Owner's substantial compliance with the terms and conditions of the Agreement shall not constitute or be asserted as a default by Owner.

ARTICLE VII

Delay, Default, Remedies, and Termination

1. **Notice and Cure of Default.** In the event of a material default, the Party alleging a default shall give the defaulting Party a notice of default in writing. The notice of default shall specify the nature of the alleged material default, and the manner and period of time of not less than thirty (30) days in which the default must be cured (the "Cure Period"). The Cure Period must provide sufficient and reasonable time for the default to be cured. During the Cure Period, the Party charged shall not be considered in default. If the default is cured within the Cure Period, then no default shall be deemed to exist.

2. **Option to Institute Legal Proceedings or to Terminate.** If a material default is not cured within the Cure Period, the noticing Party may institute legal proceedings as provided in Article VII Section 8 and/or give to the defaulting Party a notice of intent to terminate the Agreement. If a notice of intent to terminate the Agreement is given, the City Council, within thirty (30) days after the giving of the Notice, shall hold a public hearing in the manner set forth in the Development Agreement Legislation, as amended, to consider and review the matter.

3. **Notice of Termination.** Following consideration of the evidence presented before the City Council and its determination that a default exists, the Party alleging a material default by the other Party, at its option, may give written notice of termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon the giving of the Notice. The

validity of the basis for such a termination may be challenged pursuant to Article VII Section 8 by the Party alleged to be in default.

4. **Waiver.** Failure or delay in giving notice of default pursuant to Article VII Section 1 shall not constitute a waiver of any other material default. Except as otherwise expressly provided in the Agreement, a failure or delay in asserting any rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies otherwise available to a Party or deprive a Party of the right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any rights or remedies it may have.

5. **Default by Owner.** An Annual Review may result in amendment or termination of the Agreement provided a material default has been established by substantial evidence and such default has not been cured within the Cure Period.

6. **Default by the City.** Upon a material default by the City, Owner, without limiting any of its other remedies, shall not be obligated to complete any of its obligations under the Agreement. Upon a City default, any resulting delays in Owner's performance shall neither be construed as a material default by Owner nor constitute grounds for termination or cancellation of this Agreement by the City and the Term shall be extended for the period of any such delay.

7. **Enforced Delay, Extension of Time of Performance.** Neither Party shall be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by other applicable governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written notice of such delay is given to the other Party following the commencement of such delay, an extension of time for performance shall be granted in writing

for the period of the delay, or longer as may be mutually agreed upon. An extension shall commence to run from time of commencement of the cause of delay.

8. **Institution of Legal Action.** In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to enforce any provision of the Agreement, to enjoin any threatened or attempted violation of the Agreement, to recover damages for any default, or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of San Diego, North County Branch, State of California, or in the Federal District Court in the Southern District of California. Pursuant to Code of Civil Procedure Section 638, et seq., all legal actions shall be heard by a referee who shall be a retired judge from either the San Diego County Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Owner and the City shall agree upon a single referee who shall then try all issues, whether fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Owner and the City are unable to agree upon a referee within ten (10) days of a written request to do so by either party hereto, it will not be considered a material default by Owner nor constitute grounds for termination or cancellation of the Agreement by the City and the Term shall be extended for the period of any such delay, and either party may seek to have a referee appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Article VII Section 8 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the provisions of this Article VII Section 8, either party shall be

entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of the Agreement, or to enjoin the other party from an asserted breach thereof, pending the selection of a referee as provided in this Article VII Section 8, on a showing that the moving party would otherwise suffer irreparable harm.

ARTICLE VIII

Encumbrances and Releases on Property

1. **Discretion to Encumber.** The Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage. The City acknowledges that lenders providing financing may require modifications to the Agreement and the City agrees, upon request, from time to time, to meet with Owner and/or representatives of lenders to negotiate in good faith any lender request for modification. The City agrees that it will not unreasonably withhold its consent to any lender requested modification to the Agreement.

2. **Entitlement to Written Notice of Default.** Any mortgagee and its successors and assigns, upon written request to the City, shall be entitled to receive from the City written notice of any Owner default at the same time Owner is provided with such notice pursuant to Article VII Section 1 above.

3. **Additional Mortgagee Protection.** Any mortgagee of a mortgage or a beneficiary of a deed of trust of the Property shall be entitled to the following rights and privileges:

a. Neither entering into the Agreement nor a breach of the Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

b. Any mortgagee receiving the notice referred to in Article VIII Section 2 above shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under the Agreement. If the default is of a nature which can only be remedied or cured by such mortgagee upon obtaining possession, such mortgagee shall seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence be remedied or cured within such 30-day period, then such mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such mortgagee commences cure during such 30-day period, and thereafter diligently pursues and completes such cure.

ARTICLE IX

Miscellaneous Provisions

1. **Rules of Construction.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

2. **Severability.** If any non-material provision of the Agreement shall be adjudged by a court of competent jurisdiction to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of the Agreement. If any material part of the Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or illegal, the Parties shall take all steps necessary to modify the Agreement to implement the original intent of the Parties in a valid and binding manner. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefited by

the material provision does not waive its rights under the unenforceable provision, the entire Agreement shall become void.

3. **Entire Agreement.** Except as the Agreement expressly refers to and/or incorporates other agreements between the City and Owner, the Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of the Agreement. The Agreement supersedes all other negotiations and previous agreements between the Parties with respect to that subject matter.

4. **Waivers.** All waivers of the provisions of the Agreement must be in writing and signed by the appropriate agents of the City or of Owner.

5. **Amendments.** All amendments to the Agreement must be in writing signed by the appropriate agents of the City and Owner, in a form suitable for recording in the Official Records of San Diego County, California.

6. **Recording.** The City Clerk shall cause a copy of the Agreement to be recorded with the Office of the County Recorder of San Diego County, California within Ten (10) days following the Effective Date. Upon the completion of performance of the Agreement or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of Owner and the City shall be recorded in the Official Records of San Diego County, California.

7. **Project as a Private Undertaking.** It is specifically understood by the Parties that the Project is a private development and that Owner shall have the full power and exclusive control of the Property subject to the provisions of the Agreement.

8. **Incorporation of Recitals.** The Recitals set forth in Article I of the Agreement are part of the Agreement.

9. **Captions.** The captions of the Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of the Agreement.

10. **Consent.** Where the consent or approval of a Party is required or necessary under the Agreement, the consent or approval shall not be withheld unreasonably.

11. **The City's Ongoing Statutory Authority.** Except as expressly stated, nothing in this Agreement shall limit the City's authority and responsibility under the California Constitution and applicable California statutes to act in the best interests of the public health, safety, and welfare, and nothing in this Agreement is intended to limit in any way the legislative discretion otherwise afforded the Escondido City Council under state or federal law, as amended.

12. **Covenant of Cooperation.** The Parties shall cooperate with and assist each other in the performance of the provisions of the Agreement including assistance in obtaining permits for the development of the Property which may be required from public agencies other than the City. The covenant of cooperation shall include, to the maximum extent permitted by law, that the City shall use its best efforts to prevent any ordinance, measure, moratorium or other limitation from invalidating, prevailing over or making impossible any provision of the Agreement, and the City shall cooperate with Owner to keep the Agreement in full force and effect. Owner reserves the right to challenge any such ordinance, measure, moratorium, or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to the Agreement.

13. **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under the Agreement and the satisfaction of the conditions of the Agreement. Upon the request of either Party, the other

Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of the Agreement to carry out the intent and to fulfill the provisions of the Agreement or to evidence or consummate the transactions contemplated by the Agreement.

14. **Successors and Assigns.** Subject to Article III Section 2 above, the burdens of the Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.

15. **Time of the Essence.** Time is of the essence of the Agreement and of each and every term and condition hereof.

16. **Applicable Laws.** The Agreement shall be construed and enforced in accordance with the laws of the State of California. All statutory references are to California statutes.

17. **No Waiver of Existing Rights or Applicable Laws.** The Agreement shall not constitute a waiver of any of Owner's existing rights or applicable laws, nor shall it limit or expand Owner's right to challenge any General Fee as being contrary to applicable law or to challenge any existing or Future Exaction as being in excess of Exactions permitted by applicable law.

18. **Authorization.** Each person executing this Agreement hereby warrants and represents that he/she has the authority to enter into this Agreement and to bind his/her respective entity to the provisions hereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.

19. **No Third Party Beneficiaries.** This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party.

SIGNATURE PAGE FOLLOWS

The Agreement has been executed by the Parties as of the dates set forth below:

CITY OF ESCONDIDO

By: _____
Sam Abed
Its: Mayor

CITY OF ESCONDIDO

By: _____
Diane Halverson
Its: Clerk

PACIFIC LAND INVESTORS, LLC
A Delaware limited liability company on behalf of
MERIT GROUP, INC.
A California corporation

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

CITY OF ESCONDIDO

By: _____
Jeffrey R. Epp
Its: City Attorney

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

By: _____
David W. Ferguson, Esq.
Attorney for Pacific Land Investors, LLC.

EXHIBIT A

LEGAL DESCRIPTION

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

That portion of Parcel 2 as shown on a Parcel Map filed in Book of Parcel Maps on Page 971, being a portion of Lot 1, Block 418 of Rancho Rincon Del Diablo, in the County of San Diego, State of California, according to Map thereof No. 1520, filed in the Office of the County Recorder of San Diego County, January 21, 1913, said portion of Parcel 2 being described as follows:

Beginning at the most Southerly corner of Parcel 1 of said Parcel Map 971; thence North 55°33'17" East 298.69 feet to the most Easterly corner of Parcel 4 of said Parcel Map 971, being also a corner in the boundary of said Parcel 2. as follows:

South 34°23'03" East 475.56 feet; thence South 55°34'37" West 298.63 feet; thence North 34°23'32" West 475.45 feet to the Point of Beginning.

Assessor's Parcel Number: **224-142-35-00**

EXHIBIT B

ENTITLEMENTS

1. Tentative Subdivision Map (Tract 894), No. 894 (the "Tentative Map"), by City Council Resolution No. 2006-156 on August 16, 2006, including grading exemptions. Owner and the City understand that the Tentative Map has been modified to comply with the stormwater regulations as stated in Article II, Section 3. Owner and the City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-156.

2. Mitigated Negative Declaration (Tract 894) ER 2004-31, certified by City Council Resolution No. 2006-156 on August 16, 2006.

EXHIBIT C

PUBLIC BENEFITS

A. Owner shall pay the City SEVENTEEN THOUSAND DOLLARS ($17,000.00) per lot shown on the Project's approved Final Map prior to the City's grant of the first building permit for the Project, which funds the City shall use to finance certain roadway and drainage improvements in the vicinity of the Project.

B. Owner shall construct a 24" water line along Conway Drive from Lehner Avenue to Stanley Avenue.

EXHIBIT D

AGREEMENT FOR COMPLETION OF IMPROVEMENTS

This Agreement is made and entered into this ___ day of _____, 20_, by and between the CITY OF ESCONDIDO, a municipal corporation, hereinafter referred to as "CITY," and _____ a _____ hereinafter referred to as "APPLICANT";

WHEREAS, APPLICANT proposes to construct a building, structure or development at _____ in the City of Escondido, County of San Diego, State of California, the "Project"; and

WHEREAS, certain public improvements are required to be constructed and/or installed in the streets and/or easements adjacent to the lot or parcel upon which such the Project is to be constructed or erected; and

WHEREAS, pursuant to the provisions of Ordinance No. 93-2 of the Escondido Municipal Code, it is necessary that certain public improvements as detailed in the plans and specifications on file with the City Engineer of the City of Escondido, the "Improvements", be constructed and/or installed as a condition of and prerequisite to final inspection and acceptance of the Project.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. APPLICANT hereby agrees, at its sole cost and expense, to furnish all labor, equipment and materials to construct the Improvements in a good workmanlike manner and in conformance with the approved plans and specifications on file with the City Engineer. APPLICANT agrees that the Improvements shall be completed within two years from the date of this Agreement. The Improvements shall be completed to the satisfaction of the City Engineer, and shall not be deemed complete until approved and accepted by the CITY. The estimated cost of the Improvements is the sum of $_____.

2. APPLICANT covenants that all Improvements shall be constructed in a manner that does not damage existing public property. Should any damage occur to public property, including, but not limited to, the Improvements in the public right-of-way as a result of APPLICANT or APPLICANT'S contractor performing construction, APPLICANT shall be responsible for repair or reconstruction of the public property. Such repair or reconstruction shall be at the APPLICANT'S sole expense and shall be completed to the satisfaction of the City Engineer.

3. The CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to APPLICANT or any other person for, and APPLICANT shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of

action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by construction of the Improvements. The CITY shall not by its approval of the Project, or any part of it, or by entering into this Agreement, or by granting any permits concerning this Project or Improvements, be deemed an insurer or surety for the design or construction of the Improvements.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which APPLICANT has agreed to indemnify Indemnitees as provided above, APPLICANT, upon notice from the CITY, shall defend Indemnitees at APPLICANT'S expense by counsel acceptable to the CITY, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

If a court of competent jurisdiction determines that the CITY has acted with negligence with respect to anything covered in this Agreement, APPLICANT's obligation to indemnify the CITY shall be limited by the provisions of California Civil Code Section 2782(b).

4. APPLICANT shall further indemnify, defend and hold harmless the CITY and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01) of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

5. It is further agreed that APPLICANT will at all times, prior to CITY acceptance of the Improvements, give good and adequate warning to the traveling public of each and every defective and/or dangerous condition existing in the affected public rights-of-way and/or easements or any of them, and will protect the traveling public from such defective or dangerous conditions. It is understood and agreed that until acceptance of the Improvements, each of the affected public rights-of-way and/or easements not accepted as improved shall be under the charge of APPLICANT for the purposes of this Agreement. APPLICANT may, upon approval of the City Engineer, close all or a portion of any public right-of-way whenever it is reasonably necessary to protect the traveling public during construction of the Improvements. APPLICANT agrees that the provisions of Sections 3 and 4, respecting indemnification, are applicable to the obligations as set forth in this Section 5.

6. APPLICANT hereby agrees to pay for any inspection of streets and/or easements as may be required by CITY ordinances.

7. It is further agreed that APPLICANT shall file with the City Clerk at the time of signing this Agreement a good and sufficient bond or Instrument of Credit in an amount not less than the estimated cost of the Improvements, as specified above, for the faithful performance of the terms and conditions of this Agreement, including payment for all labor and materials furnished in connection therewith and the guarantee and warranty of the Improvements for a period of two years against any defective work or labor or defective materials furnished, and that should the sureties on the bond or either of them become insufficient, APPLICANT agrees to renew the bond with good and sufficient sureties within 10 days after receiving notice that the sureties are insufficient.

8. In lieu of filing a bond as provided above, APPLICANT may deposit with the City Clerk or with a responsible escrow agent, bank, savings and loan or trust company, a sum of money or other form of security acceptable to the City Attorney, not less than the estimated cost of the Improvements as above specified, together with instructions to the escrow agent or bank, savings and loan or trust company for the payment of such money, which instructions shall be subject to the approval of the City Attorney.

9. Upon mutual consent of APPLICANT and the City Engineer, the City Engineer may make such changes, alterations or additions to the plans and specifications for the Improvements as may be determined necessary and desirable by the City Engineer for the proper completion of the Improvements and no such changes, alterations or additions shall relieve the surety or sureties on any bond given for the faithful performance of this Agreement.

10. It is further agreed by and between the parties hereto that, in the event it is deemed necessary to extend the time of completion of the Improvements required under this Agreement, the extension may be granted by the CITY and shall in no way affect the validity of this Agreement, nor shall such extension release the surety or sureties on any bond given for the faithful performance of this Agreement. In accordance herewith, the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

11. It is further agreed by and between the parties hereto that the terms of this Agreement shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the above-described land or any part thereof.

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

CITY OF ESCONDIDO

Date:_____ By _____
City Manager

APPLICANT

Date:_____ By_____
Authorized Signature

Address:

_____

_____
(SIGNATURES MUST BE NOTARIZED)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

_____
City Attorney

ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 17
Date: December 4, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Barbara J. Redlitz, Director of Community Development

SUBJECT: Proposed Development Agreement and Finding of Substantial Conformance for Tract 889 (PHG 13-0028)

STAFF RECOMMENDATION:

It is requested that Council adopt Ordinance No. 2013-15 approving a Development Agreement with a five-year term to authorize construction of the previously approved 16-lot, TR 889 residential subdivision within the North Broadway Deficiency Area.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission voted unanimously (7-0) to recommend approval of the proposed Development Agreement on November 12, 2013.

PROJECT DESCRIPTION:

A proposed Development Agreement with a five-year term to authorize construction of the previously approved 16-lot, Tract 889 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 16 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 12" water line in Stanley Avenue from Conway Drive to Ash Street. The developer would also be obligated to pay additional deficiency fees towards future construction of street and drainage improvements in the project area. The Development Agreement also includes a finding of substantial conformance for proposed modifications to the Tentative Map that include changing the proposed street in the development from a through-street to a cul-de-sac.

LOCATION:

The project site is a 4.63-acre parcel located on the southern side of Stanley Avenue and northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 733 Stanley Avenue.

FISCAL ANALYSIS:

In return for being allowed to proceed with residential construction prior to improving infrastructure in the area, the Development Agreement includes a term that requires the owner to pay $17,000 per approved residential lot ("Deficiency Fee") to finance traffic and drainage improvements in the vicinity of the project. The total value of the fee for 16 lots is $272,000.

GENERAL PLAN ANALYSIS:

The Growth Management Element (Section VIII) of the Escondido General Plan notes there could be situations where development is delayed in areas with critical deficiencies until adequate facilities are available. Options available to accelerate or ensure the timely provision of infrastructure improvements in these areas can include development impact fees, assessment and maintenance districts, development agreements and other financing programs required for completing the identified infrastructure improvements. The General Plan recognizes that these options are key components of the capital improvement planning process; and Public Financing Policy 3.3 (Pg. VIII-9) encourages the use of Development Agreements to ensure the timely provision of facilities necessary to support the demands of development.

In order to approve a development agreement, the Council must find that the agreement is consistent with the objectives, policies and programs of the General Plan. Payment of the deficiency fee as proposed in the development agreement would provide a funding mechanism to insure that infrastructure development occurs in an orderly manner to meet present and future needs as envisioned in the Growth Management Goals and Policies of the General Plan.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (ER 2004-24) was issued for the Tract 889 project, including annexation and a Development Agreement on August 26, 2004. Pursuant to CEQA Section 15162, no additional environmental review needs to be prepared for the project since there are no substantial changes in the project that require major revisions to the previous environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

BACKGROUND:

On February 8, 2006, the City Council approved a 16-lot residential subdivision on 4.63 acres (TR 889) in conjunction with a Development Agreement (2004-44-DA). The City Council approval also authorized annexation of the subject property as part of a larger 22-acre annexation area (2004-02-AN).

At the time the City Council originally approved the project and annexation in 2006, it was noted that the site was in the North Broadway Deficiency Area and that the Development Agreement was required to address known infrastructure deficiencies per Section 33-1431 of the Escondido Zoning Code. The applicant could have developed the property under County 1-acre zoning in effect at that

time which would have likely yielded four lots, but chose to go through the Development Agreement process to assist with infrastructure needs in return for a 300% increase in residential density. The Development Agreement was approved for a term of five years and subsequently expired on March 24, 2011. The Tentative Map benefitted from three separate two-year extensions granted by the California State Legislature and now expires on March 24, 2017. The proposed Development Agreement would allow the project to proceed with recording the Final Map and the start of construction.

Tract 889 is a rectangular property with frontage on both Stanley Avenue and Lehner Avenue. The approved Tentative Map includes eight lots on each side of a public street that connects Stanley Ave. to Lehner Ave. The applicant is proposing a change to the project design through the Substantial Conformance process that would change the through-street to a cul-de-sac. A Finding of Substantial Conformance can be authorized by the Director of Community Development, but in this case has been elevated to the City Council because the substantial conformance finding has been identified as a project entitlement in the proposed Development Agreement.

PLANNING COMMISSION RECOMMENDATION AND SUMMARY:

The Planning Commission voted unanimously (7-0) to recommend approval of the proposed Development Agreement on November 12, 2013. Much of the discussion during the hearing focused on the cost of the 12" water line in Stanley Avenue and how that cost was to be apportioned to future developments on that block. As requested by the applicant, the proposed Development Agreement includes a term that obligates the City to require future Development Agreements to provide a per-lot repayment to the developer for the water line that is estimated to be approximately $3,555 per lot. There was also a discussion about the terms of the previous agreement versus the proposed agreement and it was noted the previous agreement obligated the developer to construct an off-site 30" water line at a cost of $700,000 and that fee credits would have offset some of that cost. The proposed agreement no longer requires that upgrade and there are no fee credits being offered. The applicant's representative, Dave Ferguson, stated that he generally concurred with the staff recommendation with the exception of the Deficiency Fee amount, which has been set at $17,000 per lot as described below. Mr. Ferguson felt the fee was excessive and noted that he would be discussing this issue with the City Council. The Planning Commission generally agreed that the amount of the fee was a matter that should be resolved by the City Council and voted to recommend approval of the Development Agreement with the finding that the modified Tentative Map design was in substantial conformance with the original approval.

ANALYSIS OF PROPOSED TERMS:

The North Broadway Deficiency Area allows the timely processing and development of residential projects in areas where known infrastructure deficiencies exist when accompanied by a Development Agreement. The Development Agreement facilitates the construction of public infrastructure necessary to upgrade deficiencies and/or includes a proportionate share payment towards neighborhood infrastructure. The previously approved Development Agreement (now expired) for Tract 889 obligated the developer to construct 1,700 lineal feet of off-site water line improvements on Sheridan Avenue in exchange for a waiver of certain fees.

Several critical infrastructure upgrades have been completed or are in the planning stages since the time the last Development Agreement was approved for the project. These include the channelization of Reidy Creek at North Broadway, construction of a 36" water line in El Norte Parkway, and the planned construction of two new Vista Verde water tanks that will enhance water service in the northern part of the city. The Utilities Department has recently indicated that the water service issues related to the previously-required water line in Sheridan Avenue have been alleviated and that water upgrades closer to the project site are now needed. The proposed Development Agreement would relieve the developer of the Tentative Map condition to construct the Sheridan water line in return for constructing off-site water line upgrades on Stanley Avenue.

The proposed Development Agreement would be in effect for five years and would extend the life of the Tentative Map for that same period. The proposed terms in the agreement list specific obligations that are the responsibility of both the developer ("Owner") and the City. The key terms include the following:

1. Owner required to pay current fee rates in effect at the time fees are incurred.

2. Owner agrees to pay City $17,000 per approved residential lot ("Deficiency Fee") to finance traffic and drainage improvements in the vicinity of the project.

3. Owner agrees to construct off-site 12" water line from project eastern boundary to Conway Drive.

4. City agrees to include a requirement in future Development Agreements for any property on Stanley Avenue between Conway Drive and Ash Street, for each of those properties to reimburse Owner for its proportionate share of the 12" water line (estimated to be approx. $3,555/unit).

5. City shall allow Owner to perform on-site project grading and off-site road and water line construction prior to approval of a final map, subject to approval of customary plans and bonds.

6. City guarantees sewer connection rights for a period of one year.

7. City agrees that the modified Tentative Map is in substantial conformance with the Tentative Map approved by City Council Resolution 2006-23.

A question has arisen regarding the proposed terms and whether this represents an inferior deal for the applicant when compared to the expired agreement. Staff feels that it is not as shown in the table below which depicts costs per lot.

	Previous DA	Current DA
Water Deficiency Fee / Improvements:	$34,300	$3,555*
Traffic / Drainage Deficiency Fee:	Waived	$17,000
TOTAL:	$34,300 per lot	$20,555 per lot

** Improvements are limited to what is required to serve development.*

The $17,000 per unit Deficiency Fee has recently been evaluated and increased from the $12,000 fee that was acknowledged in the 2006 Development Agreement for the project. The new fee was established based on a current cost estimate for the highest priority traffic and drainage improvements in the area that are needed to accommodate anticipated development. Priority drainage needs include construction of the environmental channel for Reidy Creek from Broadway to Centre City Parkway where existing homes lie within the floodway, and construction of a box culvert at Centre City Parkway. Priority street projects needed to resolve vehicular and pedestrian related infrastructure deficiencies include the following segments and intersections:

Segments (Construction to Classification Standards)

• Ash Street	Sheridan to Rincon Ave.	Local Collector
• Conway Drive	Vista Ave. to Rincon Ave.	Local Collector
• Vista Avenue	Conway to Broadway	Collector
• Stanley Avenue	Ash Street to Broadway	Local Collector

Intersections (New Traffic Signals)

- Rincon Avenue and Conway Drive
- Ash Street and Vista Avenue
- Ash Street and Sheridan Avenue

The total cost for the improvements identified above as high priority street and drainage facilities has been estimated to be approximately $11.3 million dollars. Based on a General Plan residential yield calculation that indicates approximately 668 potential dwelling units could still be constructed within the North Broadway Deficiency Area, a per unit cost of $17,000 was established as the Deficiency Fee. This fee will be required in each residential Development Agreement in the area to provide for needed traffic and drainage infrastructure improvements. Staff feels the Deficiency Fee and other terms proposed in the Development Agreement are reasonable and prudent since the agreement will allow the construction of the residential development and water line improvements in a coordinated fashion that will result in reduced costs while maximizing public and private resources to construct necessary public infrastructure at the earliest practicable time.

The Subdivision Ordinance states a determination of Substantial Conformance can be made when a modified Tentative Map complies with all the conditions of approval and where no additional grading exemptions, units, property or parcels are involved. The approved minimum lot size must also be maintained and the revisions must be consistent with the character of the original approval. Staff feels the proposed modification meets these standards and would be in conformance with the approved conditions of approval. The same number of residential lots and minimum lot size would be

maintained and the approved grading exemption would not increase in height. The proposed cul-de-sac design enhances the neighborhood and allows current storm water requirements to be met. Both staff and the Planning Commission therefore recommend that a finding of Substantial Conformance be incorporated into the Development Agreement as proposed.

Respectfully Submitted,

for Barbara J. Redlitz
Director of Community Development

Bill Martin
Principal Planner

CITY OF ESCONDIDO

MINUTES OF THE REGULAR MEETING OF THE ESCONDIDO PLANNING COMMISSION

November 12, 2013

The meeting of the Escondido Planning Commission was called to order at 7:00 p.m. by Chairman Weber in the City Council Chambers, 201 North Broadway, Escondido, California.

Commissioners present: Jeffery Weber, Chairman; Bob McQuead Vice-chairman; Darol Caster, Commissioner; Gregory Johns, Commissioner. James Spann, Commissioner; Merle Watson, Commissioner; and Guy Winton, Commissioner;

Commissioners absent: None.

Staff present: Bill Martin, Principal Planner; Owen Tunnell, Principal Engineer; Gary McCarthy, Senior Deputy City Attorney; and Ty Paulson, Minutes Clerk.

MINUTES:

Moved by Commissioner Caster, seconded by Commissioner Spann, to approve the minutes of the October 22, 2013, meeting. Motion carried. Ayes: Spann, McQuead, Weber, Watson, and Caster. Noes: None. Abstain: Johns and Winton. (5-0-2)

WRITTEN COMMUNICATIONS – None.

FUTURE NEIGHBORHOOD MEETINGS – None.

ORAL COMMUNICATIONS – None.

PUBLIC HEARINGS:

1. <u>DEVELOPMENT AGREEMENT – PHG 13-0028:</u>

REQUEST: A proposed Development Agreement with a five-year term to authorize construction of the previously approved 16-lot, Tract 889 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 16 residences and a cul-de-sac street

in return for upgrading existing water infrastructure in the area to include a new 12" water line in Stanley Avenue from Conway Drive to Ash Street. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements. The project includes the use of a previously adopted Mitigated Negative Declaration (ER 2004-24) in accordance with CEQA Section 15162.

PROPERTY SIZE AND LOCATION: The project site is a 4.63-acre parcel located on the southern side of Stanley Avenue, addressed as 733 Stanley Avenue.

Bill Martin, Principal Planner, referenced the staff report and noted staff recommended approval of the proposed Development Agreement and Finding of Substantial Conformance to the City Council.

Commissioner McQuead referenced Page 12 of the staff report with regard to the minimum separation requirements for the new residences.

Commissioner Caster and staff discussed previous and current fees as well as potential fee credits.

Chairman Weber and staff discussed the costs for the proposed water line in Stanley Avenue.

Dave Ferguson, Escondido, representing Pacific Land Investors, noted that the total cost of the 12-inch water line was $270,150, noting there were 76 future lots that would connect to the line, which came out to $3,555 per lot.

Commissioner Caster asked Mr. Ferguson if the subject project would break even for the water line. Mr. Ferguson noted that the subject project would front the funds for the water line and take the risk that the other projects would develop in the future.

Mr. Ferguson noted the principals of Pacific Land Investors were present and were in escrow pending the Development Agreement being reinstated. He noted that the project did not include any requests for fee waivers. He noted that one difference in the project was to cul-de-sac the street, which would make it a better neighborhood. He also stated that they concurred with staff's recommendations, but would be discussing the amount of the Deficiency Fee with the City Council.

Barry Baker, Escondido, was in favor of the proposed project, feeling it would be a good infill project that would be good for Rincon Middle School due to the

improvements associated with Lehner Avenue. He also stated that he would prefer having more access points between Lehner Avenue and Stanley Avenue.

Commissioner Caster was in favor of the cul-de-sac being proposed for the project. He also stated that he had no basis for the fee amounts, noting this was a decision better made by City Council.

Chairman Weber expressed concern with developers being overburdened with fees.

ACTION:

Moved by Chairman Weber, seconded by Commissioner Winton, to approve staff's recommendation. Motion carried unanimously. (7-0)

2. DEVELOPMENT AGREEMENT – PHG 13-0027:

REQUEST: A proposed Development Agreement with a five-year term to authorize construction of the previously approved 11-lot, Tract 894 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 11 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements. The project includes the use of a previously adopted Mitigated Negative Declaration (ER 2004-31) in accordance with CEQA Section 15162.

PROPERTY SIZE AND LOCATION: The project site is a 3.15-acre parcel located on the northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 1026 Lehner Avenue.

Bill Martin, Principal Planner, referenced the staff report and noted staff recommended approval of the proposed Development Agreement for Tract 894.

Commissioner Spann and staff discussed the timing for purchasing sewer connections.

Dave Ferguson, Escondido, representing Pacific Land Investors, noted that the projects would be spending substantial funds on public improvements and that a one-year guarantee for sewer connection rights was warranted and

ESCONDIDO
City of Choice

PLANNING COMMISSION

Agenda Item No.: G.1
Date: Nov. 12, 2013

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Proposed Development Agreement and Finding of Substantial Conformance for Tract 889 (PHG 13-0028)

STAFF RECOMMENDATION:

Recommend Approval of the proposed Development Agreement and Finding of Substantial Conformance to the City Council.

PROJECT DESCRIPTION:

A proposed Development Agreement with a five-year term to authorize construction of the previously approved 16-lot, Tract 889 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 16 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 12" water line in Stanley Avenue from Conway Drive to Ash Street. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements. The project also includes a finding of substantial conformance for proposed modifications to the Tentative Map that include changing the proposed street in the development from a through-street to a cul-de-sac.

LOCATION:

The project site is a 4.63-acre parcel located on the southern side of Stanley Avenue and northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 733 Stanley Avenue.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (ER 2004-24) was issued for the Tract 889 project and Development Agreement on August 26, 2004. Pursuant to CEQA Section 15162, no additional environmental review need be prepared for the project since there are no substantial changes in the project that require major

revisions to the previous environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

BACKGROUND:

On February 8, 2006, the City Council approved a 16-lot residential subdivision on 4.63 acres (TR 889) in conjunction with a Development Agreement (2004-44-DA). The City Council approval also authorized annexation of the subject property as part of a larger 22-acre annexation area. At the time the project was approved, it was noted that the site was in the North Broadway Deficiency Area and that the Development Agreement was required to address known infrastructure deficiencies per Section 33-1431 of the Escondido Zoning Code. The Development Agreement was approved for a term of five-years and subsequently expired on March 24, 2011. The Tentative Map benefitted from three separate two-year extensions granted by the California State Legislature and now expires on March 24, 2017. The proposed Development Agreement would allow the project to proceed with recording the Final Map and the start of construction.

Tract 889 is a rectangular property with frontage on both Stanley Avenue and Lehner Avenue. The approved Tentative Map includes eight lots on each side of a public street that connects Stanley Ave. to Lehner Ave. The applicant is proposing a change to the project design through the Substantial Conformance process that would change the through-street to a cul-de-sac. A Finding of Substantial Conformance can be authorized by the Director of Community Development, or elevated to the Planning Commission for decision. The Director has opted to package the Substantial Conformance request with the proposed Development Agreement for review by the Planning Commission.

DISCUSSION:

Proposed Development Agreement Terms

The North Broadway Deficiency Area allows the timely processing and development of residential projects in areas where known infrastructure deficiencies exist when accompanied by a Development Agreement. The Development Agreement facilitates the construction of public infrastructure necessary to upgrade existing deficiencies and/or includes a proportionate share payment towards neighborhood infrastructure. The previously approved Development Agreement (now expired) for Tract 889 obligated the developer to construct 1,700 lineal feet of off-site water line improvements on Sheridan Avenue in exchange for a waiver of certain fees. The developer was also obligated to pay an infrastructure deficiency fee of $12,000 per lot that was to be

used to fund future street and drainage improvements in the North Broadway area.

Several critical infrastructure upgrades have been completed since the time the last Development Agreement was approved for the project. These include the channelization of Reidy Creek at North Broadway, and construction of a 36" water line in El Norte Parkway that enhanced water service in the northern part of the city. The Utilities Department has recently indicated that the water service issues related to the previously-required water line in Sheridan Avenue have been alleviated and that water upgrades closer to the project site are now needed. The proposed Development Agreement would relieve the developer of the Tentative Map condition to construct the Sheridan water line in return for constructing off-site water line upgrades on Stanley Avenue.

The proposed Development Agreement would be in effect for five years and would extend the life of the Tentative Map for that same period. The proposed terms in the agreement list specific obligations that are the responsibility of both the developer ("Owner") and the City. The key terms include the following:

1. Owner required to pay current fee rates in effect at the time fees are incurred.

2. Owner agrees to pay City $17,000 per approved residential lot ("Deficiency Fee") to finance traffic and drainage improvements in the vicinity of the project.

3. City shall allow Owner to perform on-site project grading and off-site road and water line construction prior to approval of a final map, subject to approval of customary plans and bonds.

4. City guarantees sewer connection rights for a period of one year.

5. Owner agrees to construct off-site 12" water line from project eastern boundary to Conway Drive.

6. City agrees to include a requirement in future Development Agreements for any property on Stanley Avenue between Conway Drive and Ash Street, for each of those properties to reimburse Owner for its proportionate share of the 12" water line (estimated to be approx. $3,555/unit).

7. City agrees that the modified Tentative Map is in substantial conformance with the Tentative Map approved by City Council Resolution 2006-23.

The $17,000 per unit Deficiency Fee has recently been evaluated and increased from the $12,000 fee that was included in the 2006 Development Agreement for the project. The new fee was established based on a current cost estimate for the highest priority traffic and drainage improvements in the area that are needed to resolve known deficiencies. Priority drainage needs include construction of the environmental channel for Reidy Creek from Broadway to Centre City Parkway where existing homes lie within the floodway, and construction of a box culvert at Centre City Parkway. Priority street projects needed to resolve vehicular and pedestrian related infrastructure deficiencies include the following segments and intersections:

Segments (Construction to Classification Standards)

• Ash Street	Sheridan to Rincon Ave.	Local Collector
• Conway Drive	Vista Ave. to Rincon Ave.	Local Collector
• Vista Avenue	Conway to Broadway	Collector
• Stanley Avenue	Ash Street to Broadway	Local Collector

Intersections (New Traffic Signals)

- Rincon Avenue and Conway Drive
- Ash Street and Vista Avenue
- Ash Street and Sheridan Avenue

The total cost for the improvements identified above as high priority street and drainage facilities has been estimated to be approximately $11.3 million dollars. Based on a General Plan residential yield calculation that indicates approximately 668 potential dwelling units could still be constructed within the North Broadway Deficiency Area, a per unit cost of $17,000 was established as the Deficiency Fee. This fee will be required in each residential Development Agreement in the area to resolve traffic and drainage infrastructure issues. Staff feels the Deficiency Fee and other terms proposed in the Development Agreement are reasonable and prudent since the agreement will allow the construction of the residential development and water line improvements in a coordinated fashion that will result in reduced costs while maximizing public and private resources to construct necessary public infrastructure at the earliest practicable time.

Finding of Substantial Conformance

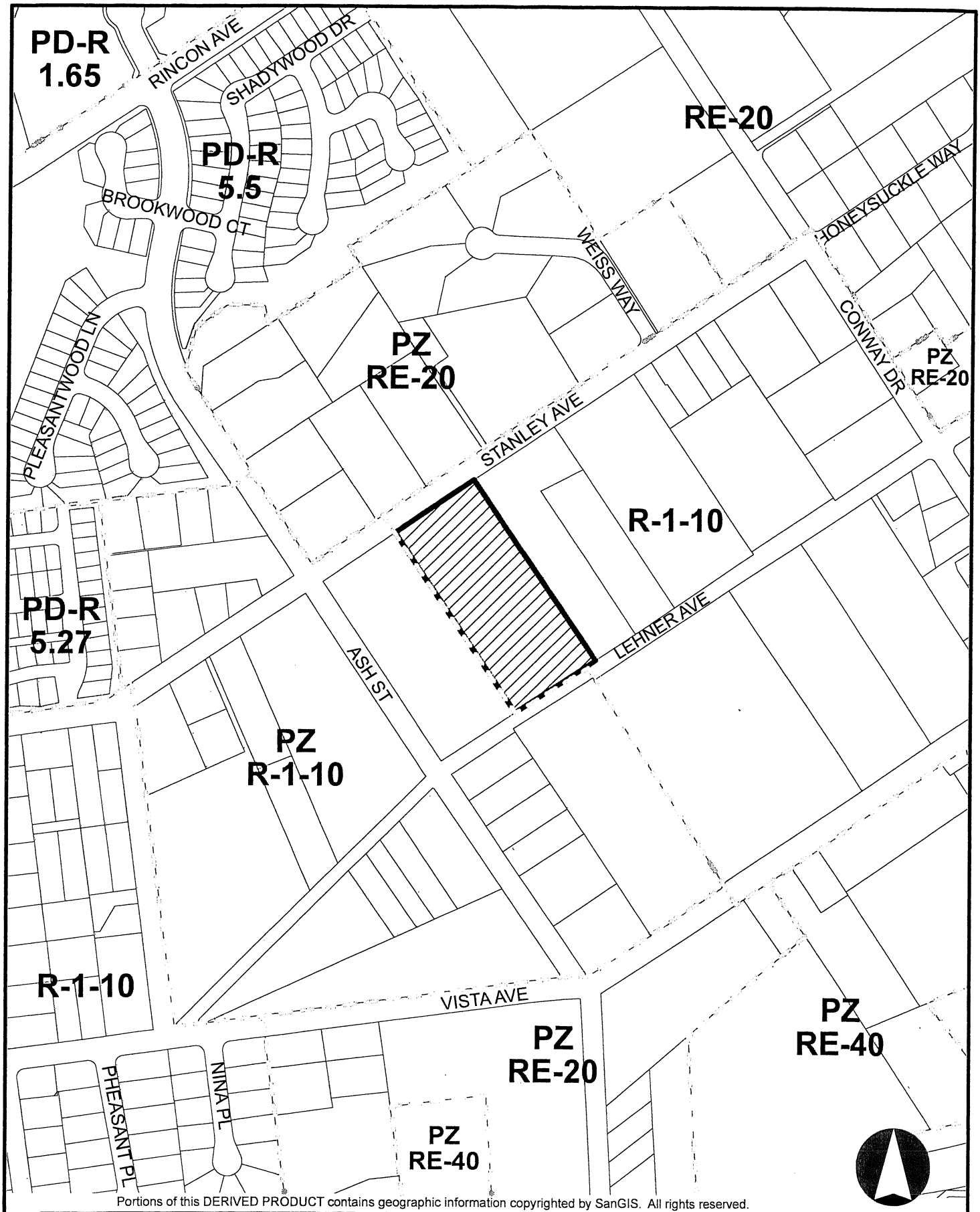
The 4.63-acre, Tract 889 development was designed with a single new street that connects Stanley Avenue on the northern side of the property to Lehner Avenue on the southern side. Modifications to the approved project design are now required to address storm water treatment standards that have changed since the Tentative Map was approved. A more intensive on-site treatment system for runoff must now be incorporated into the project design to treat the water before it discharges into the storm drain.

The applicant is proposing to treat storm water in two 2,700 SF detention basins placed at the lower end of the property adjacent to Lehner Avenue. This would constrain Lots 8 and 9 under the current Tentative Map design to the point where a smaller building footprint may have to be developed specifically for those lots. The applicant is proposing to address this issue by modifying the project design to increase the size of Lots 8 and 9 by installing a cul-de-sac with access from Stanley Avenue. The increased area for Lots 8 and 9 can then be utilized for the detention basins. A secondary benefit of the cul-de-sac design is that it eliminates potential cut-through trips during school hours at Rincon Middle School. The applicant is requesting that these changes to the project design be accepted through the Substantial Conformance process.

The Subdivision Ordinance states a determination of Substantial Conformance can be made when a modified Tentative Map complies with all the conditions of approval and where no additional grading exemptions, units, property or parcels are involved. The approved minimum lot size must also be maintained and the revisions must be consistent with the character of the original approval. Staff feels the proposed modification meets these standards and would be in conformance with the approved conditions of approval. The same number of residential lots and minimum lot size would be maintained and the approved grading exemption would not increase in height. The proposed cul-de-sac design enhances the neighborhood and allows current storm water requirements to be met. Staff therefore recommends that a Finding of Substantial Conformance be issued.

Respectfully Submitted,

Bill Martin
Principal Planner

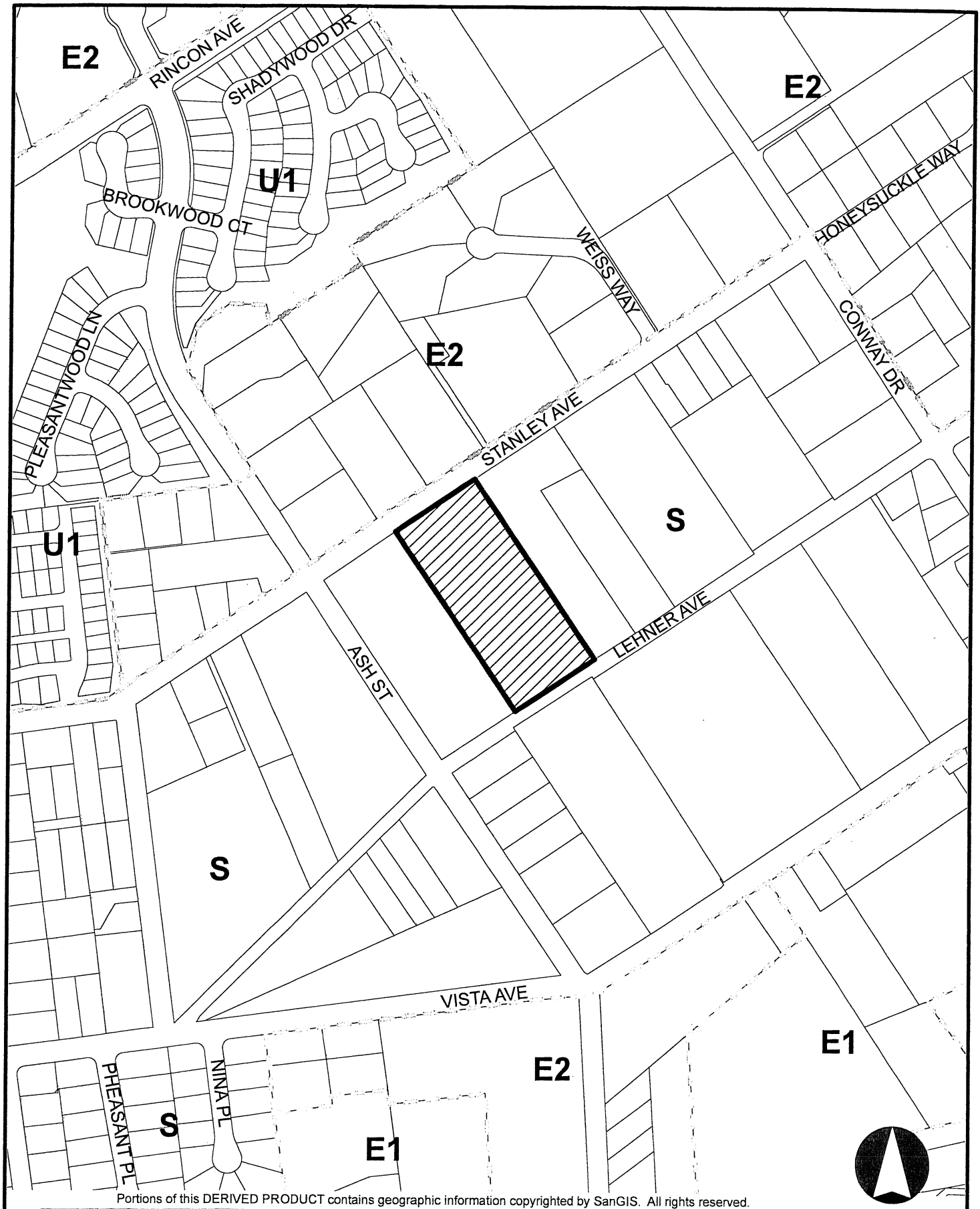


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PROPOSED PROJECT
PHG 13-0028

L

LOCATION/ZONING



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PROPOSED PROJECT
PHG 13-0028

GP
GENERAL PLAN

PROPOSED PROJECT
PHG 13-0028

8

SITE PLAN

S

CITY OF ESCONDIDO TRACT NO. 889
TENTATIVE SUBDIVISION MAP

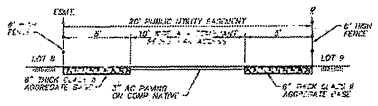
SHEET 1 OF 2

LEGEND

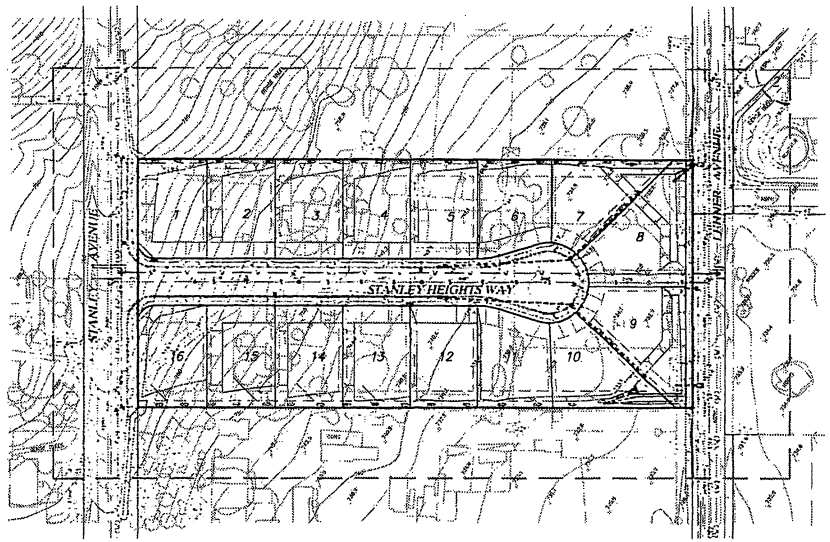
- SHEET NUMBER (KEY MAP)
- PROPOSED FIRE HYDRANT
- PROPOSED BOX CULVERT
- PROPOSED STORM DRAIN
- PROPOSED SEWER
- PROPOSED SEWER MANHOLE
- PROPOSED WATER
- 100 PROPOSED LOT NUMBER
- 6,000 S.F. PROPOSED LOT AREA
- PE 1030 PROPOSED PAD ELEVATION
- PROPOSED SLOPE EMBANKMENTS (2:1 MAX)
- PROPOSED CUT / FILL LINE
- PROPOSED CROSS GUTTER
- PROPOSED EASEMENT
- PROPOSED DAY LITE
- EXISTING EASEMENT (PLOTTABLE)
- 500 EXISTING CONTOURS
- (W) EXISTING WATER LINE
- (S) EXISTING SEWER LINE
- (GAS) EXISTING GAS LINE
- EXISTING FIRE HYDRANT
- EXISTING SITE FEATURES TO BE REMOVED
- DAY GRADE FROM LOT

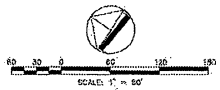
EXISTING EASEMENTS

1. EASEMENT FOR DITCHES AND DITCHES TO ESCONDIDO IRRIGATION DISTRICT DATED APRIL 22, 1895 IN BOOK 238, PAGE 200 OF DEEDS (NON-PLOTTABLE).

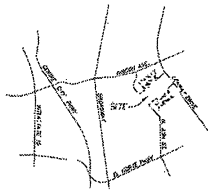


PUBLIC UTILITY EASEMENT LOT 8
NOT TO SCALE

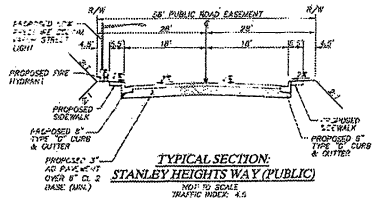




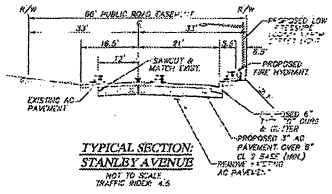
KEY MAP



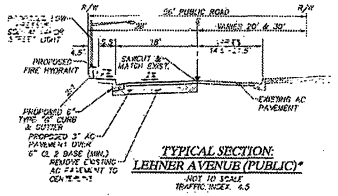
VICINITY MAP
NOT TO SCALE



TYPICAL SECTION:
STANLEY HEIGHTS WAY (PUBLIC)
NOT TO SCALE
TRAFFIC INDEX: 4.5



TYPICAL SECTION:
STANLEY AVENUE
NOT TO SCALE
TRAFFIC INDEX: 4.5



TYPICAL SECTION:
LEHNER AVENUE (PUBLIC)*
NOT TO SCALE
TRAFFIC INDEX: 4.5

* STREET TYPICAL SECTIONS SHOWN HEREON ARE FOR INFORMATIONAL PURPOSES ONLY. SEE STREET IMPROVEMENTS FOR TRACT 889

OWNER'S CERTIFICATE

WE HEREBY CERTIFY THAT WE ARE THE RECORD OWNERS OF THE PROPERTY SHOWN ON THE TENTATIVE SUBDIVISION MAP AND THAT SAID MAP SHOWS ALL OUR CONTIGUOUS HOLDINGS IN WHICH WE HAVE ANY FEE OR TRUST INTEREST. WE UNDERSTAND THAT OUR PROPERTY IS CONSIDERED CONTIGUOUS EVEN IF IT IS SEPARATED BY PUBLIC STREETS, UTILITY EASEMENTS, OR RAILROAD RIGHTS-OF-WAY.

BD LIMTD, LLC
2418 GREENSIDE AVENUE
NORTH HOLLYWOOD, CA 91605

MARK SERRANO, AGENT FOR OWNER

ENGINEER OF WORK

bHA, Inc.
land planning, civil engineering, surveying
[illegible]
CARLSBAD, CA 92008-4387
(760) 931-8700

RONALD C. HOLLOWAY — REG. 28271 — 8-10-2013 DATE

REGISTERED PROFESSIONAL ENGINEER RONALD C. HOLLOWAY No. 28271 EXP. 6-31-15 CIVIL STATE OF CALIFORNIA

ASSESSOR'S PARCEL NO.

224-142-02

LEGAL DESCRIPTION

LOT 1 IN BLOCK 416 OF [illegible] RESUBDIVISION OF BLOCK 416 AND 419 OF RANCHO RANCHO DEL E. S.D. IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1930, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 21, 1913.

FIRE: CITY OF ESCONDIDO

SCHOOL: ESCONDIDO UNION SCHOOL DISTRICT
ESCONDIDO UNION HIGH SCHOOL DISTRICT

SEWER: CITY OF ESCONDIDO

WATER: CITY OF ESCONDIDO

TOPOGRAPHY: TOWILL INC.
FLOWN ON: APRIL 2004

GENERAL NOTES

ALL STREETS ARE PUBLIC

GRADING AND IMPROVEMENTS SHALL BE IN ACCORDANCE WITH CITY OF ESCONDIDO STANDARDS

EASEMENTS OF RECORD NOT SHOWN HEREON SHALL BE HONORED, ABANDONED AND/OR RELOCATED TO THE SATISFACTION OF ALL INTERESTED PARTIES, AND PUBLIC UTILITY EASEMENT NECESSARY TO SERVE THIS PROJECT WILL BE COORDINATED WITH SERVING UTILITY COMPANIES.

LOT DIMENSIONS AND AREAS SHOWN HEREON ARE APPROXIMATE. THE DIMENSIONS MAY BE ADJUSTED TO BE CONSISTENT WITH THE FINAL MAP.

TOTAL AREA OF SUBDIVISION: 4.63 Ac. GROSS

TOTAL LOTS: 16

TOTAL DWELLING UNITS: 16
ZONE R-1-10: 15 D.U.

ZONE: PZ R-1-10

GENERAL PLAN: SUBURBAN

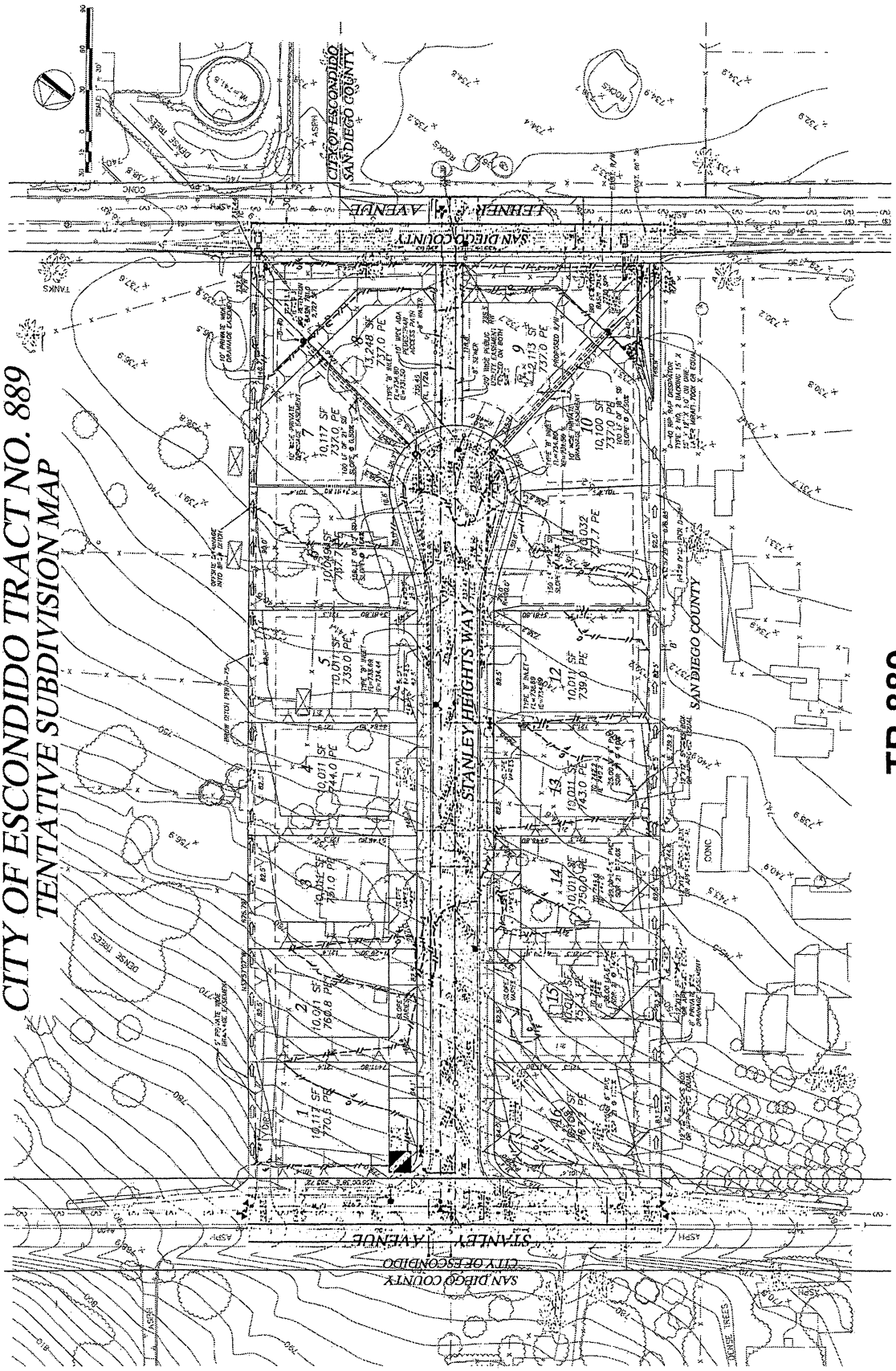
EARTHWORK

CUT: 9,350 CY
FILL: 9,350 CY

RECEIVED
SEP 10 2013
PLANNING DIVISION

N:\Land Projects\1340-0842-8001\dwg\MP1842-01002-10001.dwg 8/30/2013 10:10:14 AM PDT

TR 889
PROPOSED SUBSTANTIAL CONFORMANCE TENTATIVE MAP



PROPOSED PROJECT
PHG 13-0028

SITE PLAN

PROPOSED PROJECT
PHG 13-0028

10

SITE PLAN

CITY OF ESCONDIDO TRACT NO. 889
TENTATIVE SUBDIVISION MAP

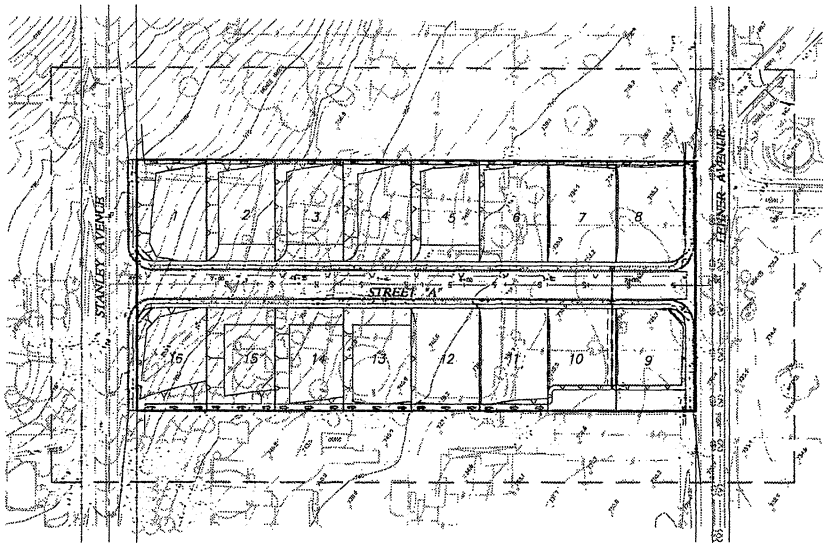
SHEET 1 OF 2

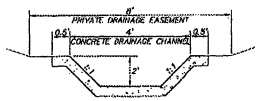
LEGEND

- SHEET NUMBER (KEY MAP)
- PROPOSED FIRE HYDRANT
- PROPOSED BOX CULVERT
- PROPOSED STORM DRAIN
- PROPOSED SEWER
- PROPOSED SEWER MANHOLE
- PROPOSED WATER
- 100 PROPOSED LOT NUMBER
- 6,000 S.F. PROPOSED LOT AREA
- PE 1030 PROPOSED PAD ELEVATION
- PROPOSED SLOPE EMBANKMENTS (2:1 MAX)
- PROPOSED CUT / FILL LINE
- PROPOSED CROSS GUTTER
- PROPOSED EASEMENT
- PROPOSED DAY LITE
- EXISTING EASEMENT (PLOTTABLE)
- 500 EXISTING CONTOURS
- EXISTING WATER LINE
- EXISTING SEWER LINE
- EXISTING GAS LINE
- EXISTING FIRE HYDRANT
- PROPOSED STEEP SLOPE OPEN SPACE EASEMENT

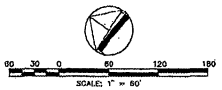
EXISTING EASEMENTS

1 EXISTING EASEMENT FOR PIPELINES AND DITCHES TO ESCONDIDO IRRIGATION DISTRICT DATED APRIL 22, 1890 IN BOOK 238, PAGE 290 OF DEEDS (NON-PLOTTABLE).

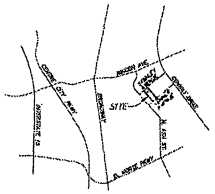




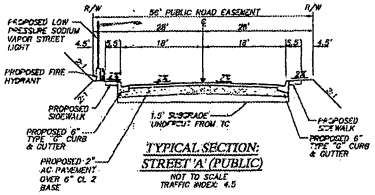
TYPICAL SECTION A-A:
CONCRETE DRAINAGE CHANNEL
NOT TO SCALE



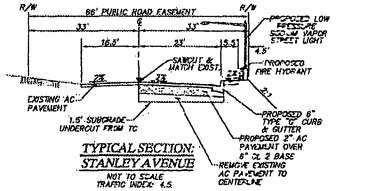
KEY MAP



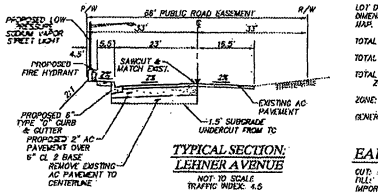
VICINITY MAP
NOT TO SCALE



TYPICAL SECTION:
STREET 'A' (PUBLIC)
NOT TO SCALE
TRAFFIC INDEX: 4.5



TYPICAL SECTION:
STANLEY AVENUE
NOT TO SCALE
TRAFFIC INDEX: 4.5



TYPICAL SECTION:
LEHNER AVENUE
NOT TO SCALE
TRAFFIC INDEX: 4.5

OWNER'S CERTIFICATE

WE HEREBY CERTIFY THAT WE ARE THE RECORD OWNERS OF THE PROPERTY SHOWN ON THE TENTATIVE SUBDIVISION MAP AND THAT SAID MAP SHOWS ALL OUR CONTIGUOUS OWNERSHIP IN WHICH WE HAVE ANY FEE OR TRUST INTEREST. WE UNDERSTAND THAT OUR PROPERTY IS CONSIDERED CONTIGUOUS EVEN IF IT IS SEPARATED BY ROADS, STREETS, UTILITY EASEMENTS, OR RAILROAD RIGHTS-OF-WAY.

THE VICTOR WONG TRUST

VICTOR WONG

CERTIFIED
IS IN SUBSTANTIAL CONFORMANCE WITH AS IN SUBSTANTIAL CONFORMANCE WITH THE APPROVED TENTATIVE MAP AND PLANNING DEPARTMENT CONDITIONS FOR APP. 3/26/07
PLANNING DIRECTOR — DATE 3/26/07

SUBDIVIDER

RMCI GROUP INC.
163 STEWARD AVE., SUITE 311
SOLANA BEACH, CA 92075
(858) 792-0733

ROBERT MUELLER, PRESIDENT

ENGINEER OF WORK

bha, inc.
land planning, civil engineering, surveying
5115 AVENIDA ENCINAS
SUITE "L"
CARLSBAD, CA. 92008-4387
(760) 931-8700

RONALD L. HOLLOWAY RCE 29271 — DATE 12-15-05

REGISTERED PROFESSIONAL ENGINEER — RONALD LEE HOLLOWAY — NO. 29271 — EXP. 3-31-07 — CIVIL — STATE OF CALIFORNIA

ASSESSOR'S PARCEL NO.

224-142-02

LEGAL DESCRIPTION

LOT "L" IN BLOCK 418 OF THE RESUBDIVISION OF BLOCK 418 AND 419 OF RANCHO RANCHITO DEL DIABLO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1529, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 21, 1913

FIRE: CITY OF ESCONDIDO

SCHOOL: ESCONDIDO UNION SCHOOL DISTRICT
ESCONDIDO UNION HIGH SCHOOL DISTRICT

SEWER: CITY OF ESCONDIDO

WATER: CITY OF ESCONDIDO

TOPOGRAPHY: TOWILL INC.
FLOWN ON: APRIL 2004

GENERAL NOTES

ALL STREETS ARE PUBLIC

GRADING AND IMPROVEMENTS SHALL BE IN ACCORDANCE WITH CITY OF ESCONDIDO STANDARDS

EASEMENTS OF RECORD NOT SHOWN HEREON SHALL BE HONORED, ABANDONED AND/OR RELOCATED TO THE SATISFACTION OF ALL INTERESTED PARTIES, AND PUBLIC UTILITY EASEMENT NECESSARY TO SERVE THIS PROJECT WILL BE COORDINATED WITH SERVING UTILITY COMPANIES

LOT DIMENSIONS AND AREAS SHOWN HEREON ARE APPROXIMATE. THE DIMENSIONS MAY BE ADJUSTED TO BE CONSISTENT WITH THE FINAL MAP.

TOTAL AREA OF SUBDIVISION: 4.83 Ac. GROSS

TOTAL LOTS: 16

TOTAL DWELLING UNITS: 16
ZONE R-1-10, 1.5 D.U.

ZONE: PZ R-1-10

GENERAL PLAN: SUBURBAN

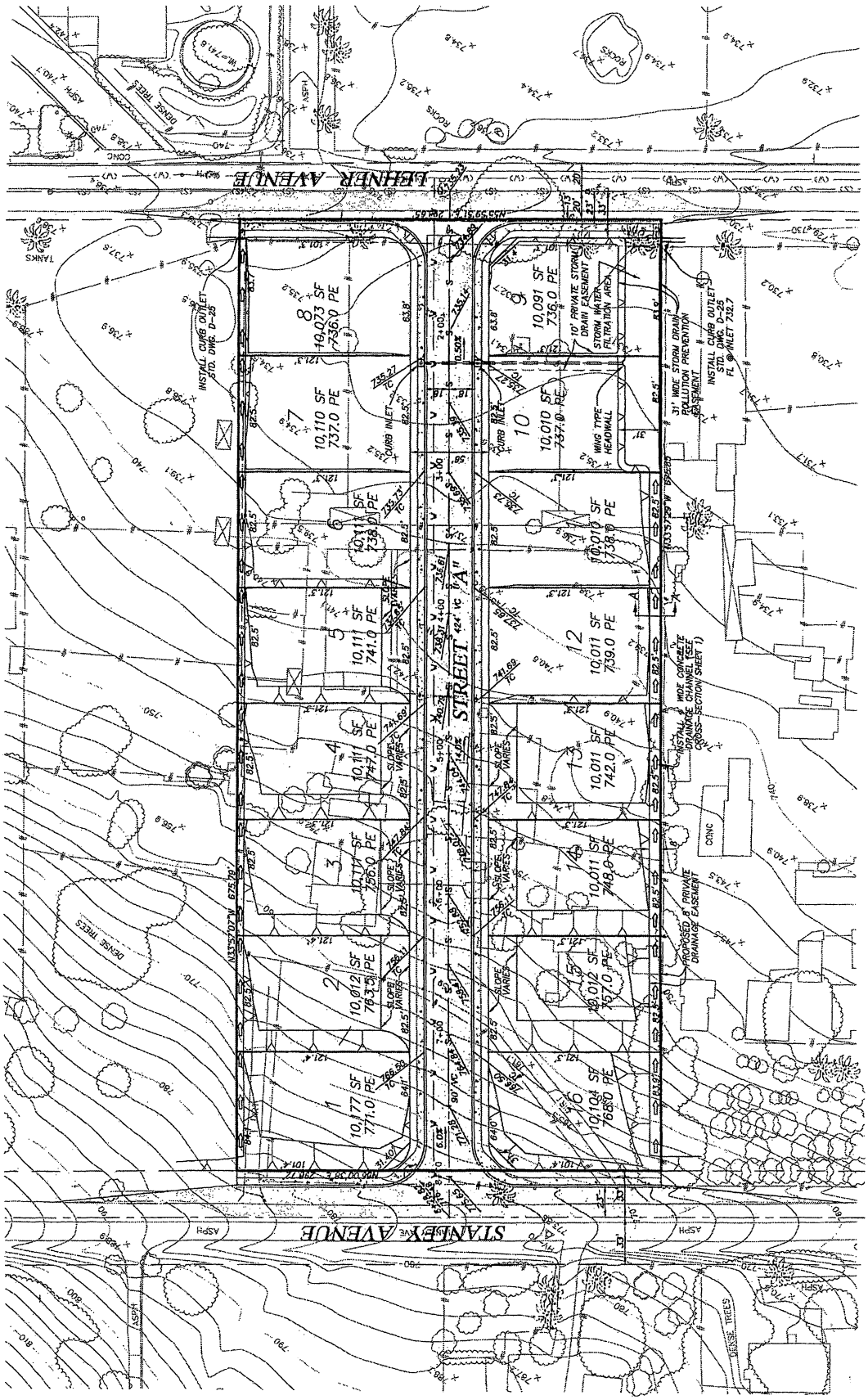
EARTHWORK

CUT: 4,702 CY.
FILL: 10,802 CY.
IMPORT: 6,100 CY.

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PLANNING DIVISION

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TR 889
APPROVED TENTATIVE MAP



TR 889
APPROVED TENTATIVE MAP

PROPOSED PROJECT
PHG 13-0028

SITE PLAN

SUPPLEMENT TO STAFF REPORT/DETAILS OF REQUEST

A. SUPPLEMENTAL DETAILS OF REQUEST

1. Property Size:	4.63 acres
2. Number of Lots:	16
3. General Plan Designation:	Suburban (up to 3.3 units per acre)
3, Residential Density:	3.45 dwelling units per acre (Approved by City Council in conformance with Subdivision Ordinance Section 32.202.03.
4. Lot Size:	Minimum of 10,000 SF required. Project lot sizes range from 10,011 SF to 13,248 SF.
5. Lot Width:	Minimum of 80 feet required.
6. Required Setbacks:	
Front:	15 feet (20 feet for front-facing garage)
Side:	5 feet one side; 10 feet on the other (10 feet for corner lots).
Rear:	20 feet

FINDINGS OF FACT
PHG 13-0028
EXHIBIT "A"

Development Agreement

1. The proposed Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan since there are no changes proposed to the General Plan land use designations or policies that affect development of the site, a Citywide Facilities Plan has been adopted to address infrastructure deficiencies on a citywide basis and the agreement has a provision for a community benefit that could not otherwise be required of the developer.

2. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the property is located since the General Plan land use designation for the site is Suburban, which allows the number of dwelling units approved for the development in conformance with Subdivision Ordinance Section 32.202.03.

3. The proposed Development Agreement is in conformity with the public convenience and general welfare since the proposed agreement provides for construction of a water line upgrade in Stanley Avenue and payment of a fee needed to construct future improvements that resolve traffic and drainage infrastructure issues in the North Broadway area.

4. The proposed Development Agreement will not be detrimental to the health, safety and general welfare of the community since the agreement provides for the construction of a 12" water line in Stanley Avenue from Conway Drive to Ash Street and the payment of a deficiency fee need to construct street and drainage improvement in the vicinity of the project site.

5. The proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values since the project will be developed in conformance with the existing General Plan designation on the property.

6. The proposed Development Agreement is consistent with Government Code Section 65864, which states that the lack of certainty in the approval of development projects can result in a waste of resources and escalated housing costs while discouraging comprehensive planning since the proposed agreement provides for a five-year term and provides certainty as to the payment and construction obligations for associated public improvements.

Substantial Conformance

1. The proposed modifications to the approved Tentative Map are in compliance with all of the conditions of approval, except for the requirement to provide a water line in Sheridan Avenue, which is no longer needed and has been modified to provide an alternative public benefit through the Development Agreement.

2. The proposed modifications to the approved Tentative Map are in substantial conformance with the approved project design because the modified Tentative Map would be graded in a similar fashion and no additional grading exemptions or increased slope heights are proposed, the same number of residential lots and minimum lot size would be maintained, no additional property or parcels have been included into the development, and the revisions are consistent with the character of the original approval.

CITY OF ESCONDIDO
PLANNING DIVISION
201 NORTH BROADWAY
ESCONDIDO, CA 92025-2798
(760) 839-4671

AMENDED MITIGATED NEGATIVE DECLARATION

Stanley Avenue / Conway Annexation
Tract 889, 2004-44-GE/DA, 2004-02-AN

Case Number: ER 2004-24, Tract 889, 2004-44-GE/DA, 2004-02-AN

Date Issued: December 15, 2005

Public Review Period: December 16, 2005 – January 4, 2006

Location: Tract 889 is located between Stanley and Lehner Avenues approximately 300 feet east of Ash Street. Additional areas to be annexed include properties immediately east of proposed Tract 889 to Conway Drive and at the northwest corner of Stanley Avenue and Conway Drive.

Addresses: 733, 839, 923, 942 Stanley Avenue, 926, 1026 Lehner Avenue, 2019, 2045, 2229 Conway Drive, vacant parcel (Assessor Parcel Number 224-142-04 between Stanley and Lehner Avenues.

Project Description:
The project includes a 16-lot residential subdivision on 4.63 acres (Tract 889) with grading exemptions for peripheral fill slopes up to 13.5 feet high and construction of a replacement 25" diameter waterline with a 30" diameter waterline on Sheridan Avenue between Conway Drive and Ash Street. A reorganization of the development is also proposed that includes contiguous areas totaling 9 properties on 22 acres. The reorganization consists of annexation to the City of Escondido and detachment from County Service Area 135 (Regional 88 MHZ Radio) and Rincon del Diablo-Improvement District E (Fire Protection).

Applicant: RMCI Development Inc.

An Initial Study has been prepared to assess this project as required by the California Environmental Quality Act and Guidelines as well as Ordinances and Regulations of the City of Escondido. The Initial Study is on file at the City of Escondido Planning Division.

Findings: The finding of this review are that the Initial Study identified Traffic, Biology, Hazardous Materials and Public Services impacts that may be potentially significant, but mitigation measures would reduce potential impacts to a less than significant level.

Jay Petrek, Senior Planner

Initial Study Part II
ER 2004-24 (Amended)
Stanley Avenue Tract 889
Grading Exemption, Development Agreement, Annexation
Case Numbers: Tract 889, 2004-44-GE/DA, 2004-02-AN

Original Project Description:

The following section evaluates the potential environmental impacts associated with a 15-lot residential subdivision on 4.63 acres and re-organization of the subject site as well as nine other contiguous areas totaling approximately 22 acres. The reorganization consists of annexation to the City of Escondido and detachment from County Service Area 135 (Regional 88 MHZ Radio) and Rincon del Diablo-Improvement District E (Fire Protection). The attached environmental Initial Study is consistent with the California Environmental Quality Act (CEQA) Guidelines, and has been used to focus this study on physical factors that may be impacted by the proposed project. This Initial Study will serve to identify and evaluate any effects determined to be potentially significant. As provided by CEQA, the San Diego Local Agency Formation Commission (LAFCO) will act as a responsible agency because of their role in reviewing and potentially approving the reorganization. Approval of a re-organization for areas 1 and 2 has already been initiated by the City of Escondido City Council.

- Area 1 (Tract 889): RMCI Development Inc. has submitted a Tentative Tract Map for a proposed development consisting of 15 single-family residences on minimum 10,000 square foot lots and associated public infrastructure improvements such as circulation, franchise utilities, storm drains, and water and sewer lines. This part of the project (Area 1) would include the demolition and removal of an existing home, barn, out buildings and horse corrals to create the proposed streets and home building sites. Grading Exemptions are proposed for peripheral fill slopes up to 13.5 feet in height where the ordinance allows a maximum of 10 feet. The approximately 4.62 – acre site is comprised of one Assessor Parcel Number (224-142-02) fronting on Stanley and Lehner Avenues. The proposed project is located within an unincorporated neighborhood in the Lehner Valley area between Ash and Conway Streets and has been pre-zoned R-1-10.

- Area 2 (Stanley/Conway Annexation): The second area includes nine properties totaling 22 acres adjacent to Tract 889 proposed for annexation with no development plans submitted at this time. Assessor Parcel Numbers 224-241-23 & 25 (6.79 acres) are pre-zoned R-E-20 and the remaining properties are pre-zoned R-1-10. Development of these areas will require separate environment review prior to construction

Amended Project Description:

Subsequent discussions and negotiations with the applicant regarding the Development Agreement have resulted in physical changes to the proposal involving:

1) Adding one additional residential lot to the subdivision increasing the number of units from 15 to 16; and,
2) Upgrading a 1,700 foot long, 25" diameter potable water pipeline to 30" diameter in the Sheridan Avenue right of way between Conway Drive and Ash Street. The pipeline constitutes a portion of a longer potable water pipeline totaling 10,200 feet that extends along Sheridan Avenue, Ash and Stanley Avenue to serve the Lehner Valley Area.

This amended environmental initial study evaluates the impact of adding one additional unit to the project as well as the constructing the proposed pipeline on a project level and cumulative level. All modifications proposed in this environmental study are incorporated with underlined text.

Environmental Setting:

Area 1 (Tract 889):
The approximately 4.63-acre property, referred to as Tract 889, has been disturbed by agricultural activities and contains one single-family house in the northwest portion of the site. The home does not have historic value and will be removed as part of the development of the property. Primary access to the site is from Stanley Avenue secondary access from Lehner Avenue. Portions of the site are used for equestrian and agriculture purposes. The entire site is particularly disturbed from residential, equestrian and agricultural activities. Elevations on the site range from approximately 730 in the south to 780 feet in the north above mean sea level with topographic features including mild slopes. Vegetation includes fragmented non-native grasses, mature ornamental trees and shrubs, agriculture, disturbed and developed area.

Area 2 (Stanley / Conway Annexation):
The adjacent nine properties are generally vacant or underdeveloped with approximately 6 single family units, various out-buildings, horse corrals and barns on 8 parcels (APN 224-241-23 & 25, 224-142-04, 13, 14, 23, 31, 32, & 35) ranging from 0.32 – 4.7 acres. The properties are accessed from Conway Drive, Stanley and Lehner Avenues. Elevations on the site range from approximately 735 in the south to 800 feet in the north above mean sea level with topographic features including mild slopes. Vegetation includes fragmented southern riparian forest, disturbed wetland, non-native grasses, mature ornamental trees and shrubs, eucalyptus woodland, agriculture, disturbed and developed area.

Area proposed for waterline installation:
The area proposed for the water line replacement installation includes a 1,700 foot length of Sheridan Avenue between Conway Drive and Ash Street. This area is entirely within the right of way and beneath paved roadway surfaces. Bordering this length of Sheridan Avenue are single family developments in residential neighborhoods.

Adjacent land uses are summarized below:

North: Developed single-family dwellings with an Estate II land use designation.

South: Developed single-family dwellings and a public Middle School with a Suburban land use designation.

West: Developed single-family dwellings and agricultural uses with a Suburban and Estate II land use designation

East: Developed single-family dwellings and agricultural uses with a Suburban and Estate II land use designation

I. Land Use

City of Escondido Significance Criteria:

Significant land use impacts would occur if the project substantially conflicted with established uses, disrupted or divided an established community or resulted in a substantial alteration to the present or planned land uses. Consistency with the City of Escondido General Plan and zoning and other applicable environmental plans and policies, is evaluated in making a determination of potential significant land use impacts.

Area 1: The City of Escondido General Plan designates Area 1 as Suburban, allowing single-family residential development. The objective of the Suburban category is to promote single-family development with a maximum density of 3.3 units per acre on relatively large lots with minimum 10,000 sq. ft. lot sizes. This designation is often applied in transitional areas between more intensive urban and less intensive estate and rural development. Public water and wastewater collection and treatment are required in these areas.

The extent of dwelling units permitted on the proposed development by Suburban is dependent on the topography of the site. The General Plan indicates that the maximum development yield of Suburban lands shall be sensitive to topography and be calculated according to the following slope categories:

0-25%:	3.3 dwelling units per 1 acre
25-35%	1.5 dwelling unit per 1 acre
35+	1 dwelling unit per 20 acres

The minimum lot size shall be 10,000 square feet, unless the development is clustered. Based on the variable slope provisions of Suburban contained in the City's General Plan, 15.3 dwelling units would be allowed for Tract 889, which is consistent with the proposed 15-unit subdivision. The pre-zoning, which was adopted approximately 15 years ago as part of a previous annexation, is R-1-10, which is consistent with the General Plan.

Area 1 is within the County of San Diego's North County Metropolitan Subregional Plan and is designated Residential 6 (4.3 du/ac). The existing County zoning is RS-4. The applicants for Area 1 are proposing to develop in accordance with the City's General Plan designation. While the project is surrounded by vacant and/or underdeveloped land to the east and west, there is a public Middle School across Lehner Avenue and single family development across Stanley Avenue to the north.

From a zoning "plan to plan" analysis, the current county zoning for the 4.63 acres would allow approximately 19 single family units. This is an increase of 4 units more than the City's pre-zoning and General Plan and consequently would not constitute a significant impact since four fewer units would be less intrusive.

From a "plan to ground" analysis, the proposal would add an additional 15 units more than currently exist on the 4.63-acre site. This is not considered significant since the proposed project would be consistent with existing adopted City of Escondido land use policies, no significant land use impact would occur as a result of the proposed project.

The addition of one additional dwelling unit is proposed since all lots within the development will maintain a minimum of 10,000 square feet in size, which will conform to the underlying City pre-zoning of PZ R-1-10. Section 32.202.03 of the City's Zoning Ordinance allows development involving constrained lands or limited street dedications on the property may b considered in conformance with the General Plan, if the Director of Planning and Building determines that the proposed project satisfies each of the following criteria:

A. The Tentative Subdivision or Parcel Map proposes lot sizes which conform with the standards of the current zoning designation and such zoning conforms with the current land use category of the General plan.

B. The proposed lot sizes conform with the minimum size specified in the General Plan Land Use Category in which it is located.

C. The proposed map is infill in nature and the proposed lot sizes are compatible with the size and design of surrounding properties; and,

D. The map design conforms with other General Plan goals regarding the preservation of wetlands, riparian areas, steep slopes, and sensitive habitat areas.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have land use impacts since the amount of water that will be delivered to the area will only serve development that has already been planned and/or anticipated for the build-out of the community.

Area 2: The City of Escondido General Plan designates Area 2 as Suburban for properties located between Stanley and Lehner Avenues and Estate II for areas north of Stanley Avenue. Both land use designations allow single-family residential development. The objective of the Suburban category is described above. The objective of the Estate II category is to promote single-family development with a maximum density of 2 units per acre on relatively large lots with minimum 20,000 sq. ft. lot sizes. This designation is often applied in transitional areas between Suburban and less intensive rural development. Public water and wastewater collection and treatment are required in these areas.

The extent of dwelling units permitted on the proposed development by Suburban is dependent on the topography of the site. The General Plan indicates that the maximum development yield of Suburban lands shall be sensitive to topography and be calculated according to the following slope categories:

0-25%: 2 dwelling units per 1 acre

25-35% 1 dwelling unit per 1 acre

35+ 1 dwelling unit per 20 acres

The minimum lot size shall be 20,000 square feet, unless the development is clustered.

Based on the variable slope provisions of Suburban and Estate II designations contained in the City's General Plan, 71 dwelling units would be allowed for the 22 acres. The pre-zoning, which was adopted approximately 15 years ago as part of a previous annexation, is R-1-10 and R-E-20, which is consistent with the General Plan.

Area 2 is within the County of San Diego's North County Metropolitan Subregional Plan and is designated Residential 6 (4.3 du/ac). The existing County zoning is RS-4. The applicants for Area 2 would require separate environmental review conducted prior to development occurring on the site. While the project is surrounded by vacant and/or underdeveloped land to the east and west, there is a public Middle School across Lehner Avenue and single family development across Stanley Avenue to the north.

From a zoning "plan to plan" analysis, the current county zoning for the 22 acres would allow approximately 94 single family units. This is an increase of 23 units more than the City's pre-zoning and General Plan and consequently would not constitute a significant impact since 23 fewer units would be less intrusive.

From a "plan to ground" analysis, the proposal would add an additional approximately 66 units more than currently existing in the 22-acre area. This is not considered significant since any future project would be consistent with existing adopted City of Escondido land use policies, no significant land use impact would occur.

II. Aesthetics

City of Escondido Significance Criteria:

Aesthetic impacts would be significant if the project resulted in the obstruction of any scenic view or vista open to the public; damage of significant scenic resources within a designated State scenic highway, create an aesthetically offensive site open to the public, and/or substantial degradation of the existing visual character or quality of the site and its surroundings. Significant aesthetic impacts would also occur if the project generated new sources of light or glare that adversely affected day or nighttime views in the area, including that which would directly illuminate or reflect upon adjacent properties or could be directly seen by motorists or persons residing, working or otherwise situated within sight of the project.

Areas 1 and 2 are not located on a ridgeline identified in the Community Open Space/Conservation Element of the General Plan. Grading exemptions are being requested for slopes within Area 1 up to 13 feet in height along the periphery of the project. The applicants have submitted findings describing the various reasons why each exemption is necessary. The slopes are minor in nature and will not block significant views. .

Residential projects, typically do not directly illuminate or reflect glare upon adjacent properties, therefore no significant light or glare impact would result from the proposed project. Development of the proposed Area 1 and future development of area 2 will also not obstruct scenic views or vistas open to the public since neither the City nor the State designates Lehner / Stanley Avenues or Conway Drive as a scenic resource.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an aesthetic impact since the pipeline will be completely buried under the existing street right of way.

III. Agricultural Resources

City of Escondido Significance Criteria:

Project impacts to agricultural resources would be significant if they lead to direct or indirect loss of Prime Farmland, Unique Farmland or Farmland of Statewide Importance, defined by the California Department of Conservation, or conflicted with the City's existing agricultural zoning or Williamson Act Contract.

The project site is not listed as Prime Agricultural Lands as identified in the General Plan Final Environmental Impact Report, which was prepared for the City's most recent General Plan revisions in 2000. Although both area have been used sporadically for agricultural purposes, such as orchards, grazing, and corralled animals, some of these existing uses may be incompatible with the surrounding residential community. The property is also not involved in a Williamson Act Contract or other agricultural land contract.

The California Department of Conservation, which publishes farmland conservation reports, classifies Area 1 (The Estates) as "Other Land" which is defined as:

> "Rural development, marginal agricultural lands, tracts not suitable for grazing, government lands not available for agricultural use, road systems and vacant land surrounded on all sides by urban development."

The development of a residential community within both areas would therefore not result in significant individual or cumulative impacts to agricultural resources.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will not involve agricultural lands. The entire lot will be graded in either the 15 or 16 lot scenario and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an agricultural impact since the pipeline will be completely buried under the existing street right of way and involve no agricultural resources.

IV. Transportation

City of Escondido Significance Criteria:

According to the City of Escondido Environmental Quality Regulation (Article 47, Sec. 33-924), impacts are considered significant if the project:

1. *Causes the level of service (LOS) of a circulation element street to fall below a mid-range of LOS "D" and /or adds more than 200 ADT to a circulation element street with a LOS below the mid-range "D" yet above LOS "F". According to the Escondido General Plan, the minimum acceptable LOS is "C".*

2. *Exceeds, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads and highways.*

3. *Results in a change of air traffic patterns, including either an increase in traffic levels or in a location that results in substantial safety risks or increased hazards due to a design feature.*

4. *Results in inadequate emergency access or parking capacity, or conflicts with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).*

General Plan Circulation Policy D2.3 states that:
"... Due to the physical design characteristics, environmental resource considerations, existing development, freeway interchange impacts and incomplete system improvements, level of service "C" may not be feasible in all areas at all times. However, level of service "C" should be pursued in the ultimate implementation of the circulation system."

A traffic impact study for the proposed project was performed on June 15, 2004 by Linscott, Law and Greenspan and further updated and summarized below. The scope of the analysis was developed with input from the City of Escondido. The analysis methods and study scenarios are based on Escondido Traffic Impact Study Guidelines. For a complete description please refer to the consultant document.

Access to the site for the proposed 15 unit single family units (Area 1) will be provided Stanley Avenue and Lehner Avenue, approximately 265 feet east of the existing Ash Street intersection. Area 2 will access these streets as well as Conway Drive. The study included the following roadway segments and intersections:

Roadway	*Intersection*
North Broadway • North of Stanley Avenue • Stanley to Vista Avenue • South of Vista Avenue	North Broadway / Stanley Avenue (two-way stop)
North Ash Street • Lehner Avenue to Vista • South of Vista Avenue	North Broadway / Vista Avenue (two-way stop)
Stanley Avenue • North Broadway to North Ash Street	North Ash Street / Lehner Avenue (all-way stop)
	North Ash Street / Vista Avenue (all-way stop)

Summary
The project is calculated to add traffic to the intersection of North Broadway/Vista Avenue. This intersection is currently operating at Level of Service (LOS) "F" with the addition of project traffic. The project contribution to the other poorly operating intersections in the area is less than the permissible 2.0 seconds. Therefore, no other cumulative impacts are calculated.

The project is within the North Broadway Bridge Critical Deficiency Area. Mitigation for this infrastructure improvement involves a Development Agreement that specifies a negotiated payment to off-set the future construction of North Broadway between Stanley and Vista Avenues. The project is also recommended to make half-width improvements along the project frontage on Stanley Avenue, which is classified as a Local Collector on the City's Circulation Element. This would result in 42-feet of paved roadway in 66 feet of right-of-way and has been incorporated into the current project description.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall traffic generation of the proposed development. The addition of a single unit will increase the number of vehicle trips generated by the project by 20 and the increases in delay time experienced at intersections and on street segments will be negligible.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will general construction trip traffic that will be intermittent and temporary during the installation of the pipeline. Traffic control measure will be incorporated into the construction plan as required by local city policies so as to not disrupt neighborhood traffic.

V. Air Quality

City of Escondido Significance Criteria:
Project impacts exceeding any of the following South Coast Air Quality Management District (SCAQMD) daily emissions criteria can be considered significant:

- *Carbon Monoxide* — *550 lbs.*
- *Reactive Organic Gases* — *55 lbs.*
- *Oxides of Nitrogen* — *55 lbs.*
- *Fine Particulate Matter* — *150 lbs.*
- *Sox* — *250 lbs.*
- *Lead* — *3.2 lbs.*

The project area is within the San Diego Air Basin (SDAB). Air quality at a particular location is a function of the kinds and amounts of pollutants being emitted into the air locally, and throughout the basin, and the dispersal rates of pollutants within the region. The major factors affecting pollutant dispersion are wind, speed and direction, the vertical dispersion of pollutants (which is affected by inversions) and the local topography.

The air basin currently is designated a state and federal non-attainment area for ozone and particulate matter. However, in the SDAB, part of the ozone contamination is derived from the Los Angeles area South Coast Air Basin during periods of westerly winds when air pollutants are windborne over the ocean, drift to the south and eventually are blown easterly into the SDAB. Local agencies can control neither the source nor transportation of pollutants from outside the basin. The Air Pollution Control District (APCD) policy therefore, has been to control local sources effectively enough to reduce locally produced contamination.

For long-term emissions, the direct impacts of a project can be measured by the project's consistency with regional plans to improve and maintain air quality. Local air-quality impacts are directly related to the number of vehicle trips and operation levels on adjacent streets and intersections. For planning purposes, the APCD assumed the City's General Plan designation of Suburban and Estate II in calculating air quality impacts. According to CEQA Guidelines, a project normally is considered to have a significant air quality impact if it violates any ambient air quality standard, contributes substantially to an existing or projected air-quality violation, or exposes sensitive receptors to substantial pollution concentrations.

Emissions resulting from developing Area 1 would be directly related to the amount of vehicular traffic generated by the project. The increase 15 units would have an incremental impact to the basin-wide air-quality. Considering the cumulative impacts of thousands of sources, the impact attributed to the project is immeasurably small on a regional scale and will not cause ambient air-quality standards to be exceeded. Area 2 proposes no development at this time and annexation to the City will not affect air emissions. Since annexation and development would not materially degrade the levels of service on adjacent streets and intersections, and would not violate daily emissions thresholds, the project will not have a significant impact on air quality and no mitigation measures are required.

Construction-Related Emissions

Construction-related activities are temporary, short-term sources of air emissions. Sources of construction-related air emission include:

- Fugitive dust from grading activities;
- Construction equipment exhaust;
- Construction-related trips by worker, delivery trucks and material-hauling trucks; and
- Construction-related power consumption.

Maximum daily emissions of NOx during construction periods are not projected to exceed City thresholds or APCD standards based on similar studies performed for similar size grading operations. Since construction is a one-time temporary activity, and because average daily construction emissions are projected to be below thresholds of significance, operation of equipment during project construction is not anticipated to result in substantial air quality impacts. Dust from grading and other site preparation would generate particulate matter emission; however, with appropriate use of grading and operation procedures as described in the attached mitigation measures (in conformance with APCD Best Management Practice for dust control), the project would not generate significant particulate matter or dust.

The City of Escondido Grading Ordinance and erosion control requirements include provisions for dust control to reduce impacts to air quality during grading and construction activities. At a minimum, these ordinances and provisions require projects to perform regular watering and timely re-vegetation of disturbed areas to minimize the dust and airborne nuisance impacts to off-site receptors. Emissions from construction equipment, worker and delivery and material-hauling trucks, and construction-related power consumption would be temporary and would result in an extremely small contribution to the SDAB and therefore would not result in a significant impact.

Emissions resulting from developing one additional unit and installing a portion of the pipeline or the complete improvement would be directly related to the amount of vehicular traffic generated by the unit and the construction related to installing the pipeling. The increase 1 unit and the construction related to installing the pipeline section (or cumulatively) would have an incremental impact to the basin-wide air-quality. Considering the cumulative impacts of thousands of sources, the impact attributed to the project is immeasurably small on a regional scale and will not cause ambient air-quality standards to be exceeded.

VI. Biological Resources

City of Escondido Significance Criteria:

Project impacts upon biological resources may be significant if the project generates impacts that create any of the following results:

- *Substantial direct or indirect-effect on any species identified as a candidate, sensitive, or special status in local/regional plans, policies or regulations, or by the State of California Department of Fish and Game (F & G) or U.S. Fish and Wildlife Service (U.S. FWS);*
- *Substantial effect upon sensitive natural communities identified in local/regional plans, policies, regulations or by the agencies (F & G-U.S. FWS);*
- *Substantial affects (e.g. fill, removal, hydrologic interruption) upon federally protected wetlands under Section 404 of the Clean Water Act;*
- *Substantial interference with movement of native resident or migratory wildlife corridors or impeding the use of native wildlife nursery sites;*
- *Conflict with any local policies/ordinance that protect biological resources (e.g. tree preservation policy or ordinance)*
- *Conflict with provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved habitat conservation plan.*

Area 1: A biological report for Tract 889 dated June 11, 2004 was prepared by Helix Environmental Planning. The report concludes that the 4.6 acres parcel supports five vegetation communities: non-native grassland (0.2 acre), non-native vegetation (0.1 acre), extensive agriculture (2.9 acres), disturbed habitat (1.1 acre), and developed land (0.3 acre). There were no sensitive plant or animal species observed or detected on site. There are a total of 21 mature ornamental trees located on the property. The report concludes that development of the site and removal of existing habitat would not require mitigation, however indirect impacts are potentially significant for any nesting raptors on-site (though none were detected at the time). Mitigation is recommended regarding the timing of construction to ensure raptors are not impacted.

Area 2: The June 11th biological report also reviewed Area 2 and determined that the parcels supported approximately 0.2 acre of southern riparian forest, 0.1 acre of disturbed wetland, 11.8 acres of non-native grassland, 2.1 acres of eucalyptus woodland, 1.4 acre of non-native vegetation, 3.8 acres of extensive agriculture, 0.2 acre of disturbed habitat and 2.7 acres of developed land. Annexation of this area will not impact biological resources since no development is proposed at this time and separate environmental review would be required for impacts associated with biological disturbance.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will not involve sensitive biological resources. The entire lot will be graded in either the 15 or 16 lot scenario and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an biological impact since the pipeline will be completely buried under the existing street right of way and involve no biological resources.

MITIGATION MEASURE:

1. In accordance with the City's tree preservation ordinance, the removal of "mature trees" shall be mitigated at a ratio of 1:1. The removal of 21 "mature trees" shall be mitigated by installing 21 ornamental with a minimum 24-inch box size throughout the project prior to final occupancy. If said trees shall be planted as street trees they shall conform to the selected species on the City's street tree list.

2. The breeding season for nesting birds occurs approximately February 15 through August 31; however, raptors may begin breeding as early as January. Vegetation clearing, brushing, and grading should occur outside the bird breeding season. If construction occurs (within the cleared portion of the project site but adjacent to habitat on or off site) during the bird breeding season, a qualified biologist should conduct a pre-construction survey of the remaining habitat to determine whether there are active bird nests in the area, including raptors and ground nesting birds. The survey should begin not more than three days prior to the beginning of construction activities. If an active nest is observed, a minimum 300-foot buffer (500 feet for raptors) should be established using temporary fencing. The buffer should be in effect as long as construction is occurring and until the nest is no longer active.

VII. Cultural Resources

City of Escondido Significance Criteria:

A significant impact to cultural resources would occur if implementing the project causes substantial change to a historical or archaeological resource pursuant to Section 15064.5 of the California Environmental Quality Act Guidelines, the destruction of unique paleontological resources or unique geologic feature, or disturb any human remains.

Area 1 is completely disturbed with residential, agricultural and equestrian uses. Both Areas 1 and 2 are not listed on the Archaeological Resources Site; therefore the proposed annexation and development would have less than significant impact on cultural resources.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development since the lot will be graded in either the 15 or 16 lot scenario and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an cultural impact since the pipeline will be completely buried under the existing street right of way, which already contains disturbed soils.

VIII. Geology and Soils

City of Escondido Significance Criteria:

A significant geologic impact would occur if a project exposed people or structures to major geologic hazards such as earthquake damage (rupture, ground shaking, ground failure, and landslides), Slope and/or foundation instability, erosion, soil instability or other problems of a geologic nature.

The deepest cut areas are 9 feet deep along the side of the lot adjacent to Stanley Avenue in the northern portion of the project. The Phase I Environmental Assessment identified Area 1 to be underlain by older deposits and at a depth by weathered granitic bedrock. The alluvium is described as unconsolidated to locally poorly consolidated sand and gravel deposits. Based on the soil types found on site it is reasonably anticipated that conventional grading practices can be utilized to develop the site without the need for blasting . If blasting is required it would be limited to the northern portion of the site and the contractor will be required to obtain the necessary permits and follow all City of Escondido procedures.

The site is not located on any active or potentially active fault trace as defined by the California Division of Mines and Geology. The nearest active fault to the site is the Rose Canyon Fault, located approximately 14.5 miles to the west. Other nearby faults include the Elsinore-Julian Fault and the Newport-Inglewood Fault. The site is not considered to possess a significantly greater seismic risk than that of the surrounding area based on accounts from other geotechnical investigations for projects developed in the area; therefore a significant geology and soils impact would not occur.

IX. Hazards and Hazardous Materials

City of Escondido Significance Criteria:

A significant impact to the environment and the public associated with hazards and hazardous materials would result from a project if any of the following occurred:

1. *Creation of a significant hazard to the public or the environment though routine transport, use or disposal of hazardous materials or from reasonably foreseeable upset and accident;*
2. *Emission and/or handling of hazardous materials substances or waste within one-quarter mile of an existing or proposed school;*
3. *Location of a project on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5;*
4. *Location within an airport land-use plan or within two miles of a public airport. Or the project is located within the vicinity of a private air strip;*
5. *Impairment/interference with an adopted emergency response plan or emergency evacuation plan; and*
6. *Expose people or structures to a significant risk of loss, injury or death involving wild fires.*

Research for Area I has been conducted with the County Department of Environmental Health and is not identified on the County's list of hazardous waste sites. The County Department of Environmental Health regulates the storage and on-site use of any potential hazardous materials such as fuel oil, motor oil, paints and hazardous cleaning materials to prevent the accidental release of, proper prevention of pollution of the environment. The site was not used to store hazardous chemicals.

Both Area 1 and 2 are not adjacent or within two miles of an airport. Any proposed development would not impair the City's emergency response plan according to discussions with the City Fire Department. The areas will not expose people or structures to a significant risk of loss, injury or death involving wild fires since the site is in an urban setting and will be irrigated.

Pesticides, herbicides, and/or insecticides may have been historically been applied to Area 1 since it has been used for agricultural purposes. Rincon Consultants, Inc. performed a Phase I Soil Sampling and Analysis (dated July 12, 2002) that noted is a potential recognized environmental condition (REC). If agricultural chemicals were used as part of the agricultural activity, residual pesticides and herbicides may be present in soil and could be of concern to future residents. Area 2 proposes no development at this time and will require future soil sampling to assess conditions prior to development. The following Mitigation Measures are included:

MITIGATION MEASURE:

1 Soil sampling and analysis shall be conducted prior to grading or Final Map to evaluate for the potential presence of agricultural chemicals in the northwestern corner of the site and other constituents of concern in the main horse arena area at the site.
2 All containers of chemical products and trash and debris shall be removed from the site and properly disposed prior to grading or Final Map.

X. Hydrology and Water Quality

City of Escondido Significance Criteria:

Significant impacts associated with hydrology and water quality would result from a project if water quality standards or waste discharge requirements were violated; groundwater and surface water quality and quantity were substantially altered; drainage patterns were substantially altered so as to increase erosion/siltation and increase surface runoff; increased runoff would exceed the capacity of existing or planned drainage systems or add a substantial source of pollution; the project were located in a 100-year floodplain and cannot be protected; and, the project exposed people to hydrological hazards, such flooding or inundation by seiche, tsunami, or mudflow.

The property is relatively level, rising moderately from Lehner Avenue at the south to Stanley Avenue in the north (generally less than 15% slope) and primarily drains north to south. The amount of run-off from the site would be expected to incrementally increase upon development of Area 1 due to impervious surfaces associated with the development of the residences and paved surfaces. The project would be required to comply with National Pollution Discharge Elimination System (NPDES) standards; consequently, the Engineering Department has determined that runoff from the project would not be considered significant and the project would not materially degrade the existing drainage facilities. The City would provide sewer and water service from mains within the adjacent street or easements; consequently, no significant impact is expected to occur to the groundwater table. The project is outside the 100-year flood plain area as identified on current Flood Insurance Rate Maps (FIRM). Therefore, the project site is not subject to potential flooding, landslides or mudflows. Area 2 is not proposed for development at this time and will undergo separate environmental review upon submittal of a project application.

XI. Mineral Resources

City of Escondido Significance Criteria:
Impacts to mineral resources would be substantial if the proposed project resulted in the loss of significant state or locally important mineral resources.

The proposed project would not substantially impact mineral resources in Area 1 based on the soil study and analysis prepared by the applicant. Area 2 proposes no development at this time as only a portion of the small site includes granitic rock. The limited size of the project would not substantially increase the use of, or result in the depletion of any nonrenewable natural resources.

XII. Noise

City of Escondido Significance Criteria:
Significant noise impacts would occur if the project; exposed persons to, or generated noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies; exposed persons to, or generated excessive ground-borne vibration or ground-borne noise levels. Significant noise effects would also occur if the project resulted in substantial permanent or temporary/periodic increase in ambient noise levels in the project vicinity above noise levels existing without the project. According the General Plan Noise Policy E1.4, projects that increase noise levels by 5 dB or greater should be considered as generating a significant impact and should be mitigated.

The City's General Plan Noise Element contains noise policies that which outline acceptable noise levels associated with each type of land use. A 60 dBA CNEL exposure is considered normally acceptable for exterior residential land uses and 45 dBA CNEL for interior levels based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements. The City requires that noise levels be presented in terms of Community Noise Equivalent Level (CNEL). CNEL is a weighted sound level during a 24-hour period, after the addition of 5 decibels (dB) to average sound levels at evening hours (7 PM to 10 PM) and 10dB to the average night hours (10 PM to 7AM). The addition of 5 and 10 dB is applied to account for noise sensitivity during evening and nighttime hours.

In order to assess future noise generation associated with the improvement of the City's circulation system, a Noise Contour map was prepared for the Noise Element of the General Plan. The Noise Exposure Map-Future Conditions Map contained in the General plan does not depict the subject site as exposed to 60 CNEL or more. The August 2000 Final Environmental Impact Report prepared for the Escondido General Plan Update illustrates existing and future noise contours. Noise levels depicted for the site fall below the 60 CNEL standard contained in the Noise/Land Use Compatibility Guidelines of the General Plan.

Grading and construction within Area 1 and along the pipeline alignment during construction would create temporary noise impacts. Modern construction equipment, properly used and maintained, meet the noise limits contained in the City's Noise Ordinance. All noise generated by the project would be required to comply with the City's Noise Ordinance. Upon completion of the project, all construction noise from the project will cease. Because construction operations would be required to conform to the City's Noise Ordinance and because construction noise is temporary, no significant impact from construction

XIII. Population and Housing

City of Escondido Significance Criteria:

Significant population and housing impacts would occur if the proposed project; induced substantial population growth in an area; and, displaced substantial numbers of people or existing housing.

Population within the City would incrementally increase as a result of developing the proposed 15 dwelling units within Area. The City's General Plan anticipates single-family residential use on the project site and the density of the proposal is consistent with the City's General Plan Land Use Designation of Suburban. The proposed development would incrementally contribute to the City's Regional Share Housing requirements. The development of Area 1 would not be considered growth inducing since the project site is located within an established community. The displacement of the one existing home within Area 1 is not considered significant. Therefore, the project would not result in a significant population and housing impact. Area 2 is not proposed for development at this time and will require separate environmental review

XIV. Public Services

City of Escondido Significance Criteria:

Impacts to public services would occur if there was a substantial increase on the demand for the services (fire protection, schools, parks or other public facilities) by the project, which would also cause a reduction in existing service levels.

Sewer Service – There currently exists a public sewer line in City streets immediately off-site that would accommodate Areas 1 and 2. Interviews with City Public Utilities staff have confirmed that treatment capacity exists at the wastewater treatment plant located on Hale Avenue.

Water Service –Areas 1 and 2 ~~are~~ were within the City's Municipal Water District and the North City Critical Water Deficiency Area. Currently inadequate water delivery is available from water lines in adjacent streets to accommodate significant amounts of development until an existing water line in El Norte Parkway between Escondido Creek and La Honda Drive is up-sized to 36" diameter (approximately 1 mile in length). The proposed project can be accommodated provided a 25" diameter waterline in Sheridan between Conway Drive and Ash Street is up-sized to 30" diameter, which is included as part of the project description. Until this improvement is installed development in Areas 1 and 2 will be delayed. Design of the infrastructure within El Norte Parkway has been submitted to the City for plan check and construction of the water line is anticipated within the next four months. Interviews with City Public Utilities staff have confirmed capacity exists in the City's reservoir and treatment facilities to adequately serve the project once the water line is extended.

Storm Water/Refuse Collection – The proposed project (Area 1) includes the construction of new storm drain facilities and water detention facilities, in concert with the NPDES standards to meet state and federal requirements. Escondido Disposal currently provides solid waste service to the site and the project would not result in a significant increase in solid waste. The proposal would not result in any individual or cumulative impacts to utilities and service systems.

Fire - The City Fire Department has indicated their ability to adequately serve the proposed project. The closest Fire Station is located at 2665 Village Road; approximately 1.3 miles from the site.

Law Enforcement – The City's Police Department currently serves the area and has included the property within a patrol beat area. The Department has not expressed concerns regarding its ability to serve the site.

Schools - The site is within the Escondido Union School District and the Escondido Union High School District. Secondary students would likely attend North Broadway Elementary School, Rincon Middle School and Escondido High School. The incremental impact of the proposed residential developments on the school system would be offset by the impact fees collected upon issuance of building permits.

XIV. Recreation

City of Escondido Significance Criteria

Significant impact would occur if the project resulted in an increase of 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. A significant impact would also occur if the project includes or requires the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment.

Development of the area would result in an incremental demand on the City's recreational facilities. However the development fees paid by this project would offset the anticipated impact on the existing facilities. The proposed project would not affect existing recreational opportunities since the site is not used for recreational activities; consequently no significant impact to recreational resources would occur as a result of the project.

XV. Mandatory Findings of Significance

No significant impacts to the environment as a result of this project have been identified when considering the mitigation measures included as part of the development plan. Approval of the project is not expected to have any significant impacts, either long-term or short-term, nor will it cause substantial adverse effect on human beings, either directly or indirectly provided all mitigation measures and normal project conditions are followed.

MITIGATION MONITORING REPORT

Mitigated Neg. Dec. No.: ER 2004-24

Page 1 of 2

PROJECT NAME: Tract 889, Stanley Avenue development, water pipeline reconstruction and annexation
PROJECT DESCRIPTION: 16-lot residential subdivision & annexation on 4.6 acres; annexation of 9 additional properties on 22 acres
ASSOCIATED CASES: Tract 889, 2004-44-GE/DA, 2004-04-AN
PROJECT LOCATION: Property between Ash Street and Conway Drive along Stanley Avenue
APPROVAL BODY/DATE:_____
PROJECT MANAGER / CONTACT PERSON: Jay Petrek, Senior Planner (760) 839-4556

NATURE OF IMPACT	MITIGATION MEASURE and timeline for implementation	IDENTIFICATION. NO. LOCATION IN DOC.	Responsibility for Implementation	CERTIFIED INITIAL/DATE	COMMENTS
BIOLOGY					
The project will remove several mature trees on the site.	In accordance with the City's tree preservation ordinance, the removal of "mature trees" shall be mitigated at a ratio of 1:1. The removal of 21 "mature trees" shall be mitigated by installing 21 ornamental with a minimum 24-inch box size throughout the project If said trees shall be planted as street trees they shall conform to the selected species on the City's street tree list. Timeline for implementation: prior to final occupancy.	Biological Resources	Planning Div. .		
Project will have a direct impact on foraging habitat for raptors in the area.	The breeding season for nesting birds occurs approximately February 15 through August 31; however, raptors may begin breeding as early as January. Vegetation clearing, brushing, and grading should occur outside the bird breeding season. If construction occurs (within the cleared portion of the project site but adjacent to habitat on or off site) during the bird breeding season, a qualified biologist should conduct a pre-construction survey of the remaining habitat to determine whether there are active bird nests in the area, including raptors and ground nesting	Biological Resources	Planning Div.		

MITIGATION MONITORING REPORT **Amended Mitigated Neg. Dec. No.: ER 2004-24** **Page 2 of 2**	birds. The survey should begin not more than three days prior to the beginning of construction activities. If an active nest is observed, a minimum 300-foot buffer (500 feet for raptors) should be established using temporary fencing. The buffer should be in effect as long as construction is occurring and until the nest is no longer active. Timeline for implementation: prior to grading.				
HAZARDS					
Project will potentially impact health due to previous use of pesticides	Soil sampling and analysis shall be conducted to evaluate for the potential presence of agricultural chemicals in the northwestern corner of the site and other constituents of concern in the main horse arena area at the site. Timeline for implementation: Prior to grading or Final Map	Hazardous Materials	Engineering Dept.		
Project will potentially impact health due to previous use of pesticides	All containers of chemical products and trash and debris shall be removed from the site and properly disposed. Timeline for implementation: Prior to grading or Final Map	Public Services	Engineering Dept.		

Agenda Item No.: 17
Date: December 4, 2013

ORDINANCE NO. 2013-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN BG LIHTC, LLC AND THE CITY OF ESCONDIDO TO AUTHORIZE CONSTRUCTION OF THE PREVIOUSLY APPROVED 16-LOT TRACT 889 RESIDENTIAL SUBDIVISION IN THE NORTH BROADWAY DEFICIENCY AREA

PLANNING CASE NO.: PHG 13-0028

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. That the City Council has reviewed and considered the Mitigated Negative Declaration (City Log No. ER-2004-24) and Mitigation Monitoring Report originally prepared for the Tract 889 project and has determined that all environmental issues associated with the project have been addressed and no significant environmental impacts will result from approving this agreement.

SECTION 3. That upon consideration of the staff report, Planning Commission recommendation and all public testimony presented at the hearing held on this agreement, this City Council finds that the Development Agreement is consistent with the Escondido General Plan and the Growth Management Ordinance (Article 68) of the Zoning Code.

SECTION 4. That the City Council desires at this time and deems it to be in the best public interest to approve the Development Agreement with BG LIHTC, LLC attached as Exhibit "A" and incorporated by this reference.

SECTION 5. That the City Council hereby consents to the future assignment of the Development Agreement to Pacific Land Investors, LLC.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 7. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation in the City of Escondido.

RECORDING REQUESTED BY:

CITY CLERK, CITY OF ESCONDIDO

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF ESCONDIDO
201 N. BROADWAY
ESCONDIDO, CA 92025

THIS SPACE FOR RECORDER'S USE ONLY

APN: 224-142-02

Recording Fees Exempt Per Government Code Section 27383

DEVELOPMENT AGREEMENT
for Tract 889

between

CITY OF ESCONDIDO

and

BG LIHTC, LLC
A California limited liability company

_____, 2013

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the CITY OF ESCONDIDO, a municipal corporation ("City"), and BG LIHTC, LLC, a California limited liability company ("Owner")(collectively, "the Parties").

ARTICLE I

Recitals

The Agreement is entered into on the basis of the following facts, understanding intentions of the Parties:

1. **Code Authorization.** Government Code Sections 65864 through 65869.5, Article 58 of the City's Zoning Code (the "Development Agreement Legislation") and Article 68 of the City's Zoning Code ("Growth Management Ordinance") authorize the City to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the purpose of establishing certainty in the development process for both the City and the property owner, and to enable specific terms regarding property development, to be negotiated and agreed upon.

2. **Interest of Owner.** Owner is the legal and/or equitable owner of certain real property totaling approximately 4.63 acres, located in the County of San Diego, State of California (the "Property"), as described in Exhibit A attached hereto, and more specifically within the North Broadway Region of Influence identified in the City's Growth Management Ordinance. Owner intends to subdivide the Property into sixteen (16) lots for single-family residential units and to construct such other improvements as are required by the conditions of approval of the Entitlements, Future Entitlements and the Agreement (collectively, the "Project").

3. Sale of Property. Owner has entered into an agreement to sell the Property to Pacific Land Investors, LLC, ("PLI") and by letter dated July 18, 2013 on file with the City, has authorized Mark Ferraro of PLI to act on its behalf with respect to this Agreement.

4. Intent of Parties. By the Agreement, the City and Owner intend to accomplish the following:

a. Eliminate uncertainty in the planning and development of the Project by assuring Owner that it may develop the Property, in accordance with Existing Laws, subject to the terms and conditions contained in the Agreement;

b. Assure the orderly installation of necessary improvements and the provision for public services appropriate for the development of the Project; and

c. Enable the City to obtain substantial public benefits by virtue of the Agreement.

5. Execution. The execution of the Agreement by the City and Owner shall constitute conclusive evidence that duly noticed public hearings before the Planning Commission and the City Council required by the Development Agreement Legislation have been held, and that the City Council has introduced (first reading) and adopted (second reading) an Ordinance approving the Agreement and containing the findings required by the Development Agreement Legislation.

6. Effective Date. The effective date ("Effective Date") of the Agreement shall be January 10, 2014, which is the date 30 days after adoption of the development agreement ordinance.

7. Entitlements. The City has also approved or certified the following entitlements, attached hereto as Exhibit B, which are necessary to implement the Project:

a. Tentative Subdivision Map, No. 889 (the "Tentative Map"), by City Council Resolution No. 2006-23 on February 8, 2006, including grading exemptions. Owner and the City understand that the Tentative Map has been modified to comply with the stormwater regulations

as stated in Article II, Section 3. Owner and City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-23.

b. Mitigated Negative Declaration (Tract 889) ER2004-24, certified by City Council Resolution No. 2006-23 on February 8, 2006.

8. Amendment. The Tentative Map is set to expire on February 8, 2015 pursuant to Article IV, Section 10 of the Development Agreement as extended by California Government Code Sections 66452.22 and 66452.23. The Parties desire to extend the Term of the Tentative Map to align with the term of this Agreement by the terms and conditions herein.

NOW THEREFORE, in consideration of the Recitals and the mutual covenants conditions set forth herein, the Parties agree as follows:

ARTICLE II

Definitions

1. **"Entitlements"** refers to all approvals and permits necessary or incidental to the development of the Project or any portion thereof, whether discretionary or ministerial, including but not limited to, those listed in Article I Section 6 above, final tract map approvals, whether standard or vesting, project plans, grading permits, building permits, and the Agreement.

2. **"Exaction"** refers to any fee, tax, requirement, condition, dedication, restriction, or limitation imposed by the City upon the development of the Property at any time in accordance with the Existing Laws.

3. **"Existing Laws"** refers to the ordinances, resolutions, codes, rules, regulations, stormwater regulations and official policies of the City governing the development of the Property, including, but not limited to the permitted uses of the Property, the density or intensity of use, the design, improvement and construction standards and specifications for the Project,

including the maximum height and size of proposed buildings, and the provisions for reservation and dedication of land for public purposes, in effect on the Effective Date of this Agreement.

4. **"Future Exaction"** refers to Exactions imposed after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise.

5. **"Future Laws"** refers to all ordinances, resolutions, codes, rules, regulations, and official policies implemented by the City after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise. "Future Laws" includes changes to the Existing Laws.

6. **"Future Entitlements"** refers to all Entitlements approved or adopted by the City after the Effective Date.

7. **"General Fees"** refers to all general development fees which the City may levy pursuant to the Government Code Sections 66000 et seq. ("the Mitigation Fee Act"), including, but not limited to, application fees, processing fees, utility connection fees, inspection fees, capital facilities fees, development impact fees, traffic impact fees, park fees and such other similar fees as may be enacted from time to time and generally applied throughout the City.

8. **"General Plan"** refers to the City's General Plan in effect on the Effective Date.

9. **"North Broadway Deficiency Area"** refers to the region specified in the City's Growth Management Ordinance No. 94-16, and to surrounding unincorporated areas within the City's Sphere of Influence, of which the Property is a part.

10. **"Project"** shall mean and refer to all improvements described in the Entitlements, Future Entitlements, and the Agreement.

11. **"Public Benefits"** shall refer to the consideration given by Owner to the City, as described in Exhibit C attached hereto, in return for the City's good faith performance of all applicable terms and conditions in the Agreement.

ARTICLE III

General Provisions

1. **Term of Agreement.** The term of the Agreement (the "Term") shall commence on the Effective Date of this Agreement and shall continue until the fifth (5^{th}) anniversary thereof, January 10, 2019, unless terminated, modified, or extended as permitted by the Agreement.

Following the expiration of the Term, the Agreement shall be deemed terminated and of no further force or effect; provided, however, such termination shall not affect any right or duty arising from City approvals, including, without limitation, the Entitlements, the Future Entitlements and any reimbursement agreement that may be entered into pursuant to the terms of the Existing Laws or the Agreement.

The Agreement shall terminate with respect to any lot and such lot shall be released and no longer is subject to the Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the building(s) on the lot.

2. **Assignment.** The rights and obligations of Owner under the Agreement may be assigned by Owner as part of an assignment of all or a portion of the Property. Except for Owner's assignment of the Agreement to PLI, which the City approves by execution of this Agreement, no assignment shall be effective unless (1) such assignment is in writing and expressly provides that the assignment shall be subject to the Agreement; (2) the Assignee assumes all of Owner's rights and obligations with respect to the Property, or portion thereof, assigned; and (3) the City has determined that the assignment will not affect the timely completion or fulfillment of any

requirements in the Entitlements, the Future Entitlements or the Agreement relating to the Public Benefits. Owner shall provide Thirty (30) days advance written notice to the City of any assignment. In determining whether an assignment will affect the timely completion or fulfillment of any requirements relating to the Public Benefits, the City agrees (a) not to unreasonably withhold its determination that the assignment will not affect the timely completion or fulfillment of requirements relating to the Public Benefits and (b) to approve any assignment where it can reasonably be demonstrated that the proposed assignee has the financial capability to complete in a timely fashion and fulfill any uncompleted requirements relating to the Public Benefits.

During the Term, any assignee shall have all rights, benefits, and obligations of Owner under the Agreement with respect to the portion of the Property assigned. Following an assignment, Owner shall be released from its obligations with respect to the Property which has been assigned. Upon any transfer of any portion of the Property and the express assumption of Owner's obligations under the Agreement by such transferee, the City agrees to look solely to the transferee for compliance by such transferee with the provisions of the Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Owner's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee, and any amendment to the Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee.

3. **Amendment of Agreement.** The Agreement may be amended by the mutual consent of the Parties in the manner provided by the Development Agreement Legislation. The Agreement shall include any amendment properly approved and executed. Minor modifications in the manner of performance, including, but not limited to changes which relate to the form or timing of payment of Public Benefits or the design of the Project shall not constitute an Amendment to the Agreement and may be accomplished through an "Operating Memorandum" subject to Article IV, Section 10 of the Agreement.

4. **Enforcement.** Unless amended or terminated as provided herein, the Agreement is enforceable by either Party or its successors and assigns, notwithstanding any Future Laws, which alter or amend the Existing Laws.

5. **Hold Harmless.**

a. Owner agrees to indemnify, hold harmless, and provide and pay all costs for a defense for the City in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of the Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of the City, its officers, agents, employees, or representatives.

b. Owner shall further indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01) of the California Regional Water Quality Control Board Region 9, San Diego, as amended or extended, which the City might suffer, incur, or

become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

6. **Third Party Challenges.** In the event the validity, applicability, or implementation of the Agreement is challenged by means of legal proceedings by any party other than the City and Owner, it shall be the City's option, at its sole and absolute discretion, whether to undertake the defense of such challenge. If the City determines not to defend such challenge, it shall be the option of Owner, at its sole and absolute discretion, to defend the validity, applicability, or implementation of the Agreement in the proceeding at Owner's expense. If the City opts to defend a challenge against the validity, applicability, or implementation of the Agreement, Owner shall not be responsible for the defense of any of the City's actions brought in such a challenge or for the expense of defending such City actions. The City and Owner agree to cooperate in the defense of any such challenges.

7. **Notices.** All notices or communication between the City and Owner pursuant to the Agreement shall be in writing and shall be given by personal delivery (including commercial express delivery services providing acknowledgments of receipt), registered, certified, express mail, facsimile or telecopy, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:

a. For personal delivery, upon actual receipt;

b. For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and

c. For facsimile, upon transmission of the facsimile or, if transmitted after business hours, then the next business day.

Notices shall be addressed as follows:

To the City: City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025
FAX (760) 741-7541

With Copy to: Jeffrey R. Epp, Esq.
City Attorney
City of Escondido
201 N. Broadway
Escondido, CA 92025
FAX (760) 741-7541

To Owner: Pacific Land Investors, LLC
Attn: Mark Ferraro
101 Pacifica, Ste. 200
Irvine, CA 92618
FAX 949-789-0006

With copy to: David W. Ferguson, Esq.
Lounsbery Ferguson Altona & Peak, LLP
960 Canterbury Place, Suite 300
Escondido, CA 92025
FAX (760) 743-9926

The addresses to which notices shall be sent may be changed by giving Ten (10) days written notice of change of address in the manner set forth above.

8. **Conflict of State or Federal Laws.** If state or federal laws or regulations enacted after the Effective Date prevent compliance with any provision of the Agreement or require changes in the Entitlements or any Future Entitlements, those laws or regulations shall be controlling and the Parties shall make a good faith, reasonable attempt to modify the Agreement to comply both with the intent of the Agreement and with the new laws or regulations.

The City shall timely assist Owner in securing any permits, including permits from other public agencies, which may be required as a result of the modifications, suspensions, or alternate course of action.

ARTICLE IV

Development of the Property

1. **Applicable Rules, Regulations, and Policies.** Owner shall have the vested right, to the fullest extent allowed under the Development Agreement Legislation, to develop the Property in accordance with the Entitlements, Future Entitlements and the Existing Laws. During the Term, the Entitlements, Future Entitlements, Existing Laws and the Agreement shall control the overall design, development and construction of the Project. Notwithstanding the foregoing, nothing in the Agreement shall preclude the City from applying changes occurring from time to time in the uniform codes published in Title 24 of the California Code of Regulations and adopted by the City of Escondido, including local amendments, in effect when the building permits are issued. In the event of any inconsistency between the Existing Laws and the Agreement, the provisions of the Agreement shall control.

2. **Future Laws.** Future Laws shall not apply to the Project except as expressly provided in the Agreement. Owner may give the City written notice of its election to have any Future Law applied to the Property, in which case such Future Law shall be deemed to be an Existing Law.

3. **Future Discretionary Reviews.** Except as set forth in the Agreement, the City shall retain its discretionary rights in reviewing applications for Future Entitlements. Owner's applications for Future Entitlements and the City's review thereof, must comply with the Existing Laws and with the terms and conditions of the Agreement. Upon granting any Future Entitlement, such Future Entitlement shall become part of the Existing Laws. The City shall not

impose any conditions upon any Existing Entitlements that are more restrictive than or inconsistent with the terms of this Agreement or the Existing Laws, except as expressly required (as opposed to permitted) by state or federal law. The City may conduct, in accordance with CEQA and the Existing Laws, an environmental review for Future Entitlements. The City may impose, if required by CEQA, additional mitigation measures to mitigate significant adverse environmental effects that were not previously considered, or were found to be infeasible, to mitigate at the time of approval of this Agreement.

4. **Permitted Uses and Density.** The Agreement shall vest the right to develop the Property to the fullest extent allowed under the Development Agreement Legislation with respect to the permitted uses of land, density and intensity of uses, and timing and phasing of development as described in the Entitlements and Future Entitlements. The permitted uses, density, and intensity of use of the Project, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes, shall substantially conform to those specified in the Entitlement and Future Entitlement conditions of approval, Existing Laws and the Agreement. All other aspects of the Project that are not specified in the Entitlement or Future Entitlement conditions of approval shall be determined by the Existing Laws, except as expressly provided herein.

To the extent the City retains discretion in the Future Entitlements concerning future permitted land uses, density, and intensity of use(s), the City agrees, absent conditions that the City determines are dangerous to the health or safety of the residents of the City, not to exercise that discretion in such a way as to reduce the allowed number of residential units, alter the timing of development or modify the height and design features of the Project as described in the Entitlements, Future Entitlements and the Agreement.

5. **Application of Future Laws.** Subject to Article V of the Agreement, Future Laws may be applied to the Project if they are not in conflict with the Existing Laws and will not prevent, hinder, delay, or adversely economically impact the Project.

6. **Permitted Fees.** Except as otherwise provided in the Agreement, and specifically excluding fees set by entities not controlled by the City that are collected by the City, the City shall only charge and impose those General Fees and Exactions described as "Processing Fees," "Permit/Inspection Fees," "Connection Fees," and "Development Fees" in the amounts and of the type which are in effect at the time they are incurred by Owner or any successor-in-interest as described in the Escondido Fee Guide For Development Projects. The Project shall be subject to City-wide fees only and nothing in this Agreement shall impose on the Project any additional City special or district fees or taxes that do not currently exist.

7. **Required Financial Contribution to City Capital Improvement Projects.** Prior to the City's grant of the first building permit for the Project, Owner agrees to pay the City SEVENTEEN THOUSAND DOLLARS ($17,000.00) per approved residential lot ("Deficiency Fee"), which funds the City shall use to finance certain roadway and drainage improvements in the vicinity of the Project.

8. **Time for Construction and Completion of the Project.** Owner cannot predict when or the rate or the order in which the Property or the parcels will be developed, if at all. Such decisions depend upon numerous factors that are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Therefore, Owner or its assignees shall have the right to develop the Property in phases, in such order, at such rate, and at such times as Owner or its assignees deems appropriate in Owner's or its assignees' business judgment, subject only to the provisions of the Agreement. Owner or its

assignees shall be entitled to apply for and receive approval of permits, building permits, and other Entitlements and Future Entitlements for use at any time and for any or all portions or phases of the Project, provided that application is made in a manner consistent with the Agreement.

Owner shall be allowed to perform onsite Project grading and offsite road construction and water line installation prior to approval of a Final Map. The City may require, and will process, all customary plans and agreements generally applicable to developers in the City for similar works of onsite or offsite improvements. Once Owner has obtained approval of the Final Map, it may commence construction of the single-family residences.

9. **Moratorium.** No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of the City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within the City, or portions of the City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with the Agreement; provided, however, the provisions of this Section shall not affect the City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

10. **Operating Memoranda.** The Parties acknowledge that the provisions of the Agreement require cooperation between the City and Owner, and that the refinements and further development of the Project hereunder may demonstrate that changes are appropriate with respect

to the details of performance of the Parties hereunder. The Parties desire, therefore, to retain a certain degree of flexibility with respect to those items covered in general terms under the Agreement. If and when, from time to time during the Term, the Parties find that such changes or adjustments are necessary or appropriate, they shall effectuate such changes or adjustments through Operating Memoranda approved by the Parties, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary with further approval by the City and Owner. No such Operating Memoranda shall require prior notice or hearing, or constitute an amendment to the Agreement; and in the case of the City, such Operating Memoranda may be acted upon by the City Manager, Director of Community Development or by their designee. Failure of the Parties to enter into any such Operating Memoranda shall not affect or abrogate any of the rights, duties or obligations of the Parties hereunder or the provisions of the Agreement. An Operating Memorandum may be recorded as an Addendum to the Agreement.

11. **Term of Map(s) and Other Project Approvals.** Pursuant to California Government Code Sections 66452.6(a), the term of the subdivision map that is processed on all or any portion of the Property and the term of each of the Entitlements and Future Entitlements shall be extended for a period of time through the Term of the Agreement as specified in Article III Section 1.

12. **Infrastructure Capacity.** Subject to Owner's proportionate contribution to infrastructure and the Public Benefits provided by Owner, in accordance with the requirements of the Entitlements and Future Entitlements, the City hereby acknowledges that it will have sufficient capacity in its infrastructure services and utility systems, including, without limitation, traffic circulation, flood control, sewer collection, sewer treatment, sanitation service and, except for

reasons beyond the City's control, water supply, treatment, distribution and service, to accommodate the Project. To the extent that the City renders such services or provides such utilities, the City hereby agrees that it will serve the Project and that there shall be no restriction on connections or service for the Project except for reasons beyond the City's control. Notwithstanding the foregoing, the City acknowledges that sufficient capacity for sewer collection, sewer treatment and sanitation service for the Project exists as of the Effective Date. Owner acknowledges that the City cannot guarantee sufficient capacity for sewer collection, sewer treatment and sanitation service during the Term of this Agreement. The City shall guarantee sufficient capacity for sewer collection, sewer treatment and sanitation service for the Project for one (1) year from the Effective Date.

13. **Termination or Modification.** Notwithstanding the provisions of Section 33-1149 of the City's Zoning Code, the City's right to terminate or modify the Agreement may be exercised pursuant to the terms of Section 33-1149 after a public hearing only if the City determines that the failure of the City to terminate or modify the Agreement would place the residents of the City in an immediate condition dangerous to their health or safety. Upon approval of the Agreement by the Escondido City Council, Owner shall have 45 days to sign the Agreement or the Agreement shall automatically expire.

14. **Easements.** Easements dedicated for pedestrian use shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities so long as they do not unreasonably interfere with pedestrian use.

15. **Conditions of Approval.** Owner agrees to construct the following roadway improvements:

STREET	IMPROVEMENT
Street "A"	Full Width
Lehner Avenue	Half width plus 10 feet
Stanley Avenue	Half width plus 10 feet

Owner shall construct a 12" water line along Stanley Avenue, from Ash Street to the Property's eastern boundary.

Work to be performed based upon Escondido Design Standards and Standard Drawings (Effective Date: June 23, 1999).

ARTICLE V

Provision of Public Benefits

1. **Description of Public Benefits.** Owner or its assignees shall compensate the City with the following Public Benefits, as further described in Exhibit C attached hereto, as consideration for the City's good faith performance of all applicable terms and conditions in the Agreement:

a. Fulfilling long-term economic goals for the City.

b. Providing fiscal benefits to the City.

c. Providing short-term construction employment within the City.

d. Providing housing which will help to satisfy the City's obligation to meet the City's share of regional housing needs.

e. Advancement of the City's planned construction of roadway and drainage infrastructure needed in the future to serve areas near and surrounding the Property, and Owner's

payment of a Community Benefit Fee of SEVENTEEN THOUSAND DOLLARS ($17,000.00) per unit to be developed, pursuant to Article IV, Section 6.

2. **Reimbursement by Future Development Projects.** In return for Owner's construction of the twelve inch (12") water line along Stanley Avenue as described in Exhibit C and the conditions of approval, the City shall include a requirement in future development agreements for development of any property on Stanley Avenue between Conway Drive and Ash Street, for each of those properties to reimburse Owner $3,555 per unit for that property's proportionate share of the 12" water line This provision shall expire ten years after the Effective Date.

3. **Occupancy Contingent on Construction of Public Benefits.** Owner acknowledges that the City shall not grant a certificate of occupancy for residences constructed on the Property until Owner constructs all Public Benefits listed in Exhibit C. This contingency for occupancy shall survive the termination of the Agreement.

4. **Recordation of Final Map Contingent on Security for Public Benefits.** Prior to recordation of the Final Map, Owner must enter into an "Agreement for Completion of Improvements," which will detail Owner's construction obligations for project-required improvements and the Public Benefits, and will require Owner to provide financial security for completion of construction and shall be in substantially the form attached at Exhibit D.

5. **Other Governmental Bodies.** To the extent that the City, the City Council, the Planning Commission or any other City board, agency or commission that constitutes and sits as any other board, agency or commission, it shall not take any action that conflicts with the City's obligations under the Agreement.

6. **Processing During Third Party Litigation.** The filing of any third party lawsuit(s) against the City or Owner relating to the Agreement, the Entitlements, any Future Entitlements or

to other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of Future Entitlements, unless the third party obtains a court order preventing the activity. The City shall not stipulate to or cooperate in the issuance of any such order.

ARTICLE VI

Annual Review

1. **City Responsibilities.** At least every twelve (12) months during the Term, the City shall review the extent of good faith substantial compliance by Owner with the terms of the Agreement (the "Annual Review"). At the conclusion of the Annual Review, the City's finding of good faith substantial compliance by Owner with the terms of the Agreement shall be conclusive up to the date of such finding for the purposes of future Annual Reviews or legal action between the Parties.

2. **Owner Responsibilities.** At the annual review, it shall be the responsibility of Owner to demonstrate good faith substantial compliance with the major provisions of the Agreement and to provide, to the best extent possible, the status and timing of development of the Project and related public improvements. If requested by the City, Owner shall provide any additional detail or information necessary to demonstrate good faith compliance with any particular provision of the Agreement identified by the City.

3. **Opportunity to be Heard.** Owner shall be permitted an opportunity to be heard orally and in writing at any noticed public hearing regarding its performance under the Agreement. Owner shall be heard before each appropriate board agency or commission and the City Council at any required public hearing concerning a review of performance under the Agreement.

4. **Information to be Provided to Owner.** The City shall mail to Owner a copy of staff reports and related exhibits concerning Agreement performance, a minimum of ten (10) calendar days prior to consideration and review by the City Council as required by the Development Agreement Legislation.

5. **Annual Review Letter.** If Owner is found to be in substantial compliance with the Agreement after the Annual Review, the City shall issue, upon written request by Owner, a letter to Owner (the "Review Letter") stating that, based upon information known or made known to the City Council, the City Planning Commission, and/or the City Manager, the Agreement remains in effect and Owner is in compliance. Owner may record the Review Letter in the Official Records of the County of San Diego.

6. **Estoppel Certificates.** Either Party may at any time, and from time to time, deliver written notice to the other Party requesting that the other Party certify in writing that to the knowledge of the certifying Party:

a. The Agreement is in full force and effect and is a binding obligation of the Parties.

b. The Agreement has not been amended or modified orally or in writing or, if so amended, identifying the amendments.

c. There exists no material default in the performance of the requesting Party's obligations under the Agreement or, if in default, the nature and amount of any material default.

A Party receiving a request under this Section shall execute and return a certificate within Thirty (30) days following receipt of the request. The failure to deliver such certificate within such time shall be conclusive upon the party which fails to deliver such certificate that the Agreement is in full force and effect without modification and that there are no uncured defaults

in the performance of the requesting party. A certificate given pursuant to this Section may be relied upon by assignees and mortgagees.

7. **Failure of Annual Review.** The City's failure to perform the Annual Review of Owner's substantial compliance with the terms and conditions of the Agreement shall not constitute or be asserted as a default by Owner.

ARTICLE VII

Delay, Default, Remedies, and Termination

1. **Notice and Cure of Default.** In the event of a material default, the Party alleging a default shall give the defaulting Party a notice of default in writing. The notice of default shall specify the nature of the alleged material default, and the manner and period of time of not less than thirty (30) days in which the default must be cured (the "Cure Period"). The Cure Period must provide sufficient and reasonable time for the default to be cured. During the Cure Period, the Party charged shall not be considered in default. If the default is cured within the Cure Period, then no default shall be deemed to exist.

2. **Option to Institute Legal Proceedings or to Terminate.** If a material default is not cured within the Cure Period, the noticing Party may institute legal proceedings as provided in Article VII Section 8 and/or give to the defaulting Party a notice of intent to terminate the Agreement. If a notice of intent to terminate the Agreement is given, the City Council, within thirty (30) days after the giving of the Notice, shall hold a public hearing in the manner set forth in the Development Agreement Legislation, as amended, to consider and review the matter.

3. **Notice of Termination.** Following consideration of the evidence presented before the City Council and its determination that a default exists, the Party alleging a material default by the other Party, at its option, may give written notice of termination of the Agreement to the other

Party and the Agreement shall be terminated immediately upon the giving of the Notice. The validity of the basis for such a termination may be challenged pursuant to Article VII Section 8 by the Party alleged to be in default.

4. **Waiver.** Failure or delay in giving notice of default pursuant to Article VII Section 1 shall not constitute a waiver of any other material default. Except as otherwise expressly provided in the Agreement, a failure or delay in asserting any rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies otherwise available to a Party or deprive a Party of the right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any rights or remedies it may have.

5. **Default by Owner.** An Annual Review may result in amendment or termination of the Agreement provided a material default has been established by substantial evidence and such default has not been cured within the Cure Period.

6. **Default by the City.** Upon a material default by the City, Owner, without limiting any of its other remedies, shall not be obligated to complete any of its obligations under the Agreement. Upon a City default, any resulting delays in Owner's performance shall neither be construed as a material default by Owner nor constitute grounds for termination or cancellation of this Agreement by the City and the Term shall be extended for the period of any such delay.

7. **Enforced Delay, Extension of Time of Performance.** Neither Party shall be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by other applicable governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written notice of such delay is given to the other Party following the

commencement of such delay, an extension of time for performance shall be granted in writing for the period of the delay, or longer as may be mutually agreed upon. An extension shall commence to run from time of commencement of the cause of delay.

8. **Institution of Legal Action.** In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to enforce any provision of the Agreement, to enjoin any threatened or attempted violation of the Agreement, to recover damages for any default, or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of San Diego, North County Branch, State of California, or in the Federal District Court in the Southern District of California. Pursuant to Code of Civil Procedure Section 638, et seq., all legal actions shall be heard by a referee who shall be a retired judge from either the San Diego County Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Owner and the City shall agree upon a single referee who shall then try all issues, whether fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Owner and the City are unable to agree upon a referee within ten (10) days of a written request to do so by either party hereto, it will not be considered a material default by Owner nor constitute grounds for termination or cancellation of the Agreement by the City and the Term shall be extended for the period of any such delay, and either party may seek to have a referee appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Article VII Section 8, shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California

Constitution. Notwithstanding the provisions of this Article VII Section 8, either party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of the Agreement, or to enjoin the other party from an asserted breach thereof, pending the selection of a referee as provided in this Article VII Section 8, on a showing that the moving party would otherwise suffer irreparable harm.

ARTICLE VIII

Encumbrances and Releases on Property

1. **Discretion to Encumber.** The Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage. The City acknowledges that lenders providing financing may require modifications to the Agreement and the City agrees, upon request, from time to time, to meet with Owner and/or representatives of lenders to negotiate in good faith any lender request for modification. The City agrees that it will not unreasonably withhold its consent to any lender requested modification to the Agreement.

2. **Entitlement to Written Notice of Default.** Any mortgagee and its successors and assigns, upon written request to the City, shall be entitled to receive from the City written notice of any Owner default at the same time Owner is provided with such notice pursuant to Article VII Section 1 above.

3. **Additional Mortgagee Protection.** Any mortgagee of a mortgage or a beneficiary of a deed of trust of the Property shall be entitled to the following rights and privileges:

a. Neither entering into the Agreement nor a breach of the Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

b. Any mortgagee receiving the notice referred to in Article VIII Section 2 above shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under the Agreement. If the default is of a nature which can only be remedied or cured by such mortgagee upon obtaining possession, such mortgagee shall seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence be remedied or cured within such 30-day period, then such mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such mortgagee commences cure during such 30-day period, and thereafter diligently pursues and completes such cure.

ARTICLE IX

Miscellaneous Provisions

1. **Rules of Construction.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

2. **Severability.** If any non-material provision of the Agreement shall be adjudged by a court of competent jurisdiction to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of the Agreement. If any material part of the Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or illegal, the Parties shall take all steps necessary to modify the Agreement to implement the original intent of the Parties in a valid and binding manner. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefited by

the material provision does not waive its rights under the unenforceable provision, the entire Agreement shall become void.

3. **Entire Agreement.** Except as the Agreement expressly refers to and/or incorporates other agreements between the City and Owner, the Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of the Agreement. The Agreement supersedes all other negotiations and previous agreements between the Parties with respect to that subject matter.

4. **Waivers.** All waivers of the provisions of the Agreement must be in writing and signed by the appropriate agents of the City or of Owner.

5. **Amendments.** All amendments to the Agreement must be in writing signed by the appropriate agents of the City and Owner, in a form suitable for recording in the Official Records of San Diego County, California.

6. **Recording.** The City Clerk shall cause a copy of the Agreement to be recorded with the Office of the County Recorder of San Diego County, California within Ten (10) days following the Effective Date. Upon the completion of performance of the Agreement or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of Owner and the City shall be recorded in the Official Records of San Diego County, California.

7. **Project as a Private Undertaking.** It is specifically understood by the Parties that the Project is a private development and that Owner shall have the full power and exclusive control of the Property subject to the provisions of the Agreement.

8. **Incorporation of Recitals.** The Recitals set forth in Article I of the Agreement are part of the Agreement.

9. **Captions.** The captions of the Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of the Agreement.

10. **Consent.** Where the consent or approval of a Party is required or necessary under the Agreement, the consent or approval shall not be withheld unreasonably.

11. **City's Ongoing Statutory Authority.** Except as expressly stated, nothing in this Agreement shall limit the City's authority and responsibility under the California Constitution and applicable California statutes to act in the best interests of the public health, safety, and welfare, and nothing in this Agreement is intended to limit in any way the legislative discretion otherwise afforded the Escondido City Council under state or federal law, as amended.

12. **Covenant of Cooperation.** The Parties shall cooperate with and assist each other in the performance of the provisions of the Agreement including assistance in obtaining permits for the development of the Property which may be required from public agencies other than the City. The covenant of cooperation shall include, to the maximum extent permitted by law, that the City shall use its best efforts to prevent any ordinance, measure, moratorium or other limitation from invalidating, prevailing over or making impossible any provision of the Agreement, and the City shall cooperate with Owner to keep the Agreement in full force and effect. Owner reserves the right to challenge any such ordinance, measure, moratorium, or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to the Agreement.

13. **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under the Agreement and the satisfaction of the conditions of the Agreement. Upon the request of either Party, the other

Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of the Agreement to carry out the intent and to fulfill the provisions of the Agreement or to evidence or consummate the transactions contemplated by the Agreement.

14. **Successors and Assigns.** Subject to Article III Section 2 above, the burdens of the Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.

15. **Time of the Essence.** Time is of the essence of the Agreement and of each and every term and condition hereof.

16. **Applicable Laws.** The Agreement shall be construed and enforced in accordance with the laws of the State of California. All statutory references are to California statutes.

17. **No Waiver of Existing Rights or Applicable Laws.** The Agreement shall not constitute a waiver of any of Owner's existing rights or applicable laws, nor shall it limit or expand Owner's right to challenge any General Fee as being contrary to applicable law or to challenge any existing or Future Exaction as being in excess of Exactions permitted by applicable law.

18. **Authorization.** Each person executing this Agreement hereby warrants and represents that he/she has the authority to enter into this Agreement and to bind his/her respective entity to the provisions hereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.

19. **No Third Party Beneficiaries.** This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party.

SIGNATURE PAGE FOLLOWS

The Agreement has been executed by the Parties as of the dates set forth below:

CITY OF ESCONDIDO

By: _____
Sam Abed
Its: Mayor

CITY OF ESCONDIDO

By: _____
Diane Halverson
Its: Clerk

PACIFIC LAND INVESTORS, LLC
A Delaware limited liability company on behalf of
BG LIHTC, LLC
A California limited liability company

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

CITY OF ESCONDIDO

By: _____
Jeffrey R. Epp
Its: City Attorney

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

By: _____
David W. Ferguson, Esq.
Attorneys for Pacific Land Investors, LLC.

EXHIBIT A

LEGAL DESCRIPTION

Lot "L" in Block 418 of the Resubdivision of Block 418 and 419 of Rancho Rincon Del Diablo, in the County of San Diego, State of California, according to Map thereof No. 1520, filed in the Office of the County Recorder of San Diego County, January 21, 1913.

APN 224-142-02

EXHIBIT B

ENTITLEMENTS

1. Tentative Subdivision Map (Tract 889), No. 889 (the "Tentative Map"), by City Council Resolution No. 2006-23 on February 8, 2006, including grading exemptions. Owner and the City understand that the Tentative Map has been modified to comply with the stormwater regulations as stated in Article II, Section 3. Owner and the City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-23.

2. Mitigated Negative Declaration (Tract 889) ER-2004-24, certified by City Council Resolution No. 2006-23 on February 8, 2006.

EXHIBIT C

PUBLIC BENEFITS

A. Owner shall pay the City SEVENTEEN THOUSAND DOLLARS ($17,000.00) per lot shown on the Project's approved Final Map prior to the City's grant of the first building permit for the Project, which funds the City shall use to finance certain roadway and drainage improvements in the vicinity of the Project.

B. Owner shall construct a 12" water line along Stanley Avenue, from the Property's eastern boundary to Conway Drive.

EXHIBIT D

AGREEMENT FOR COMPLETION OF IMPROVEMENTS

This Agreement is made and entered into this _____ day of _____, 20_, by and between CITY OF ESCONDIDO, a municipal corporation, hereinafter referred to as "CITY," and _____ a _____ hereinafter referred to as "APPLICANT";

WHEREAS, APPLICANT proposes to construct a building, structure or development at _____ in the City of Escondido, County of San Diego, State of California, the "Project"; and

WHEREAS, certain public improvements are required to be constructed and/or installed in the streets and/or easements adjacent to the lot or parcel upon which such the Project is to be constructed or erected; and

WHEREAS, pursuant to the provisions of Ordinance No. 93-2 of the Escondido Municipal Code, it is necessary that certain public improvements as detailed in the plans and specifications on file with the City Engineer of the City of Escondido, the "Improvements", be constructed and/or installed as a condition of and prerequisite to final inspection and acceptance of the Project.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. APPLICANT hereby agrees, at its sole cost and expense, to furnish all labor, equipment and materials to construct the Improvements in a good workmanlike manner and in conformance with the approved plans and specifications on file with the City Engineer. APPLICANT agrees that the Improvements shall be completed within two years from the date of this Agreement. The Improvements shall be completed to the satisfaction of the City Engineer, and shall not be deemed complete until approved and accepted by CITY. The estimated cost of the Improvements is the sum of $_____

2. APPLICANT covenants that all Improvements shall be constructed in a manner that does not damage existing public property. Should any damage occur to public property, including, but not limited to, the Improvements in the public right-of-way as a result of APPLICANT or APPLICANT'S contractor performing construction, APPLICANT shall be responsible for repair or reconstruction of the public property. Such repair or reconstruction shall be at the APPLICANT'S sole expense and shall be completed to the satisfaction of the City Engineer.

3. CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to APPLICANT or any other person for, and APPLICANT shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of

action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by construction of the Improvements. CITY shall not by its approval of the Project, or any part of it, or by entering into this Agreement, or by granting any permits concerning this Project or Improvements, be deemed an insurer or surety for the design or construction of the Improvements.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which APPLICANT has agreed to indemnify Indemnitees as provided above, APPLICANT, upon notice from CITY, shall defend Indemnitees at APPLICANT'S expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

If a court of competent jurisdiction determines that the CITY has acted with negligence with respect to anything covered in this Agreement, APPLICANT's obligation to indemnify CITY shall be limited by the provisions of California Civil Code Section 2782(b).

4. APPLICANT shall further indemnify, defend and hold harmless CITY and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01) of the California Regional Water Quality Control Board Region 9, San Diego, which CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

5. It is further agreed that APPLICANT will at all times, prior to CITY acceptance of the Improvements, give good and adequate warning to the traveling public of each and every defective and/or dangerous condition existing in the affected public rights-of-way and/or easements or any of them, and will protect the traveling public from such defective or dangerous conditions. It is understood and agreed that until acceptance of the Improvements, each of the affected public rights-of-way and/or easements not accepted as improved shall be under the charge of APPLICANT for the purposes of this Agreement. APPLICANT may, upon approval of the City Engineer, close all or a portion of any public right-of-way whenever it is reasonably necessary to protect the traveling public during construction of the Improvements. APPLICANT agrees that the provisions of paragraph nos. 3 and 4, respecting indemnification, are applicable to the obligations as set forth in this paragraph no.

6. APPLICANT hereby agrees to pay for any inspection of streets and/or easements as may be required by CITY ordinances.

7. It is further agreed that APPLICANT shall file with the City Clerk at the time of signing this Agreement a good and sufficient bond or Instrument of Credit in an amount not less than the estimated cost of the Improvements, as specified above, for the faithful performance of the terms and conditions of this Agreement, including payment for all labor and materials furnished in connection therewith and the guarantee and warranty of the Improvements for a period of two years against any defective work or labor or defective materials furnished, and that should the sureties on the bond or either of them become insufficient, APPLICANT agrees to renew the bond with good and sufficient sureties within 10 days after receiving notice that the sureties are insufficient.

8. In lieu of filing a bond as provided above, APPLICANT may deposit with the City Clerk or with a responsible escrow agent, bank, savings and loan or trust company, a sum of money or other form of security acceptable to the City Attorney, not less than the estimated cost of the Improvements as above specified, together with instructions to the escrow agent or bank, savings and loan or trust company for the payment of such money, which instructions shall be subject to the approval of the City Attorney.

9. Upon mutual consent of APPLICANT and the City Engineer, the City Engineer may make such changes, alterations or additions to the plans and specifications for the Improvements as may be determined necessary and desirable by the City Engineer for the proper completion of the Improvements and no such changes, alterations or additions shall relieve the surety or sureties on any bond given for the faithful performance of this Agreement.

10. It is further agreed by and between the parties hereto that, in the event it is deemed necessary to extend the time of completion of the Improvements required under this Agreement, the extension may be granted by CITY and shall in no way affect the validity of this Agreement, nor shall such extension release the surety or sureties on any bond given for the faithful performance of this Agreement. In accordance herewith, the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

11. It is further agreed by and between the parties hereto that the terms of this Agreement shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the above-described land or any part thereof.

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

CITY OF ESCONDIDO

Date:_____ By _____
City Manager

APPLICANT

Date:_____ By_____
Authorized Signature

Address:

_____

_____
(SIGNATURES MUST BE NOTARIZED)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

_____
City Attorney

FUTURE CITY COUNCIL AGENDA ITEMS
November 27, 2013

AGENDA ITEMS AND COUNCIL MEETING DATES ARE SUBJECT TO CHANGE. CHECK WITH THE CITY CLERK'S OFFICE AT 839-4617

DECEMBER 11, 2013
4:30 p.m.

	CONSENT CALENDAR
	Request to Initiate Annexation and Development Agreement (B. Redlitz) *Request from John Kaye to annex this site adjacent to four other city subdivisions he is working on. His engineer has already completed the Tentative Map Application and is ready to submit the project. The site is in the North Broadway Deficiency Area and would need a Development Agreement to remedy existing infrastructure deficiencies in the area like all his other subdivisions.*
	Mission Pools Area Drainage Restoration Project (C. McKinney) *The "Mission Pools" Storm water conveyance channel has suffered from delayed maintenance. Grading variances and sediment deposits within the channel have created drainage problems. Standing water in the channel functions as habitat for breeding mosquitos. To reduce these vector and drainage concerns, the City plans to redesign the channel (within existing constraints) in a manner that improves drainage and reduces mosquito breeding habitat.*
	Appointment of Ad Hoc Subcommittee on Water Services Issues (J. Epp) *Appointment of Councilmembers John Masson and Michael Morasco to serve as an ad hoc subcommittee on water service, recycled water service and water service for fire protection in the Escondido, Rincon del Diablo and overlapping jurisdictional areas.*
	Annual Report on Capital Funds Funded by Developer Fees for the Fiscal Year Ended June 30, 2013 (G. Rojas) *The report is required to be filed annually pursuant to Government Code Section 66006.*
	Third Quarter 2013 Treasurer's Report (K. Hugins) *In accordance with the City's Investment Policy, the City Treasurer is required to submit an investment report to the City Council for review on a quarterly basis. The report will include the type of investment, issuer, date of maturity, par value, book value and market value for each security held by the City.*
	City of Escondido Landscape Maintenance District Preliminary Engineer's Report for Zone 38 for Fiscal Year 2014/2015 (E. Domingue) *Each year the City is required to submit and approve an Engineer's Report that details the City's LMD budget and assessments for the upcoming year. The purpose of the council meeting on December 11, 2013 is to begin this process by approving the preliminary Engineer's Report and setting a public hearing date for Landscape Maintenance District (LMD) Zone 38.*

CONSENT CALENDAR Continued

State of California 9-1-1 for Kids Funding
(C. Carter)

The Escondido Police Department has qualified for funding to reimburse costs for 9-1-1 education materials. Each year Escondido Public Safety Dispatchers visit local schools and provide information about how students can correctly use 9-1-1.

Bid Award and Execute Professional Services Agreement for Escondido Public Library's Integrated Library System Software
(L. McKinney)

The existing Integrated Library System (ILS) has been in place since 2003 and is no longer able to keep pace with a rapidly advancing technologies and user expectations. Staff recommends awarding the bid and executing a Public Services Agreement with Innovative Interfaces, Incorporated as the new ILS for the amount of $XX,XXX, to provide software licensing, data extractions, migration services, training, software hosting and XXXX year maintenance.

Approve the Regional Fiscal Year 2012 Assistance to Firefighters Grant Amendment to Purchase six (6) Additional EKG Monitor/Defibrillators
(M. Lowry)

The Escondido and San Marcos Fire Departments' were awarded $766, 241 in regional grant funds to purchase 20 heart monitors/defibrillators (EKG). Due to significant savings on the cost of these defibrillators/monitors, excess funds were available. Staff submitted and was awarded a grant amendment to purchase additional EKG equipment. The $34,015 (20% matching share) has been previously budgeted. San Marcos will submit payment to the City for their 20% matching portion.

Adopt Resolution to Approve Membership Agreement with the California Municipal Finance Authority and Approve the Issuance of Bonds by the Authority for the Benefit of Escondido Adventist Academy
(G. Rojas)

In order for the California Municipal Finance Authority (CMFA) to issue these revenue bonds, it's necessary for the City to become a member of the CMFA and to approve the issuance of these bonds by Resolution.

Award the Purchase of one Global M4 Street Sweeper
(E. Domingue)

Request Council authorize the Fleet Services Department to purchase one (1) Global Environmental Products, Global M4 Street Sweeper from Plumbers Depot Inc. by utilizing a Cooperative Purchase Contract.

First Amendment to Lease Agreement with Frank Turlo DBA San Diego Auto Thrift at 165 E. Lincoln
(E. Domingue)

The City's right of way at the corner of Lincoln Parkway and Broadway has been in use by Mr. Turlo since 2007 for uses related to his automobile sales business. The City has no current plans to expand Lincoln Parkway in the immediate future. The lease is terminable by either party with a 90 day notice which provides flexibility to the City for its future road project. The rent has been determined to represent fair market value.

PUBLIC HEARINGS:

Report on Drinking Water Public Health Goals
(C. McKinney)

It is required that the City have on file a report comparing the City's drinking water quality with Public Health Goals (PHGs) adopted by the California Environmental Protection Agency and Maximum Contaminant Level Goals (MCLGs) adopted by the United States Environmental Protection Agency.

DECEMBER 11, 2013
Continued

	CURRENT BUSINESS
	City Council Compensation as Required by the City Council Rules and Procedures (J. Epp) *The subject of salaries for City Council members is controlled by California Government Code Sections 36516 and 36516.5.*
	Real Property Inventory Update (E. Domingue) *One of the objectives of the City's Real Property Section is to maximize the values of the City's real property assets through strategic, purposeful asset management practices. Part of that process involves regular review of the inventory and adaption of the property classifications to meet the City's current broader planning and development goals, as established by Council. Having recently undertaken a comprehensive review of the City's real property inventory and having expanded the capabilities of its database, Staff will be presenting an overview of the City's real property portfolio to Council and will solicit input on the current property classifications.*
	Future Agenda Items (D. Halverson)

DECEMBER 18, 2013
NO MEETING (Christmas Break)

ESCONDIDO
City of Choice

City Manager's WEEKLY UPDATE to City Council

November 20, 2013

ECONOMIC DEVELOPMENT

Escondido Events now plans to open its Saturday Market beginning Saturday, December 7h from 8:00 a.m. -1 p.m. on North Kalmia Street off of Grand Avenue. The market will feature local artisans, crafters, home crafted food vendors, flowers, vegetables and much more.

SPECIAL EVENTS

- Community In Unity Holiday Kick Off – November 21, 2013, 5:31-8:31, City Hall. Food and wine is provided by over 30 local restaurants, craft brewers, and wineries. Local schools and churches provide music to create the caroling mood, followed by a step into Santa's Sweet Shop that will promise to end all diets. In the spirit of giving, guests are asked to bring new pajamas for Isabelle's Foundation for Rady's Children Hospital and/or a new toy for the Escondido Police Department's (EPD) annual Children's Christmas Party which assists child victims of violence, abuse and low income. Last year over 650 pajamas/toys were collected. The Christmas tree and Gingerbread house will be auctioned off and proceeds are also given to the EPD's child abuse program. Tickets may be purchased for $20.00 prior to the event or $25.00 at the door. For further information and ticket purchase contact the Escondido Chamber of Commerce at 760/745-2125.

- Loy Krathong Festival – November 24, 2013 10:00 to 5:00 p.m., 139 W. 11th Avenue. Loy Krathong is one of the most ancient and beautiful Thai festivals.

COMMUNITY DEVELOPMENT UPDATES

Planning:

- A tentative map and planned development application have been received for the property at 2412- 2418 S. Escondido Blvd. The project requires an amendment to the South Escondido Blvd. Neighborhood Area Plan to increase allowable densities and allow a 100% residential development as anticipated in the updated General Plan. The project involves a 76-unit three-story residential development on a 2.53 acre site.
- A tentative map for 16 lots has been submitted by Pacific Land Investors for the 4.6-acre properties at 926 Lehner Avenue/839 Stanley Avenue. This is the fourth subdivision map under review along this frontage, with additional map submittals anticipated in the coming weeks. The project will require a development agreement to address infrastructure deficiencies in the area.
- A land use determination was made for the former Old Navy site within the Civic Centre Plaza, denying a request for a proposed 99 Cents Only store. The determination was based on the Downtown Specific Plan prohibition on retail uses with across the board

maximum pricing or "everything under" pricing. The applicant has appealed the determination to the Planning Commission.

- Staff attended the Urban Land Institute's (ULI) Complete Communities Marketplace symposium held on November 15th, an event that was co-sponsored by SANDAG. We showcased Downtown and the Transit Station area. The event was designed to promote opportunities for development focused on living, working, moving, and thriving. Escondido was also selected to present a 10-minute successful case study; we chose Latitude 33 and its positive impact on downtown. The event was attended by over 100 persons including many developers and investors who met with staff and expressed interest in further investigating what Escondido has to offer.

Building:

- The Cheesecake Factory at the Westfield mall received a final inspection and approval on Monday 11/18. The "soft opening" is scheduled for this week.
- With only a four- day work week due to the Veteran's Day holiday, permits issued were below average at 35 permits for the week with a total valuation of $175,237. The majority of the permits issued were of the minor type (i.e. plumbing, mechanical and electrical, additions, and tenant improvements etc. Inspections and counter contacts were steady with an average of 23 daily inspections and 36 counter contacts. Photovoltaic permits continue to lead the permit activity for the year with 382 issued so far this year and 7 for the week.
- The Classical Academy at 207 E. Pennsylvania is going through their second round of plan review comments. The residential care facilities at 930 Monticello has received building department plan review approval and are waiting for all department approvals prior to permit issuance. The Contempo townhomes project at 203 S. Orange has begun foundation work on two new buildings.

CAPITAL IMPROVEMENT PROJECTS

2013 - 2014 Pavement Repair and Rehabilitation Program:
A preconstruction meeting will be held on Wednesday November 20th. Once the Notice to Proceed is issued, the contractor will have 80 working days to complete the project.

Grape Street Public Improvement Project:
The contractor is onsite potholing utility conflicts and preparing for the first water service replacements which are scheduled for November 21st.

Escondido Creek Trail Lighting:
The contractor has begun to install the pedestrian lighting poles on the south side of the flood control channel between Broadway and Juniper Street.

Heritage Garden:

The redwood trellis has been installed and is available for viewing. It is located at the alley entrance to the park, adjacent to the public parking area.

Private Development

Contempo Townhomes -Tract 921:
The offsite water main tie-in along Pine Street was completed on November 14th. The second water main tie-in had to be cancelled for this week due to the underground contractor disturbing the temporary end cap on a portion of the distribution system. Repairs and testing will be required which will push the final tie-in date to December 5th. The alley was reopened November 15th after the contractor completed the base course of asphalt pavement.

Stone Brewery Traffic Signal:
The project is on hold, the contractor is still awaiting delivery of the signal poles.

Lincoln Avenue & Escondido Boulevard Gas Main Testing Station:
SDG&E has notified the City that due to the high demand on the gas transmission main, which serves the SDG&E power plant located on Citracado Parkway, the utility will postpone any work that would disturb its operation until February 1st, 2014. Staff will review the construction zone to ensure that it is left in a safe condition until the project is remobilized.

PUBLIC SAFETY

Police
The Management Team held a retreat on November 19 and 20.