



DATE: June 6, 2020

TO: Planning Commission

FROM: Dexter O’Connell, Associate Planner
530-879-6810, dexter.oconnell@chicoca.gov

RE: Planned Development Permit 20-01 and Architectural Review 20-08
(Deer Creek Apartments)
Native Oak Drive, about 500 feet east of Bruce Road -- APN 018-600-082

Files: PDP 20-01
AR20-08

SUMMARY

The applicant requests approval for a 204-unit apartment complex as part of a proposed planned development on an undeveloped 11.78 acre site on Native Oak Drive in the Oak Valley Subdivision.

The Architectural Review and Historic Preservation Board (ARHPB) has reviewed the site design and architecture and recommends approval of the Planned Development Permit. Planning Commission approval of the project via the Planned Development Permit process is required pursuant to the SD-2 (Special Design considerations, Humboldt Road – Foothill) zoning overlay (Municipal Code Section 19.52.070.D.2). Staff recommends approval of the project, subject to conditions. No major issues have been identified.

Recommendation:

Planning staff recommends adoption of Resolution No. 20-09 (**Attachment A**), approving the project, subject to the attached conditions.

Proposed Motion:

I move that the Planning Commission adopt Resolution No. 20-09, approving the Deer Creek Apartments Planned Development Permit (PDP 20-01), subject to the attached conditions.

BACKGROUND

The applicant proposes to construct nine three-story apartment buildings (seven in the first phase and two in the second phase), a community building, residential amenity structures, recreational and leisure facilities, a parking lot, and associated site improvements like landscaping. The project would have a total of 204 residential units, 154 of which would be constructed in Phase 1. All units in the project would be permanent affordable housing at a variety of Low and Moderate income levels. The site is located on the north side of Native Oak Drive, about 500 feet east of the intersection of Native Oak Drive and Bruce Road (See **Attachment B**, Location Map).

The site is designated Medium Density Residential (MDR) on the City’s General Plan Land Use Diagram and zoned R2 (Medium Density Residential) with an SD2 (Humboldt Road-

Foothill) overlay. The resultant density for the project would be 18.31 dwelling units per acre (du/ac), which is above the allowable range of 6 to 14 du/ac for the R2 zoning district. However, increased density has been approved for this project. Specifically, the Oak Valley Conceptual Master Plan (the "Master Plan") was approved by City Council at their meeting of September 20, 2005. At that meeting, the City Council approved a transfer of density which allows development between 14.01 and 22 du/ac within this project area (Lot B of the original subdivision). Under this density requirement, the applicant can build up to 283 units on this parcel (see **Attachment D**, Oak Valley Conceptual Land Use Plan, and **Attachment L**, City Council Approval Documents for Oak Valley) and therefore the 204 proposed units are consistent with the Master Plan for the property.

The proposed site plan illustrates the layout and orientation of the buildings, as well as the location of the trash enclosure, site amenities, and parking (see **Attachment E**, Site Plan). The structures are arranged primarily surrounding the central courtyard, though two of the proposed structures would directly address Native Oak Drive. The proposed project will be accessed via two driveways from Native Oak Drive. A third driveway toward the southwest corner of the proposed project would be secured and reserved for access by emergency vehicles. The parking area envelops the central buildings, while covered bicycle parking, amenities, and landscaped open spaces are scattered throughout the site (see **Attachment H**, Landscape Plan) in order to provide adequate access to all units.

The project includes a total of 379 off-street vehicle parking spaces, 208 of which are covered. Bicycle parking is provided in both locker and covered open locations.

The landscape plans call for a variety of species with low-to-moderate water demands (see **Attachment H**), with a large number and good variety of trees and other plants.

The vast majority of the proposed landscape has moderate-to-low water requirements, meeting state standards for water efficiency. Of the 11.14 net acres of the site, 5.22 acres are landscaped, which meets city requirements.

Prior Review

On June 17, 2020, the Architectural Review and Historic Preservation Board (ARHPB) reviewed the proposal and voted unanimously to approve site design and architectural review, and to recommend approval of Planned Development Permit 20-01 with conditions as noted therein.

DISCUSSION

While consistent with the approved Master Plan, the proposed project will have a higher residential density than the nominal General Plan Land Use Map designation and zoning for the project site. This discrepancy is a result of a density transfer component of the overall Master Plan approval. The density transfer, which was implemented to protect the viewshed and local aesthetics, redistributes density from the higher elevated eastern end of the Master Plan area to an area that has a lower elevation. With the density transfer concept employed, approval of the Master Plan was found by the City Council to be consistent with the General Plan.

Oak Valley Master Plan

This parcel constitutes the western end of the residentially developable Master Plan area and has an approximate elevation of 250 feet above mean sea level. As the Master Plan area

extends approximately 2,220 linear feet to the east, the elevation increases to 300 feet above mean sea level. The rise in elevation from west to east across the Master Plan area is one of the factors that caused the Planning Commission (and City Council when the Planning Commission's approval was appealed) to approve the density transfer across the Master Plan area. Chico Municipal Code section 19.52.070(D)(2)(b)(1)(a) contemplates that development in the SD-2 zone should "[t]ransfer and cluster development to lower elevations of the site..." and this project represents implementation of that section's intent.

The purpose of the Planned Development Permit is to promote and encourage flexibility in the application of City standards to a site in order to protect the environment or natural resources, public health, safety and general welfare of the community. In addition, a Planned Development Permit ensures that open space areas are planned as part of overall project designs while promoting development in the community by allowing deviations from normal development standards. In the case of the subject project, density is transferred to the lower, less-visible portions of the site.

The proposed project is consistent with the land use standards of the approved Master Plan and would therefore be compatible with the surrounding planned development. The project is also consistent with General Plan goals and policies in regard to providing an adequate supply of rental housing to meet a wide range of renters' current and future needs throughout the city (H-3, H-3.2, and H-3.4). Most importantly, the commitment to 204 units built as affordable housing will contribute a substantial portion of the City's Regional Housing Needs Assessment as outlined in the General Plan Housing Element. The project is also consistent with General Plan policies that encourage context-sensitive design (CD-5.2 and CD-5.3).

Project Design

The project consists of nine principal residential buildings of the same design and a single smaller residential building accompanying them, amenity and recreation structures, a pool, and other outdoor amenities speckled within the complex.

The residential buildings are oriented to break up the building massing on the site in a figure-eight arrangement around central recreation areas. The color scheme challenges City of Chico Design Guidelines, but the applicant has agreed¹ to Condition #9 to provide at least two additional color palettes that "enhance visual interest on front elevations facing public rights-of-way or open space" by choosing from a rich palette of varied colors designed to enhance the streetscape and open space and to avoid blandness in conformance with Design Guideline 4.2.31. Other materials are modern and in conformance with City requirements.

The residential buildings would feature a gable roof, occasionally broken up by perpendicular gable elements covering balconies or extensions of the units. Accents would be appropriately complimentary and all units would have a fenced balcony or covered patio. (see **Attachment I**, Colored Architectural Elevations and Sample Panel).

Parking lot lights would be dispersed around the buildings and mounted at 10 feet in height with shielding to focus light downwards, per Condition #10, in order to comply with the SD2 overlay's requirements that "low-level pedestrian-scale street lighting" be used and "high illumination yard lighting" be shielded "to prevent off-site glare."² The covered parking would

¹ Email from Applicant received May 19, 2020

² Chico Municipal Code Section 19.52.070.D.2.b.1.(c) and (d)

also be illuminated, and Condition #8 requires it to be constructed with minimal glare and spill in accordance with Chico Municipal Code Section 19.70.060.F and Figure 5-12. Mechanical units would be located throughout the complex, screened from view by appropriate fencing and landscaping. Six dispersed concrete block trash enclosures, covered as required, are proposed within the parking area.

The landscape plans call for a variety of species with low-to-moderate water demands (see **Attachment H**), with a large number of trees and bushes. The primary trees would be elms, ginkgoes, and red oaks, though variety would be the order of the day. Accents of valley oak will appropriately compliment Native Oak Drive, and both pineapple guava and Madrid strawberry are proposed for exotic variety. The trees, shrubs, and other plantings are located throughout the development, and assist in fulfilling the Parking Lot Shade requirement.

There are no trees requiring preservation on the site, but if the applicant wishes to preserve any saplings which may exist, Condition #11 accounts for appropriate preservation measures.

While the proposed buildings are taller than the maximum height in the SD2 overlay, they sit at a lower elevation than the structures approved at a height of 35 feet at the adjacent site to the east. The Planned Development approval facilitates the increase in the building height allowance. Other aspects of the project are in conformance with their surroundings and do not unnecessarily alter the character of the area or block any views of meaningful or important landmarks.

The project includes a total of 379 off-street parking spaces, which includes Guest Parking. This is a downward deviation of about 5% from City Requirements, though it is consistent with the General Plan. This project qualifies for a parking reduction as affordable housing under state law. Bicycle parking would be provided in dispersed covered carrells, accessible to all parts of the complex. Bike lockers would also be available.

Development of the project is proposed to occur in two phases, and pursuant to CMC 19.28.070.B Condition #15 has been added to require construction on Phase II to begin within one year of the start of construction on Phase I.

ENVIRONMENTAL REVIEW

The proposal is within the scope of an Environmental Impact Report (SCH# 1998032048) that was certified by the City Council with its approval of the Master Plan on September 20, 2005. No new significant environmental effects or increases to previously identified environmental effects due to the implementation of the Project have been identified, and none of the mitigation measures or project alternatives contained within the certified EIR have been found to be infeasible or considerably different due to the implementation of the proposed project. Therefore, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15162, no further environmental review is required.

REQUIRED FINDINGS FOR APPROVAL

Planned Development Permit Findings (CMC Section 19.28.060)

Following a public hearing, the Planning Commission may approve or conditionally approve a planned development permit only after making all of the following findings:

1. *The proposed development is allowed within the zoning district and generally complies with all of the applicable provisions of City of Chico Title 19 regulations with modifications as specifically approved, and applicable project design guidelines.*

The Project is consistent with the Master Plan and generally consistent with all applicable General Plan Land Use Development Standards, Title 19 Land Use Regulations, and the City Design Guidelines Manual, as modified by the Master Plan. Project design as conditioned includes massing and architectural characteristics that relate to nearby proposed projects and the natural environment, establishing a sense of place, while also meaningfully addressing the street frontages.

2. *The proposed development would be harmonious and compatible with existing and future developments within the zoning district and general area, as well as with the land uses presently on the subject property.*

The Project will be harmonious and compatible with existing and planned developments within the Master Plan and surrounding area, in that several elements are utilized in the Project design to coordinate the design with the character and uses of adjacent development. As Conditioned, the exterior treatments of the Project complement the surrounding natural environment by incorporating earth toned colors and stone veneers in their design. Trash and utility areas would be screened by architecturally integrated walls and planted vines and shrubs.

3. *The proposed entitlement is consistent with the General Plan.*

Approvals of the Master Plan (which itself contemplated a density consistent with the R3 zone district of up to 22 units per acre) were found to be consistent with the General Plan by City Council at their September 20, 2005 meeting. The Master Plan and the proposed project are consistent with General Plan policies that encourage context-sensitive design (CD-5.2 and CD-5.3). The site is not located within the bounds of a Neighborhood Plan or Area Plan. Because the proposed project is consistent with the Master Plan it is consistent with the General Plan.

4. *The site is physically suitable for the type and density and/or intensity of use being proposed.*

The site is physically suitable for the Project in that it is adjacent to approved residential uses and necessary utilities are available to serve the Project. The proposed structures are compatible with the site in that they provide functional and adequate setbacks, with the off-street parking and amenities located throughout the project to provide all residents with access to a high quality of life. The site is also mostly flat and at a comparatively low elevation compared to the other parcels covered by the Master Plan, so it is suitable for larger structures like those proposed.

5. *There are adequate provisions for public and emergency vehicle access, sanitation, water, and public utilities and services to ensure that the proposed development would not be detrimental to public health and safety.*

The existing streets provide adequate public and emergency vehicle access, sanitation, water, and public utilities and services to ensure that the project would not be detrimental to public health and safety, in that the City's sanitary sewer system has adequate capacity to serve the project; domestic water will be provided by California Water Service Company; and storm water facilities will be constructed in accordance with adopted City standards. A third entrance and exit to the parking area for Emergency Vehicles has been provided to ensure conformance with this requirement.

6. *The design, location, size and operating characteristics of the proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.*

The design, location, size, and operating characteristics of the project will comply with the Master Plan and with all City zoning, building, and public improvement standards, with specific modifications considered and approved herein. Therefore, the project would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

7. *The proposed development is consistent with the purpose of Chico Municipal Code Section 19.28.010.*

The project is consistent with the purpose of Chico Municipal Code Chapter 19.28 (*Planned Development*) in that it:

- offers an innovative and worthwhile affordable housing program,
- is consistent with the General Plan and design guidelines as outlined above, and
- includes open space consistent with the City's Requirements as an integral part of the overall project design.

PUBLIC CONTACT

A 10-day public hearing notice was mailed to all landowners and residents within 500 feet of the site. A legal notice was also placed in the *Chico Enterprise Record*. As of the date of this report, no correspondence has been received in response to the public notice.

DISTRIBUTION:

PC Distribution
HM M. Demers
Files: PDP 20-01
AR 20-08

External

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ATTACHMENTS:

- A. Planning Commission Resolution No. 20-09
Exhibit I -- Conditions of Approval
- B. Location Map
- C. ARHPB Staff Report
- D. Oak Valley Conceptual Land Use Plan
- E. Site Plan
- F. Visual Simulation
- G. Floor Plans
- H. Landscape Plan
- I. Colored Architectural Elevations and Sample Panel
- J. Materials Elevations
- K. Applicant's Consent to Conditions as Noted
- L. City Council Approval Documents for Oak Valley
- M. Draft Minutes of ARHPB Meeting of June 17, 2020

1 RESOLUTION NO. 20-09

2 RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CHICO
3 CONDITIONALLY APPROVING PLANNED DEVELOPMENT PERMIT 20-01
4 (Deer Creek Apartments)

5 WHEREAS, a planned development permit application to construct 204 new residential
6 units on a 11.78 acre site approximately 500 feet easterly of the intersection of Highway 32 and
7 Bruce Road, identified as Assessor's Parcel No. 018-600-082 (Project); and

8 WHEREAS, the Architectural Review and Historical Preservation Board considered the
9 Project, received comments, approved Architectural Review 20-08 and recommended the
10 Planning Commission approve Planned Development Permit 20-01 at a noticed public hearing on
11 June 17, 2020; and

12 WHEREAS, the Planning Commission considered the Project, staff report,
13 recommendation from the Architectural Review and Historic Preservation Board, and comments
14 submitted at a noticed public hearing held on June 18, 2020; and

15 WHEREAS, the Project is within the scope of Environment Impact Report
16 (SCH#1998032048), certified by the City Council on September 20, 2005. Pursuant to California
17 Environmental Quality Act (CEQA) Guidelines section 15162, no subsequent environmental
18 review is required because no new significant environmental effects or increases to previously
19 identified environmental effects due to the implementation of the Project have been identified, and
20 none of the mitigation measures or project alternatives contained within the certified EIR have
21 been found to be infeasible or considerably different due to the implementation of the Project;

22 NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF
23 THE CITY OF CHICO AS FOLLOWS:

- 24 1. With regard to the Project, the Planning Commission finds that:
- 25 A. The Project is consistent with the Oak Valley Conceptual Master Plan (the "Master Plan")
26 and is generally consistent with all applicable General Plan Land Use Development
27 Standards, Title 19 Land Use Regulations, and the City Design Guidelines Manual, with
28 modifications specifically approved as indicated on the approval documents listed in

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Exhibit I, attached hereto.

- B. The Project will be harmonious and compatible with existing and planned developments within the Master Plan and surrounding area. Elements of the Project coordinate the design with the character and uses of adjacent development. As conditioned, the exterior treatments of the Project complement the surrounding natural environment by incorporating earth toned colors and stone veneers in their design. Trash and utility areas would be screened by architecturally integrated walls and planted vines and shrubs.
- C. At 17.32 dwelling units per acre the Project is above the allowable range of 6 to 14 du/ac for the R2 zoning district. However, the total unit count of 204 is consistent with the Master Plan approved by City Council at their meeting of September 20, 2005 which envisioned an R3 base density and density transfers allowing up to 283 units on this parcel, which is Lot B of the original subdivision. The project is consistent with General Plan policies that encourage context-sensitive design (CD-5.2 and CD-5.3). The site is not located within the bounds of a Neighborhood Plan or Area Plan.
- D. The site is physically suitable for the Project in that it is adjacent to approved and planned residential uses and necessary utilities are available to serve the Project. Further, the project is consistent with an approved Master Plan envisioning a project of similar form and density on the site.
- E. The location and design of the Project will significantly reduce any impact to the foothills viewshed that may otherwise result from a request for a height of 41 feet from finished grade. Design features of the Project that will significantly reduce impacts to the viewshed include a minimization of the roof pitch of the proposed buildings and the incorporation, as conditioned, of color palettes that blend with the natural environment. The location of the Project, in a portion of the Master Plan area that has a lower elevation than the surrounding area, will significantly reduce any impact of the Project on the foothill viewshed.
- F. The design, location, size, and operating characteristics of the Project will comply with all City zoning, building, and public improvement standards, with specific modifications

1 considered and approved herein and by the previously-approved Master Plan and,
2 therefore, the Project would not be detrimental to the public interest, health, safety,
3 convenience, or welfare of the City.

4 G. The Project site is consistent with the purpose of Chico Municipal Code Chapter 19.28
5 (Planned Development) in that it offers an innovative housing design, is consistent with
6 the General Plan and Design Guidelines as outlined above, and includes open space and
7 recreation space as an integral part of the overall project design.

8 2. Based on all of the above, the Planning Commission hereby approves Planned Development
9 Permit 20-01 for the Project, subject to the conditions set forth in Exhibit I, attached hereto.

10 3. The Planning Commission hereby specifies that the materials and documents which constitute
11 the record of proceedings upon which its decision is based are located at and under the
12 custody of the City of Chico Community Development Department.

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15 THE FOREGOING RESOLUTION WAS ADOPTED at a meeting of the Planning
16 Commission of the City of Chico held on June 18, 2020, by the following vote:

17 AYES:

18 NOES:

19 ABSENT:

20 ABSTAIN:

21 DISQUALIFIED:

22 ATTEST:

APPROVED AS TO FORM:

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25 _____
Bruce Ambo
Planning Commission Secretary

25 _____
Andrew Jared
City Attorney

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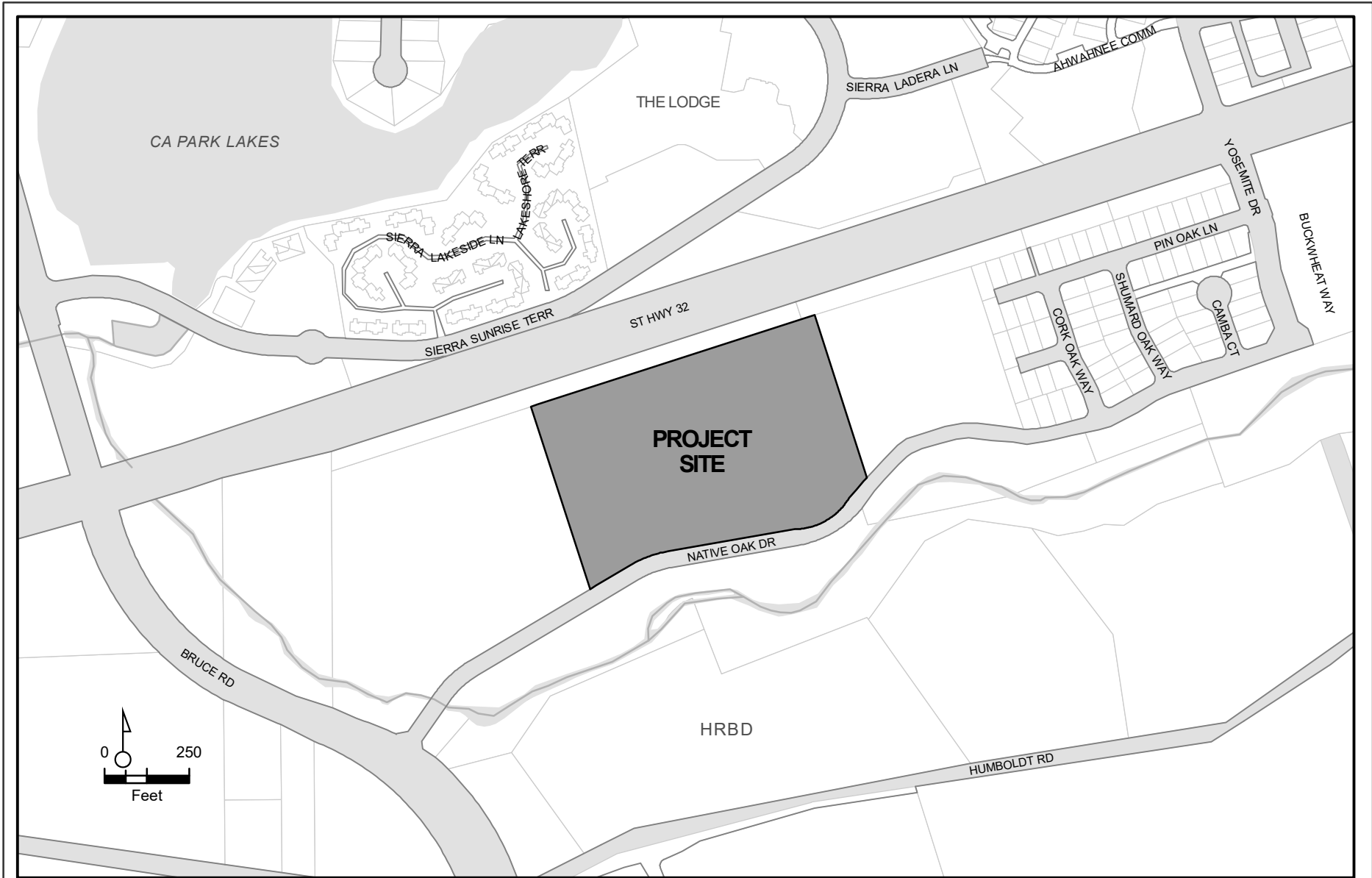
EXHIBIT "I"
CONDITIONS OF APPROVAL
Planned Development Permit 20-01
(Deer Creek Apartments)

1. All approved building plans and permits shall note that the project shall comply with Planned Development Permit 20-01 and Architectural Review 20-08 (Deer Creek Apartments). No building permits related to this approval shall be finalized without prior authorization of Planning Department staff.
2. The approval documents for this project include but are not limited to the following exhibits date stamped June 17, 2020:
 - a. Planned Development Permit Site Plan
 - b. Exterior Elevations
 - c. Site Details
 - d. Landscape Plans
3. Planned Development Permit 20-01 authorizes the following deviations from Chico Municipal Code development standards for the R2-SD2 zone district:
 - a. All deviations approved under the Oak Valley Subdivision Master Plan
 - b. Maximum building height of 41 feet.
 - c. Total required automobile parking of 379 spaces
4. All wall-mounted utilities and roof or wall penetrations including vent stacks, utility boxes, exhaust vents, gas meters and associated equipment, shall be screened by appropriate materials and colors, illustrated or notated on the building plans as required screening, and subject to approval by Planning Department staff prior to issuance of a certificate of occupancy.
5. All painting and exterior materials work shall be conducted as approved and field-verified by Planning staff prior to issuance of a certificate of occupancy.
6. All new electric, telephone, and other wiring conduits for utilities shall be placed underground in compliance with CMC 19.60.120.
7. Building plans shall delineate locations and detail as needed the final design of specific screening and landscape elements, subject to final approval by planning staff. This includes, but is not limited to, signs, irrigation equipment, and any changes to landscape planning that may be required due to alterations in configuration of the parking area of the property.
8. Proposed covered parking areas shall have adequate nighttime illumination and shall otherwise be constructed with minimal glare and spill in accordance with Chico Municipal Code Section 19.70.060.F and Figure 5-12.
9. Prior to issuance of a building permit, applicant shall submit two additional color palettes for administrative review by Planning Staff. Those palettes shall be used on not less than two-thirds of the structures in the development and shall be in conformance with City of Chico Design Guideline 4.2.31.
10. Parking lot lights shall be installed at the maximum safe distance from each other and

mounted at 10 feet in height with shielding to focus light downwards. A photometric plan shall be approved by City staff prior to the issuance of a building permit.

11. As required by CMC 16.66, any trees removed shall be replaced as follows:
 - a. On-site. For every six inches DBH removed, a new 15-gallon tree shall be planted on-site. Replacement trees shall be of similar species, unless otherwise approved by the urban forest manager, and shall be placed in areas dedicated for tree plantings. New plantings' survival shall be ensured for three years after the date of planting and shall be verified by the applicant upon request by the director. If any replacement trees die or fail within the first three years of their planting, then the applicant shall pay an in-lieu fee as established by a fee schedule adopted by the City Council.
 - b. Off-site. If it is not feasible or desirable to plant replacement trees on-site, payment of an in-lieu fee as established by a fee schedule adopted by the City Council shall be required.
 - c. Replacement trees shall not receive credit as satisfying shade or street tree requirements otherwise mandated by the municipal code.
 - d. Tree removal shall be subject to the in-lieu fee payment requirements set forth CMC16.66 and fee schedule adopted by the City Council.
 - e. All trees not approved for removal shall be preserved on and adjacent to the project site. A tree preservation plan, including fencing around drip lines and methods for excavation within the drip lines of protected trees to be preserved shall be prepared by the project developer pursuant to CMC 16.66.110 and 19.68.060 for review and approval by planning staff prior to any ground-disturbing activities.
12. Specific conditions of approval adopted by the Architectural Review and Historic Preservation Board at their meeting of June 17, 2020 are included and adopted herein by reference.
13. Mitigation Measures of the Environmental Impact Report for Oak Valley (SCH# 1998032048) as delineated in the Mitigation Monitoring Program document approved by City Council on September 20, 2005, are hereby adopted and incorporated by reference.
14. Conditions of Approval of the Oak Valley Conceptual Master Plan as approved by City Council on September 20, 2005, are hereby adopted and incorporated by reference.
15. Within one year of commencement of construction on Phase I, construction on Phase II shall commence, or the permit will be deemed void pursuant to CMC 19.28.070.
16. All units shall be Affordable Housing at an AMI level agreed upon by the City of Chico and the Applicant.
17. The applicant shall defend, indemnify, and hold harmless the City of Chico, its boards and commissions, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorney's fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to or claim regarding the legality, validity, processing or adequacy associated with: (i) this requested entitlement; (ii) the proceedings undertaken in connection with the adoption or approval of this entitlement; (iii) any subsequent approvals or permits relating to this entitlement; (iv) the processing of occupancy permits

and (v) any amendments to the approvals for this entitlement. The City of Chico shall promptly notify the applicant of any claim, action or proceeding which may be filed and shall cooperate fully in the defense, as provided for in Government code section 66474.9.



AR 20-08 (Deer Creek Apartments)
 Native Oak Drive
 APN 018-600-082-000





Architectural Review
and Historic Preservation Board
Agenda Report

Meeting Date 6/17/2020

DATE: June 8, 2020

TO: Architectural Review and Historic Preservation Board

FROM: Dexter O'Connell, Associate Planner (530-879-6810)
dexter.oconnell@chicoca.gov

RE: Planned Development Permit 20-01 and Architectural Review 20-08
(Deer Creek Apartments)
Native Oak Drive, about 500 feet east of Bruce Road -- APN 018-600-082

File: AR 20-08
PDP 20-01

RECOMMENDATION

Staff recommends that the Architectural Review and Historic Preservation Board adopt the required findings contained in the agenda report and recommend that the Planning Commission adopt Resolution No. 20-09 approving Architectural Review 20-08 and Planned Development Permit 20-01, subject to the recommended conditions.

Proposed Motion

I move that the Architectural Review and Historic Preservation Board adopt the required findings contained in the agenda report, and recommend that the Planning Commission adopt Resolution No. 20-09 approving Architectural Review 20-08 and Planned Development Permit 20-01 (Deer Creek Apartments), subject to the recommended conditions therein.

BACKGROUND

The applicant proposes to construct nine three-story apartment buildings and make associated site improvements, including other structures, on a site of 11.78 gross acres. The project would have a total of 204 residential units. The units would be permanent affordable housing at a variety of Low and Moderate income levels. The site is located on the north side of Native Oak Drive, about 500 feet east of the intersection of Native Oak Drive and Bruce Road (See **Attachment A**, Location Map).

The site is designated Medium Density Residential (MDR) on the City's General Plan Land Use Diagram and zoned R2 (Medium Density Residential) with an SD2 (Humboldt Road-Foothill) overlay. The resultant density for the project would be 17.32 dwelling units per acre (du/ac), which is above the allowable range of 6 to 14 du/ac for the R2 zoning district. However, the total unit count of 204 is consistent with the Oak Valley Conceptual Master Plan (the "Master Plan") approved by City Council at their meeting of September 20, 2005. At that meeting, the City Council approved a transfer of density which allows development between 14.01 and 22 du/ac within this project area (Lot B of the original subdivision). Under this density range, the applicant can build up to 283 units on this parcel. (see **Attachment J**, City Council Approval Documents for Oak Valley)

The site plan illustrates the layout and orientation of the buildings, as well as the location of the trash enclosure, site amenities, and parking (see **Attachment B**, Site Plan). The structures are arranged primarily surrounding the central courtyard, though two of them directly address Native Oak Drive. The parking area envelops the central buildings, while covered bicycle parking, amenities, and landscaped open spaces are scattered throughout

the site (see **Attachment D**, Landscape Plan) in order to provide adequate access to all units.

The project includes a total of 379 off-street vehicle parking spaces, 208 of which are covered. Bicycle parking is provided in both locker and covered open locations.

The landscape plans call for a variety of species with low-to-moderate water demands (see **Attachment D**), with a large number and good variety of trees and other plants.

The vast majority of the proposed landscape has moderate-to-low water requirements, meeting state standards for water efficiency. Of the 11.14 net acres of the site, 5.22 acres are landscaped, which meets city requirements.

DISCUSSION

The proposed apartment complex is an attractive development of affordable housing. The complex achieves a unified identity through harmonious architectural styling.

The project is consistent with General Plan goals and policies regarding providing an adequate supply of rental housing to meet a wide range of renters' current and future needs throughout the city (H-3, H-3.2, and H-3.4). Most importantly, the commitment to 204 units built as affordable housing will contribute significantly to the City's Regional Housing Needs Assessment obligations as outlined in the General Plan Housing Element. This is critical to ensuring some modicum of local authority over housing-related decisions.

The project consists of nine principal residential buildings of the same design and a single smaller residential building accompanying them, several ancillary structures with a variety of uses, and a variety of other amenities speckled within the complex.

The residential buildings are set in a primarily-figure-eight arrangement, with two of them addressing the fronting street, Native Oak Drive. They would feature exterior walls that would use diverse materials including modern-looking cement paneling, lap siding in a variety of colors, and simple balcony finishes (see **Attachment E**, Colored Elevations, and **Attachment G**, Color and Materials Sample Panel). The proposed color scheme challenges City of Chico Design Guidelines, but the applicant has agreed to Condition #9 to provide at least two additional color palettes that "enhance visual interest on front elevations facing public rights-of-way or open space" by choosing from a rich palette of varied colors designed to enhance the streetscape and open space and to avoid blandness in conformance with Design Guideline 4.2.31.

The residential buildings would feature a gable roof, occasionally broken up by perpendicular gable elements covering balconies or extensions of the units. Exterior doors would be clear glass highlighted in white trim, and window frames would be white vinyl as well in the primary color scheme. Roof material would be grey composite shingles. All units would have a balcony or covered patio.

The project includes a total of 379 off-street parking spaces, which includes Guest Parking. This is a downward deviation of approximately 5% from City Requirements, but is consistent with the General Plan. To provide additional transportation options, bicycle parking would be provided in a large number of dispersed covered carrells, accessible to entrances and exits. Bike lockers would also be available in a quantity that meets the City's requirements.

Parking lot lights would be dispersed around the buildings and mounted at 10 feet in height with shielding to focus light downwards, per Condition #10, in order to comply with the SD2 overlay's requirements that "low-level pedestrian-scale street lighting" be used and "high

illumination yard lighting” be shielded “to prevent off-site glare.”¹ The covered parking would also be illuminated, and Condition #8 requires it to be constructed with minimal glare and spill in accordance with Chico Municipal Code Section 19.70.060.F and Figure 5-12. Mechanical units would be located throughout the complex, screened from view by appropriate fencing and landscaping. Six concrete block trash enclosures, covered as required, are proposed around the parking area.

The landscape plans call for a variety of species with low-to-moderate water demands (see **Attachment D**), with a large number of trees and bushes. The primary trees would be elms, ginkgos, and red oaks, though variety would be the order of the day. Accents of valley oak will appropriately compliment Native Oak Drive, and both pineapple guava and Madrid strawberry are proposed for variety. The trees, shrubs, and other plantings are located throughout the development, and assist in fulfilling the Parking Lot Shade requirement

The existing site is not meaningfully treed, but Condition #11 accounts for mitigation and for the preservation measures which must be taken around trees to remain.

While the proposed buildings are taller than the maximum height in the SD2 overlay, they sit at a lower elevation than the structures approved at a height of 35 feet at the adjacent site to the east. Other aspects of the project are in conformance with their surroundings and do not unnecessarily alter the character of the area or block any views of meaningful or important landmarks. Therefore, the proposed planned development permit allows for some deviation in approved maximum height.

While consistent with the approved Master Plan, the proposed project will have a higher residential density than the underlying general plan land use designation and zone for the project site. This inconsistency is a result of a density transfer component of the overall Master Plan approval. The density transfer, which was implemented in part by the Planning Commission on April 21, 2005 and in full by City Council on September 20, 2005 to protect the viewshed and local aesthetics, redistributes density from the higher-elevation eastern end of the Master Plan area to an area that has a lower elevation. The approval of the Master Plan assumes development of the project site with up to 283 residential units. With the density transfer concept employed, the City Council deemed this project consistent with the General Plan at its September 20, 2005 meeting. The proposed project represents a compromise between the envisioned maximum density and the original concept of the SD2 overlay.

REQUIRED FINDINGS FOR APPROVAL

Environmental Review

The project has been determined to be exempt from further environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15162. The proposal is within the scope of an Environmental Impact Report (SCH# 1998032048) that was certified by the City Council with its approval of the Master Plan on September 20, 2005. No new significant environmental effects or increases to previously identified environmental effects due to the implementation of the Project have been identified, and none of the mitigation measures or project alternatives contained within the certified EIR have been found to be infeasible or considerably different due to the implementation of the proposed project.

¹ Chico Municipal Code Section 19.52.070.D.2.b.1.(c) and (d)

Architectural Review

According to Chico Municipal Code Section 19.18.060, the Architectural Review and Historic Preservation Board shall determine whether or not a project adequately meets adopted City standards and design guidelines, based upon the following findings:

1. *The proposed development is consistent with the General Plan, any applicable specific plan, and any applicable neighborhood or area plans.*

The proposed project is consistent with General Plan goals and policies as discussed above. Importantly, it is compatible with the Housing Element's actualization of the City of Chico's Regional Housing Needs Assessment (RHNA) requirements.

The plan governing this area derives from City Council's 2005 denial of two appeals and approval of the Master Plan, Subdivision 99-12 (Oak Valley), and associated Planned Development Permit 02-01 and has resulted in a substantial alteration of the requirements of the underlying zoning of the property. Primarily, this approval resulted in a transfer of density from easterly parcels within the plan area to those on the west end of the development. This parcel, as the furthest west of those in the development, has received the greatest transfer of density.

While consistent with the approved Master Plan and associated approved Planned Development Permit 02-01, the proposed project will have a higher residential density than the underlying general plan land use designation and zone for the project site. This inconsistency is a result of a density transfer component of the overall Master Plan approval. The density transfer, which was implemented to protect the viewshed and local aesthetics, redistributes density from the higher elevated eastern end of the Master Plan area to an area that has a lower elevation. The approval of the Master Plan assumes development of the project site with R3 zoning density of up to 22 units per acre, but with a density transfer that permits a total unit maximum of up to 283 residential units. With the density transfer concept employed, approvals of the Master Plan were found to be consistent with the General Plan as discussed above. The proposed project represents a compromise between the envisioned maximum density and the original concept of the SD2 overlay.

2. *The proposed development, including the character, scale, and quality of design are consistent with the purpose/intent of this chapter and any adopted design guidelines.*

The proposed structure has meaningful architectural character and high-quality design elements. The proposed landscaping and configuration of the parking area help to minimize the views of automobiles (DG 1.1.14) in the open lot.

There is a picnic area with a proposed picnic area and shade structure (DG 4.1.45). The common open space has pedestrian access (DG 4.1.42, 4.1.43), and is dispersed around the complex, with a pool, tot lot, dog run, half basketball court for three-on-three competition, and other outdoor amenities. This encourages individuals to make use of the open space by setting it in a meaningful relationship with its surroundings. Condition #10 will require lighting design to minimize glare and spillover impacts (DG 1.5.14) while still maintaining a safe atmosphere.

The buildings are at a similar scale (DG 1.2.13) as the adjacent recently approved Lava Ridge Apartments, three-story structures in the same overlay and subdivision. The

proposed Creekside Place complex would have a substantial setback from Highway 32 in part required by the barrier parcel north of it but also provided by the substantially-landscaped parking area. The components are somewhat representative of individual dwelling units (DG 4.2.11), and the required additional color schemes will be evaluated for their ability to break up the façade and indicate from the outside a meaningful sense of differentiation. The overall plan has the character, scale, and quality expected of new architecture in the City of Chico by the Chico Municipal Code and by the Design Guidelines.

- 3. The architectural design of structures, including all elevations, materials and colors are visually compatible with surrounding development. Design elements, including screening of equipment, exterior lighting, signs, and awnings, have been incorporated into the project to further ensure its compatibility with the character and uses of adjacent development.*

In an area that primarily treads well-covered architectural ground, the proposed Deer Creek Apartments are satisfactory. As conditioned, the Deer Creek Apartments provide as much or more character, especially regarding materials and colors, as any other nearby building either constructed or proposed. Its size will not be out of place either, as adjacent apartments already approved by this board will be of a similar height when considering the natural grade.

Materials are typical of the construction style and the adjacent neighbors. Ancillary elements have also been reviewed. Proposed signs are in reasonable locations and administrative review based on the City of Chico's guidelines will ensure that they are tasteful and of high quality. Screening of mechanical equipment and refuse areas is consistent with best practices of other new multi-family developments in the City of Chico, and this complex's nonresidential buildings also meet a high standard for appearance and quality. Where specific screening and landscape elements are not yet explicitly delineated, Condition #7 requires administrative architectural review of their placement and design.

- 4. The location and configuration of structures are compatible with their sites and with surrounding sites and structures, and do not unnecessarily block views from other structures or dominate their surroundings.*

The Project will be harmonious and compatible with existing and planned developments within the Master Plan and surrounding area, in that several elements are utilized in the Project design to coordinate the design with the character and uses of adjacent development. As Conditioned, the exterior treatments of the Project complement the surrounding natural environment by incorporating earth toned colors and stone veneers in their design. Trash and utility areas would be screened by architecturally integrated walls and planted vines and shrubs.

While the structures would be large, their neighbors to the east will be more imposing by virtue of their combined height and elevation, while these proposed structures, though slightly taller, are at a lower elevation and thus not dominating.

- 5. The general landscape design, including the color, location, size, texture, type, and coverage of plant materials, and provisions for irrigation and maintenance, and protection*

of landscape elements, have been considered to ensure visual relief, to complement structures, and to provide an attractive environment.

As discussed above, the Landscape plan is of high quality and meets all City of Chico requirements.

Specifically, parking lot shading is more than adequate and shared recreational areas will contribute to providing an attractive residential environment. Where specific screening and landscape elements are not yet explicitly delineated, Condition #4 requires administrative approval of their placement and design.

Planned Development Permit Findings (CMC Section 19.28.060)

Following a public hearing, the Planning Commission may approve or conditionally approve a planned development permit only after making all of the following findings:

1. *The proposed development is allowed within the zoning district and generally complies with all of the applicable provisions of City of Chico Title 19 regulations with modifications as specifically approved, and applicable project design guidelines.*

The Project is consistent with the Master Plan and generally consistent with all applicable General Plan Land Use Development Standards, Title 19 Land Use Regulations, and the City Design Guidelines Manual, as modified by the Master Plan. Project design as conditioned includes massing and architectural characteristics that relate to nearby proposed projects and the natural environment, establishing a sense of place, while also meaningfully addressing the street frontages.

2. *The proposed development would be harmonious and compatible with existing and future developments within the zoning district and general area, as well as with the land uses presently on the subject property.*

The Project will be harmonious and compatible with existing and planned developments within the Master Plan and surrounding area, in that several elements are utilized in the Project design to coordinate the design with the character and uses of adjacent development. As Conditioned, the exterior treatments of the Project complement the surrounding natural environment by incorporating earth toned colors and stone veneers in their design. Trash and utility areas would be screened by architecturally integrated walls and planted vines and shrubs.

3. *The proposed entitlement is consistent with the General Plan.*

Approvals of the Master Plan (which itself contemplated a density consistent with the R3 zone district of up to 22 units per acre) were found to be consistent with the General Plan by City Council at their September 20, 2005 meeting. The Master Plan and the proposed project are consistent with General Plan policies that encourage context-sensitive design (CD-5.2 and CD-5.3). The site is not located within the bounds of a Neighborhood Plan or Area Plan. Because the proposed project is consistent with the Master Plan it is consistent with the General Plan.

4. *The site is physically suitable for the type and density and/or intensity of use being proposed.*

The site is physically suitable for the Project in that it is adjacent to approved residential uses and necessary utilities are available to serve the Project. The proposed structures are compatible with the site in that they provide functional and adequate setbacks, with the off-street parking and amenities located throughout the project to provide all residents with access to a high quality of life. The site is also mostly flat and at a comparatively low elevation compared to the other parcels covered by the Master Plan, so it is suitable for larger structures like those proposed.

5. *There are adequate provisions for public and emergency vehicle access, sanitation, water, and public utilities and services to ensure that the proposed development would not be detrimental to public health and safety.*

The existing streets provide adequate public and emergency vehicle access, sanitation, water, and public utilities and services to ensure that the project would not be detrimental to public health and safety, in that the City's sanitary sewer system has adequate capacity to serve the project; domestic water will be provided by California Water Service Company; and storm water facilities will be constructed in accordance with adopted City standards. A third entrance and exit to the parking area for Emergency Vehicles has been provided to ensure conformance with this requirement.

6. *The design, location, size and operating characteristics of the proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.*

The design, location, size, and operating characteristics of the project will comply with the Master Plan and with all City zoning, building, and public improvement standards, with specific modifications considered and approved herein. Therefore, the project would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

7. *The proposed development is consistent with the purpose of Chico Municipal Code Section 19.28.010.*

The project is consistent with the purpose of Chico Municipal Code Chapter 19.28 (*Planned Development*) in that it:

- offers an innovative and worthwhile affordable housing program,
- is consistent with the General Plan and design guidelines as outlined above, and
- includes open space consistent with the City's Requirements as an integral part of the overall project design.

RECOMMENDED CONDITIONS OF APPROVAL

1. All approved building plans and permits shall note that the project shall comply with Planned Development Permit 20-01 (Deer Creek Apartments). No building permits related to this approval shall be finalized without prior authorization of Planning Department staff.

2. The approval documents for this project include the following exhibits date stamped June 17, 2020:
 - a. Planned Development Permit Site Plan
 - b. Exterior Elevations
 - c. Site Details
 - d. Landscape Plans
3. Planned Development Permit 20-01 authorizes the following deviations from Chico Municipal Code development standards:
 - a. All deviations approved under the Oak Valley Subdivision Master Plan
 - b. Maximum building height of 41 feet.
 - c. Total required automobile parking of 379 spaces
4. All wall-mounted utilities and roof or wall penetrations including vent stacks, utility boxes, exhaust vents, gas meters and associated equipment, shall be screened by appropriate materials and colors, illustrated or notated on the building plans as required screening, and subject to approval by Planning Department staff prior to issuance of a certificate of occupancy.
5. All painting and exterior materials work shall be conducted as approved and field-verified by Planning staff prior to issuance of a certificate of occupancy.
6. All new electric, telephone, and other wiring conduits for utilities shall be placed underground in compliance with CMC 19.60.120.
7. Building plans shall delineate locations and detail as needed the final design of specific screening and landscape elements, subject to final approval by planning staff. This includes, but is not limited to, signs, irrigation equipment, and any changes to landscape planning that may be required due to alterations in configuration of the parking area of the property.
8. Proposed covered parking areas shall have adequate nighttime illumination and shall otherwise be constructed with minimal glare and spill in accordance with Chico Municipal Code Section 19.70.060.F and Figure 5-12.
9. Prior to issuance of a building permit, applicant shall submit two additional color palettes for administrative review by Planning Staff. Those palettes shall be used on not less than two-thirds of the structures in the development and shall be in conformance with City of Chico Design Guideline 4.2.31.
10. Parking lot lights shall be installed at the maximum safe distance from each other and mounted at 10 feet in height with shielding to focus light downwards. A photometric plan shall be approved by City staff prior to the issuance of a building permit.
11. As required by CMC 16.66, any trees removed shall be replaced as follows:
 - a. On-site. For every six inches DBH removed, a new 15-gallon tree shall be planted on-site. Replacement trees shall be of similar species, unless otherwise approved by the urban forest manager, and shall be placed in areas

- dedicated for tree plantings. New plantings' survival shall be ensured for three years after the date of planting and shall be verified by the applicant upon request by the director. If any replacement trees die or fail within the first three years of their planting, then the applicant shall pay an in-lieu fee as established by a fee schedule adopted by the City Council.
- b. Off-site. If it is not feasible or desirable to plant replacement trees on-site, payment of an in-lieu fee as established by a fee schedule adopted by the City Council shall be required.
 - c. Replacement trees shall not receive credit as satisfying shade or street tree requirements otherwise mandated by the municipal code.
 - d. Tree removal shall be subject to the in-lieu fee payment requirements set forth CMC16.66 and fee schedule adopted by the City Council.
 - e. All trees not approved for removal shall be preserved on and adjacent to the project site. A tree preservation plan, including fencing around drip lines and methods for excavation within the drip lines of protected trees to be preserved shall be prepared by the project developer pursuant to CMC 16.66.110 and 19.68.060 for review and approval by planning staff prior to any ground-disturbing activities.
12. Specific conditions of approval adopted by the Architectural Review and Historic Preservation Board at their meeting of June 17, 2020 are included and adopted herein by reference.
 13. Mitigation Measures of the Environmental Impact Report for Oak Valley (SCH# 1998032048) as delineated in the Mitigation Monitoring Program document approved by City Council on September 20, 2005, are hereby adopted and incorporated by reference.
 14. Conditions of Approval of the Oak Valley Conceptual Master Plan as approved by City Council on September 20, 2005, are hereby adopted and incorporated by reference.
 15. The applicant shall defend, indemnify, and hold harmless the City of Chico, its boards and commissions, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorney's fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to or claim regarding the legality, validity, processing or adequacy associated with: (i) this requested entitlement; (ii) the proceedings undertaken in connection with the adoption or approval of this entitlement; (iii) any subsequent approvals or permits relating to this entitlement; (iv) the processing of occupancy permits and (v) any amendments to the approvals for this entitlement. The City of Chico shall promptly notify the applicant of any claim, action or proceeding which may be filed and shall cooperate fully in the defense, as provided for in Government code section 66474.9.

PUBLIC CONTACT

Ten days prior to the meeting date, a notice was published in the Chico Enterprise Record,

notices were mailed out to all property owners and tenants within 500 feet of the project site, and a notice was placed on the project site. The meeting agenda was posted at least 10 days prior to the Architectural Review and Historic Preservation Board meeting.

ATTACHMENTS

- A. Location Map
- B. Site Plan
- C. Floor Plans
- D. Landscape Plan
- E. Colored Architectural Elevations and Sample Panel
- F. Materials Elevations
- G. Visual Simulation
- H. Applicant's Consent to Conditions #7 and #8
- I. Planning Commission Resolution 20-09 and Exhibits
- J. City Council Approval Documents for Oak Valley

DISTRIBUTION

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Thomas H. Phelps Landscape Architecture. thphelps@sbcglobal.net

SP M. Sawley

HM M. Demers

Files: AR 20-08

PDP 20-01



SCALE 1"=300' (22"X34")
1"=600' (11"X17")

OAK VALLEY SUBDIVISION

REQUESTED ZONING
AUGUST 2017

112
120
133
365

161
134
345

ZONING: R2 (MDR)	
DENSITY	
• 7.1 UNITS/ACRE TO 14 UNITS/ACRE	
UNIT COUNT	
APN: 018-500-077 (PRTN)	34
APN: 018-500-161 & 162 (PRTN)	34
TOTAL -	68 UNITS

ZONING: R1	
DENSITY	
• 1 SINGLE FAMILY UNIT PER LOT (2.1 MINIMUM, 7 UNITS MAXIMUM PER ACRE FOR SUBDIVISIONS; 1 SINGLE-FAMILY UNIT PER LOT, AND 1 SECOND UNIT IN COMPLIANCE WITH SECTION 19.26.130.)	
UNIT COUNT	
APN: 018-500-176	112
APN: 018-500-165	120
APN: 018-500-166	133
TOTAL -	365 UNITS

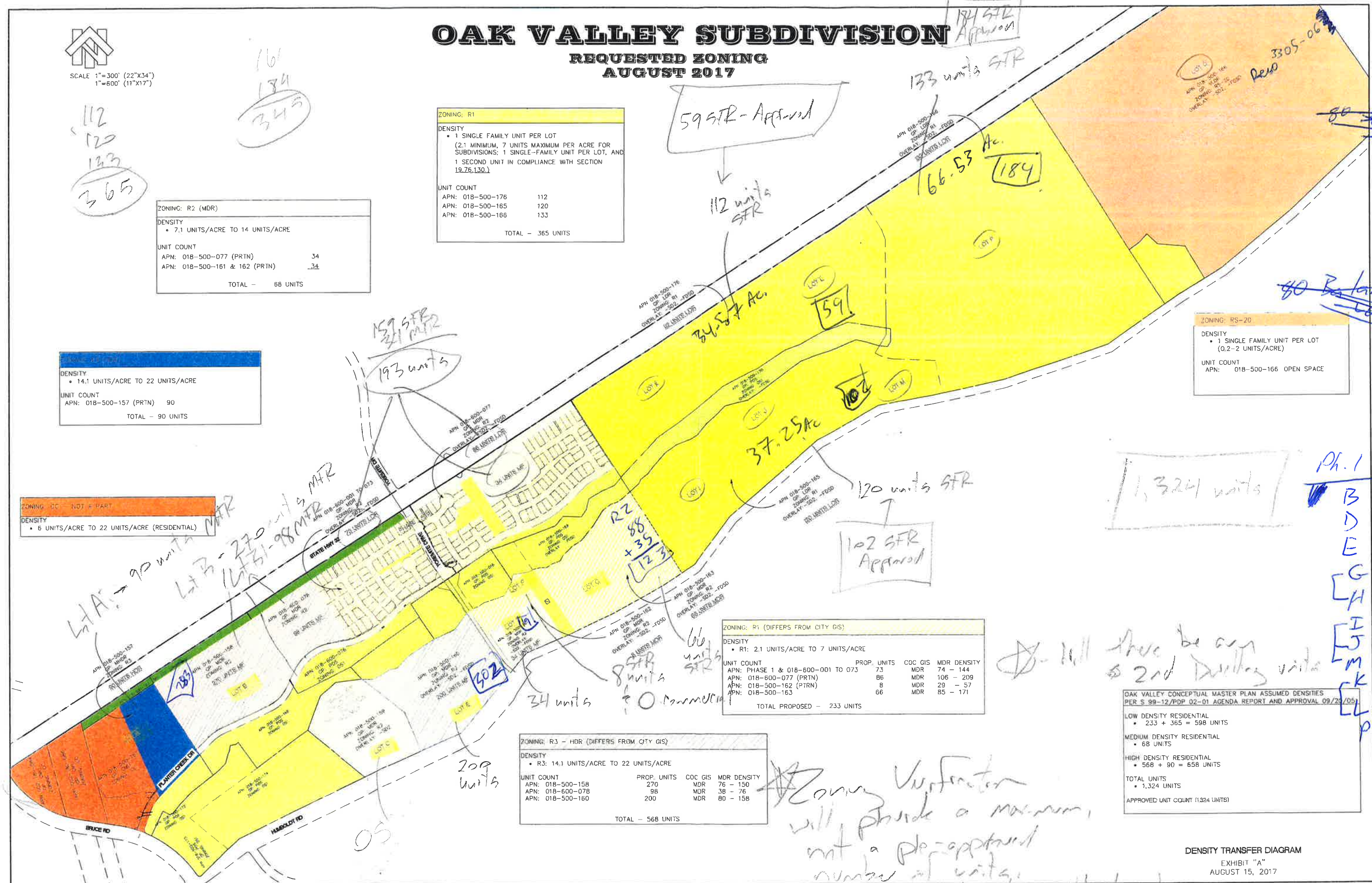
ZONING: CC - NDJ - PART	
DENSITY	
• 14.1 UNITS/ACRE TO 22 UNITS/ACRE	
UNIT COUNT	
APN: 018-500-157 (PRTN)	90
TOTAL -	90 UNITS

ZONING: CC - NDJ - PART	
DENSITY	
• 6 UNITS/ACRE TO 22 UNITS/ACRE (RESIDENTIAL)	

ZONING: R1 (DIFFERS FROM CITY GIS)			
DENSITY			
• R1: 2.1 UNITS/ACRE TO 7 UNITS/ACRE			
UNIT COUNT			
APN: PHASE 1 & 018-600-001 TO 073	PROP. UNITS	COC GIS	MDR DENSITY
APN: 018-600-077 (PRTN)	73	MDR	74 - 144
APN: 018-500-162 (PTRN)	86	MDR	106 - 209
APN: 018-500-163	8	MDR	29 - 57
APN: 018-500-163	66	MDR	85 - 171
TOTAL PROPOSED -	233 UNITS		

ZONING: R3 - HDR (DIFFERS FROM CITY GIS)			
DENSITY			
• R3: 14.1 UNITS/ACRE TO 22 UNITS/ACRE			
UNIT COUNT			
APN: 018-500-158	PROP. UNITS	COC GIS	MDR DENSITY
APN: 018-600-078	270	MDR	76 - 150
APN: 018-500-160	98	MDR	38 - 76
APN: 018-500-160	200	MDR	80 - 158
TOTAL -	568 UNITS		

ZONING: RS-20	
DENSITY	
• 1 SINGLE FAMILY UNIT PER LOT (0.2-2 UNITS/ACRE)	
UNIT COUNT	
APN: 018-500-166 OPEN SPACE	



Ph. 1	295
B	283
D	19
E	302
G	88
H	35
I	32
J	56
M	14
K	16
L	43
P	184
	1072
	Remainder

OAK VALLEY CONCEPTUAL MASTER PLAN ASSUMED DENSITIES PER S 99-12/PDP 02-01 AGENDA REPORT AND APPROVAL 09/28/05	
LOW DENSITY RESIDENTIAL	
• 233 + 365 = 598 UNITS	
MEDIUM DENSITY RESIDENTIAL	
• 68 UNITS	
HIGH DENSITY RESIDENTIAL	
• 568 + 90 = 658 UNITS	
TOTAL UNITS	
• 1,324 UNITS	
APPROVED UNIT COUNT (1324 UNITS)	

Zoning Verification will provide a maximum, not a pre-approved number of units. There are constraints, setbacks, etc. food in

DENSITY TRANSFER DIAGRAM
EXHIBIT "A"
AUGUST 15, 2017

STATE HIGHWAY 32

APPLICANT
 AMG & ASSOCIATES
 16633 VENTURA BLVD., SUITE 1014
 ENCINO, CA 91436
 (818) 825-5488

PLAN PREPARED BY:
 DOUGLAS GIBSON - C29792
 430 E. STATE ST. STE. #100
 EAGLE, ID 83616
 (208) 461-0022 EXT.3021

ACCESSIBILITY

	# OF UNITS	PERCENTAGE
ADAPTABLE UNITS (ALL GROUND FLOOR REQ.)	22	25.50%
ACCESSIBLE UNITS (10% TOTAL)	21	10.29%
SENSORY IMPAIRED UNITS (4% TOTAL)	9	4.41%

UNIT MIX SUMMARY PHASE I - CONDITIONED SQ. FOOTAGES

(18) 1-BEDROOM UNITS	(1) X 568 S.F. = 10,224 S.F.
(90) 2-BEDROOM UNITS	(90) X 780 S.F. = 70,200 S.F.
(48) 3-BEDROOM UNITS	(48) X 1,077 S.F. = 51,696 S.F.
(156) UNITS TOTAL	10,224 S.F. + 70,200 S.F. + 51,696 S.F. = 132,120 S.F.

UNIT MIX SUMMARY PHASE II - CONDITIONED SQ. FOOTAGES

(6) 1-BEDROOM UNITS	(6) X 568 S.F. = 3,408 S.F.
(30) 2-BEDROOM UNITS	(30) X 780 S.F. = 23,400 S.F.
(12) 3-BEDROOM UNITS	(12) X 1,077 S.F. = 12,924 S.F.
(48) UNITS TOTAL	3,408 S.F. + 23,400 S.F. + 12,924 S.F. = 39,732 S.F.

BICYCLE PARKING SUMMARY

BICYCLE LOCKERS
 5% OF PROVIDED PARKING = 380 * .05 = 19 LOCKERS REQUIRED
 20 LOCKERS PROVIDED

BICYCLE SPACES
 REQUIRED - 20% TOTAL ON-SITE PARKING = 380/5 = 76 COVERED BICYCLE SPACES
 PROVIDED - 22 COVERED SPACES PER RACK * 4 LOCATIONS = 88 COVERED BICYCLE SPACES

PARKING SUMMARY

REQUIRED - 1 SPACE / 1-BED UNIT = 1 * 24 = 24 SPACES
 1.5 SPACES / 2-BED UNIT = 1.5 * 120 = 180 SPACES
 2 SPACES / 3-BED UNIT = 2 * 60 = 120 SPACES
 GUEST PARKING = 1 SPACE / 5 UNITS = 2045 / 5 = 41 SPACES

TOTAL PARKING REQUIRED = 365 SPACES

PROVIDED - 208 COVERED SPACES (INCLUDING 22 ADA) + 165 STANDARD SPACES + 6 ADA SPACES

TOTAL PARKING SPACES PROVIDED = 379 SPACES

SITE COVERAGE

	SQ. FEET	PERCENTAGE
BUILDING FOOTPRINT	80,851 S.F.	15.75%
ON-SITE A.C. PAVING	167,252 S.F.	32.58%
SITE AMENITIES	12,368 S.F.	2.41%
CONC. WALKS	39,247 S.F.	7.65%
LANDSCAPE OPEN SPACE	185,435.87 S.F.	36.13%
FRONTAGE & ROAD HALF-WIDTH	28,142.51 S.F.	5.48%
TOTAL AREA	513,296.38 S.F.	100.00%

SITE AREA:

GROSS AREA: 513,296.38 S.F. ± (11.78 AC)±
 NET AREA: 485,153.87 S.F. ± (11.14 AC)±

GROSS DENSITY: 204 UNITS / 11.78 AC = 17.32 UNITS / PER ACRE
 NET DENSITY: 204 UNITS / 11.14 AC = 18.31 UNITS / PER ACRE

REVISIONS

COPYRIGHT DATE
4/24/20

DRAWN BY
DE

PROJECT #
AMG20-9

PACIFIC WEST ARCHITECTURE

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Pacific West Architecture

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CHICO, CA

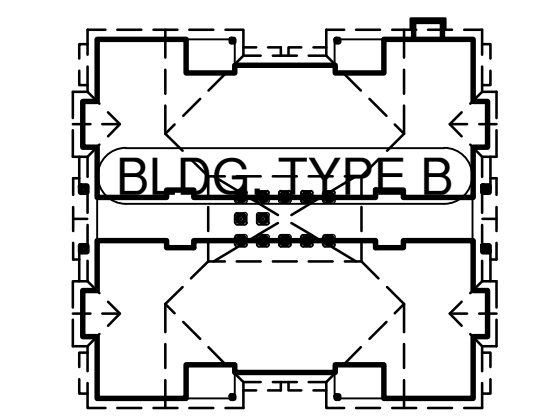
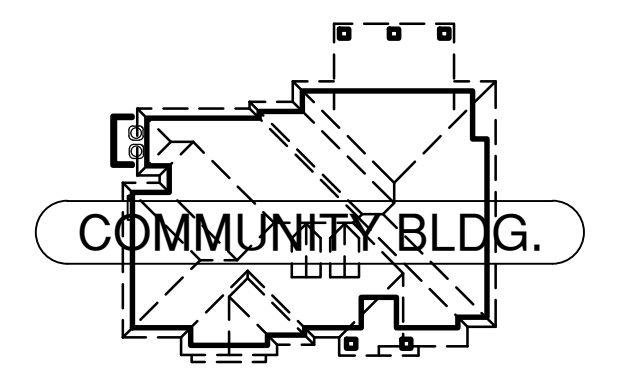
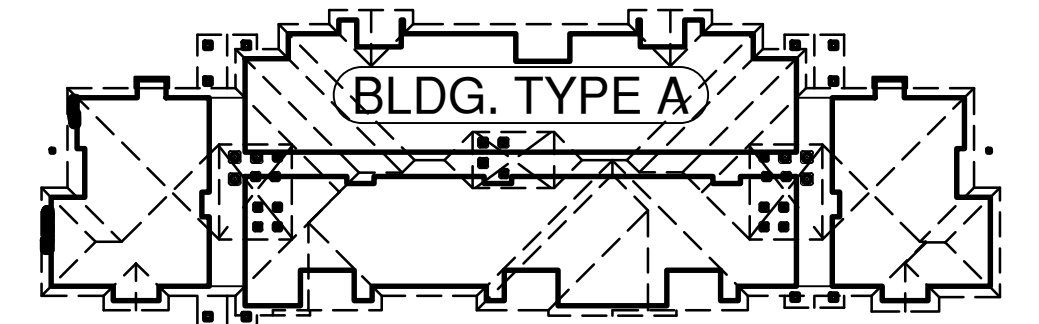
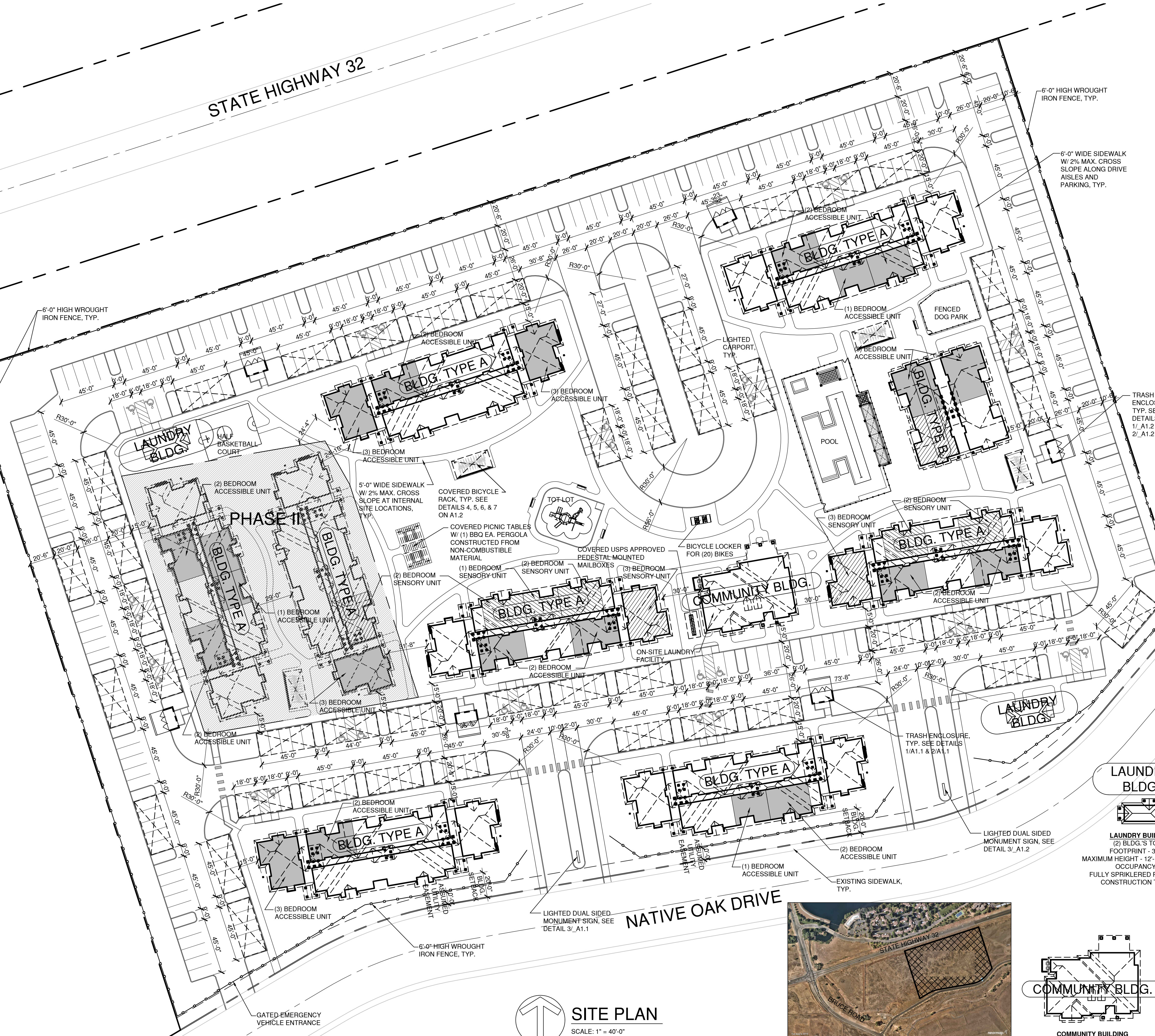
DEER CREEK APARTMENTS

PROJECT

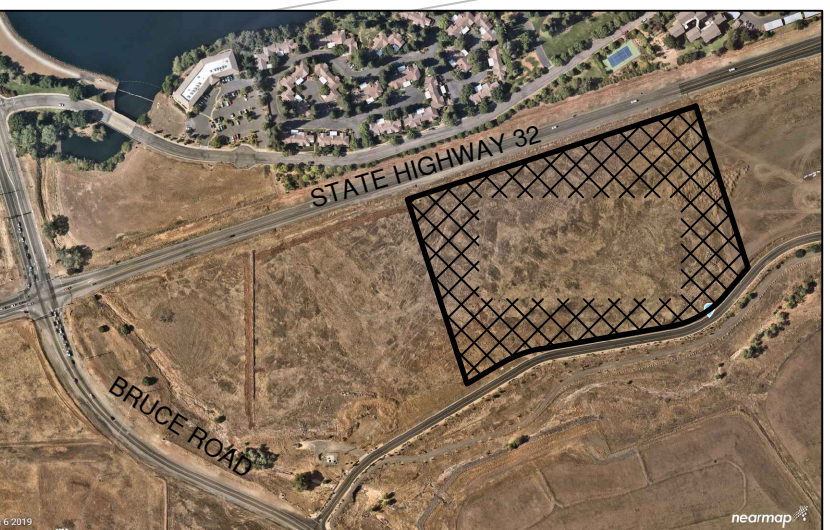
NATIVE OAK DRIVE

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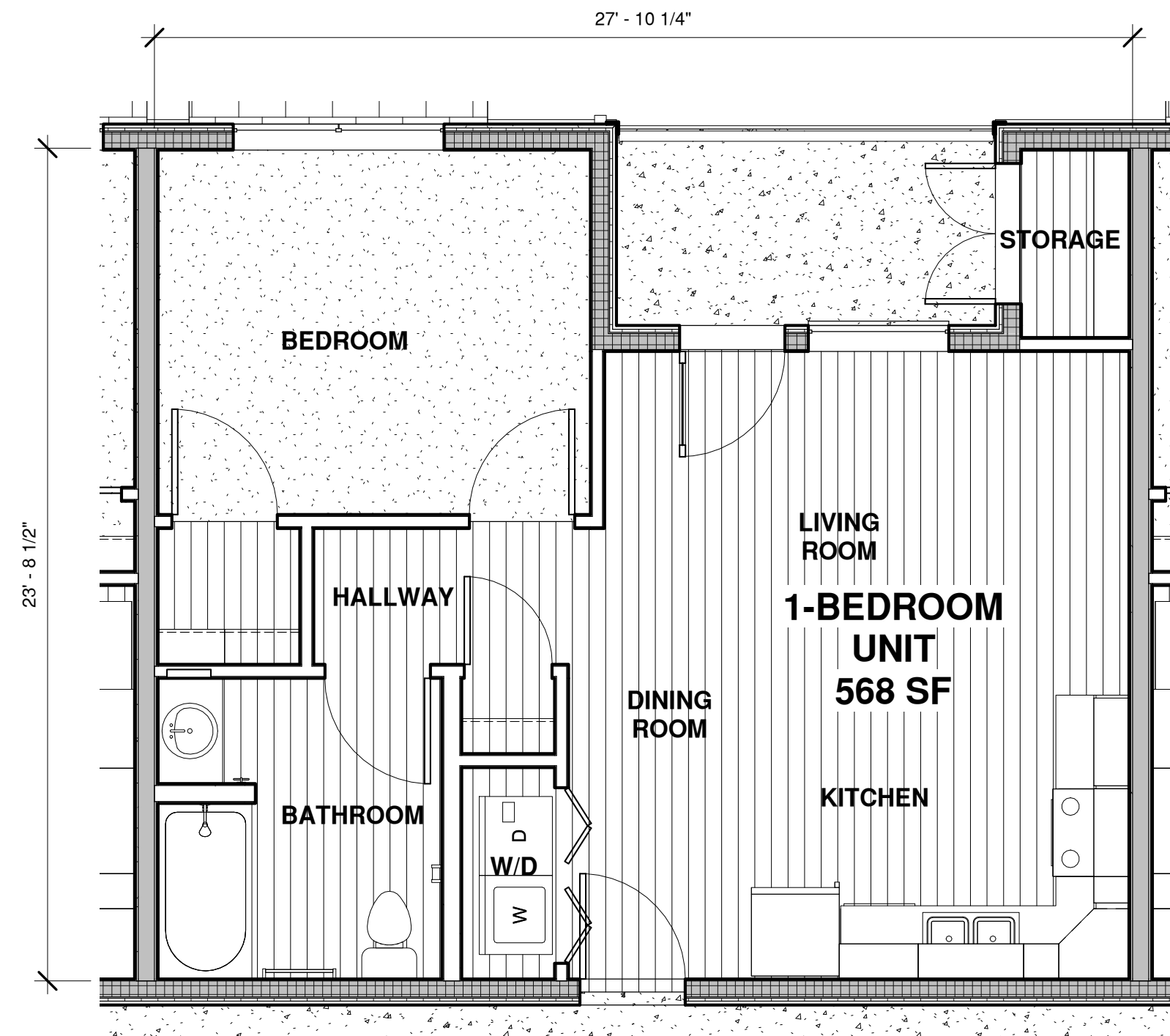
SCHMATIC SET / NOT FOR CONSTRUCTION



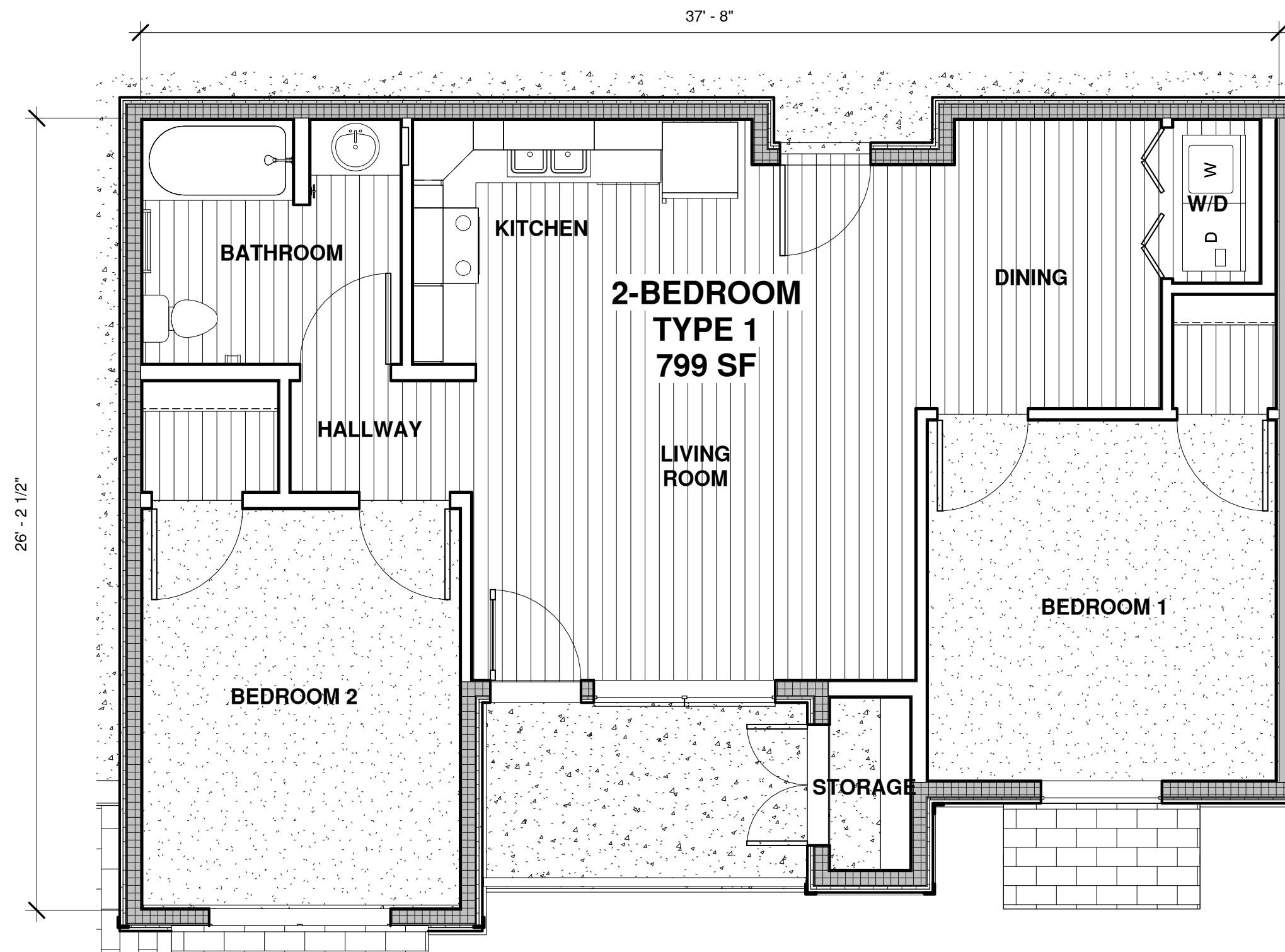
SITE PLAN
 SCALE: 1" = 40'-0"



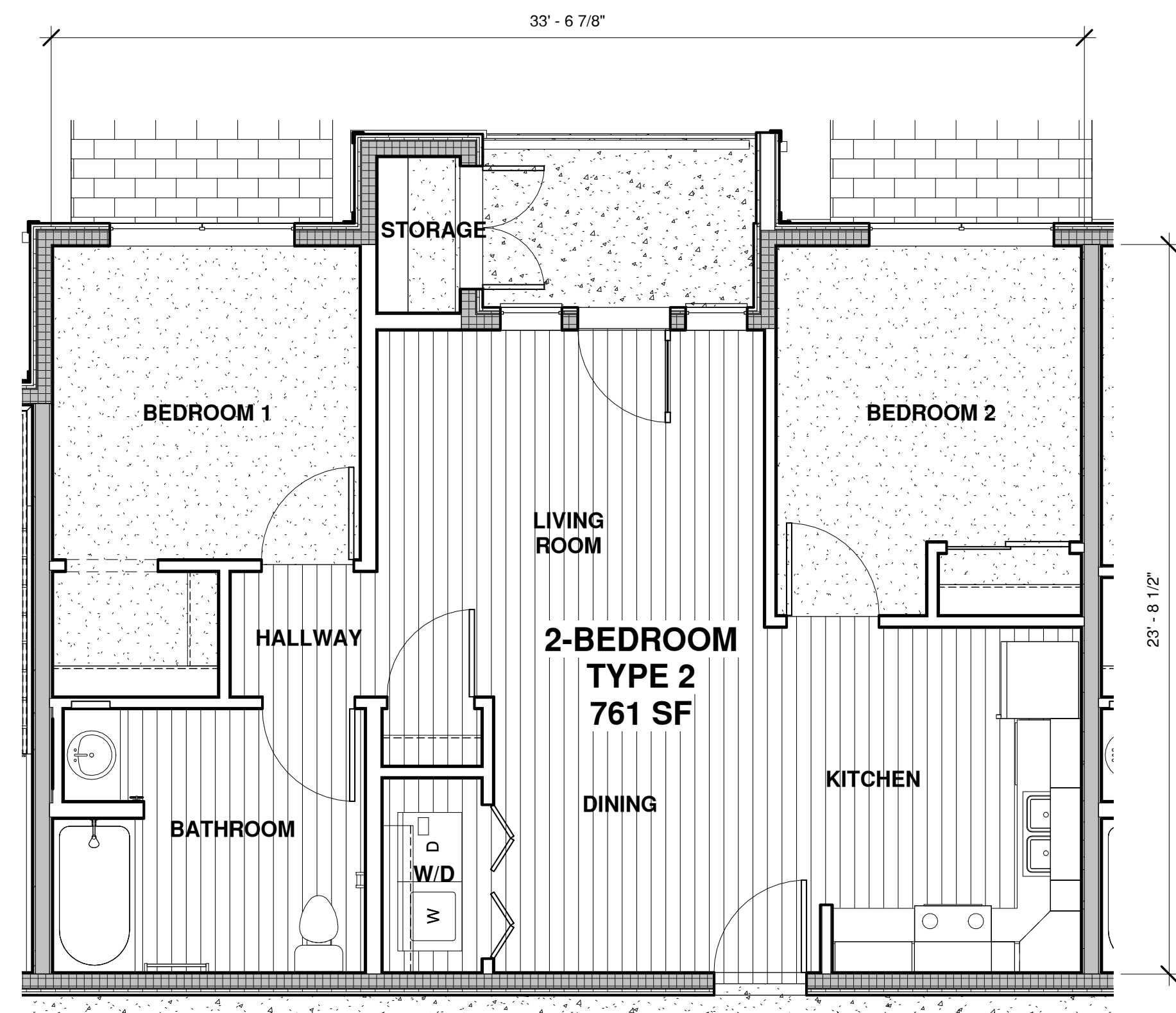




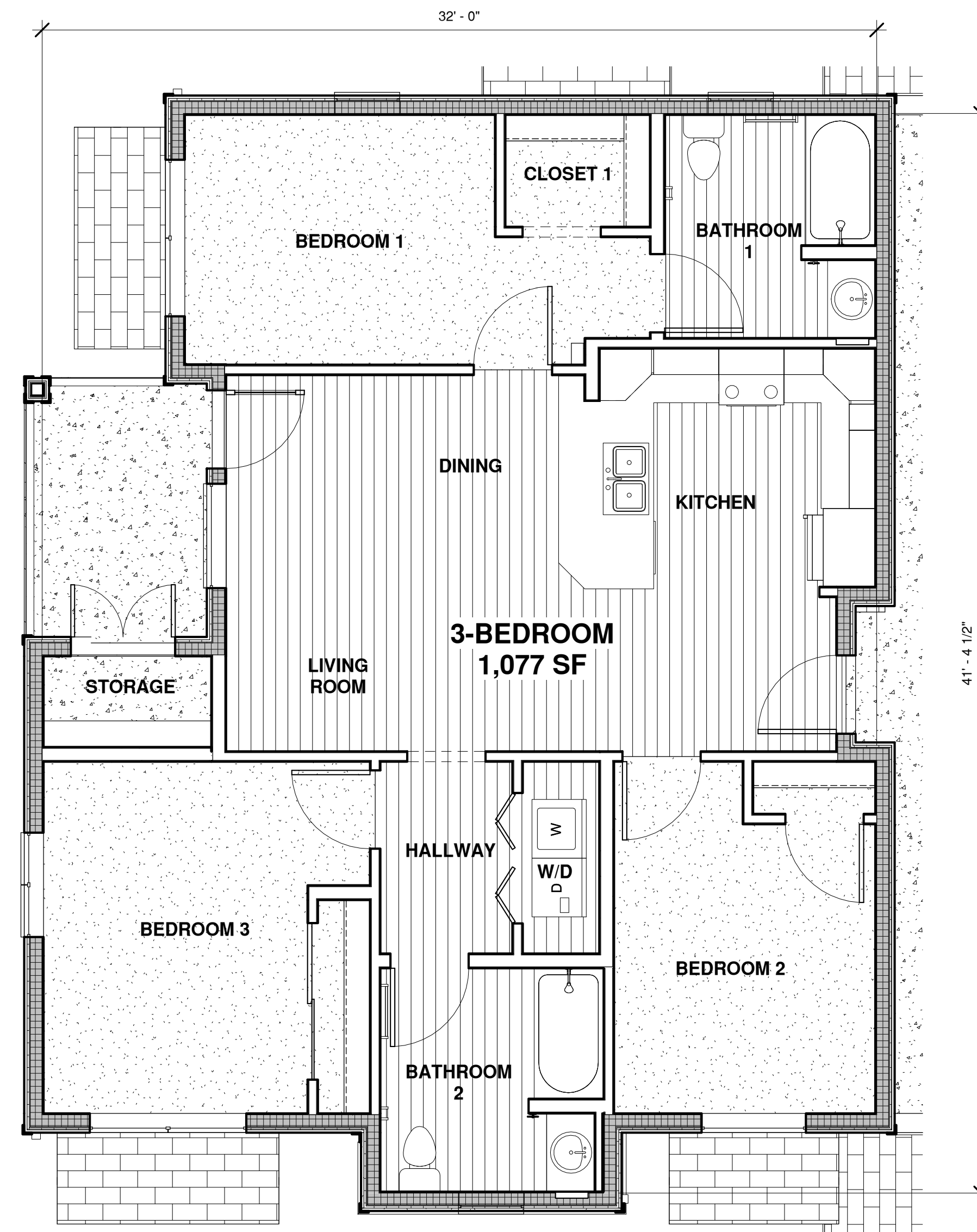
1 1-BEDROOM UNIT PLAN
1/4" = 1'-0"



2 2-BEDROOM TYPE 1 - UNIT PLAN
1/4" = 1'-0"



3 2-BEDROOM TYPE 2 - UNIT PLAN
1/4" = 1'-0"



4 3-BEDROOM UNIT PLAN
1/4" = 1'-0"

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PROJECT

DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA

_A2.1

UNIT PLANS

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1 1ST FLOOR PLAN - BLDG. TYPE A
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PROJECT

DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA

A4.1A

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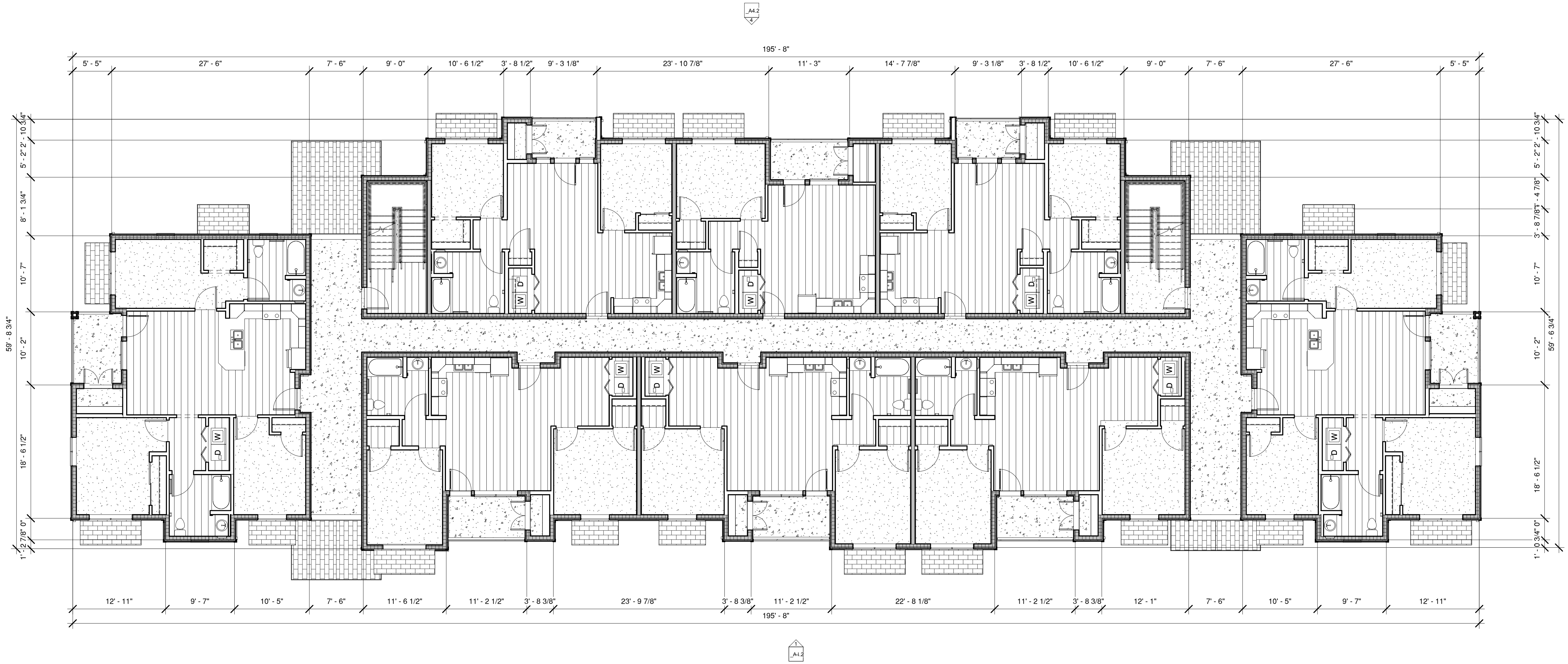
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DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA

A4.1B

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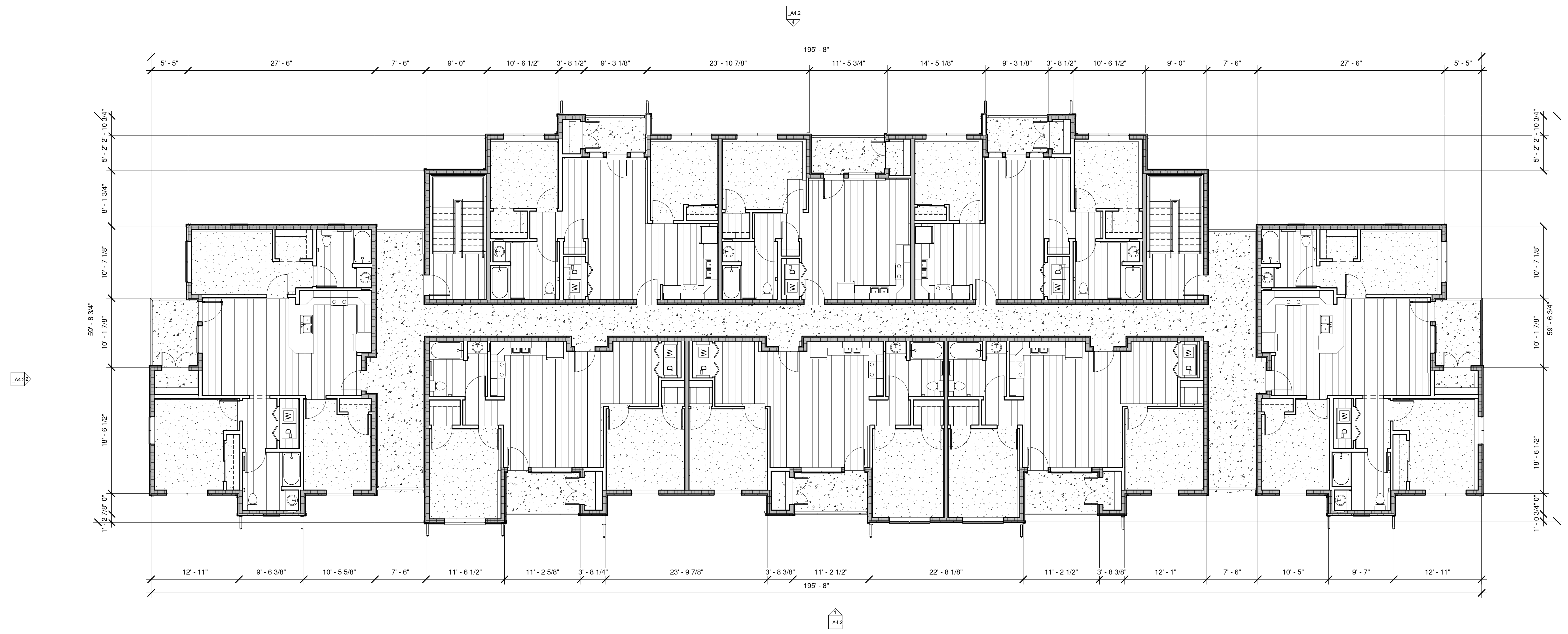
DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA

A4.1C

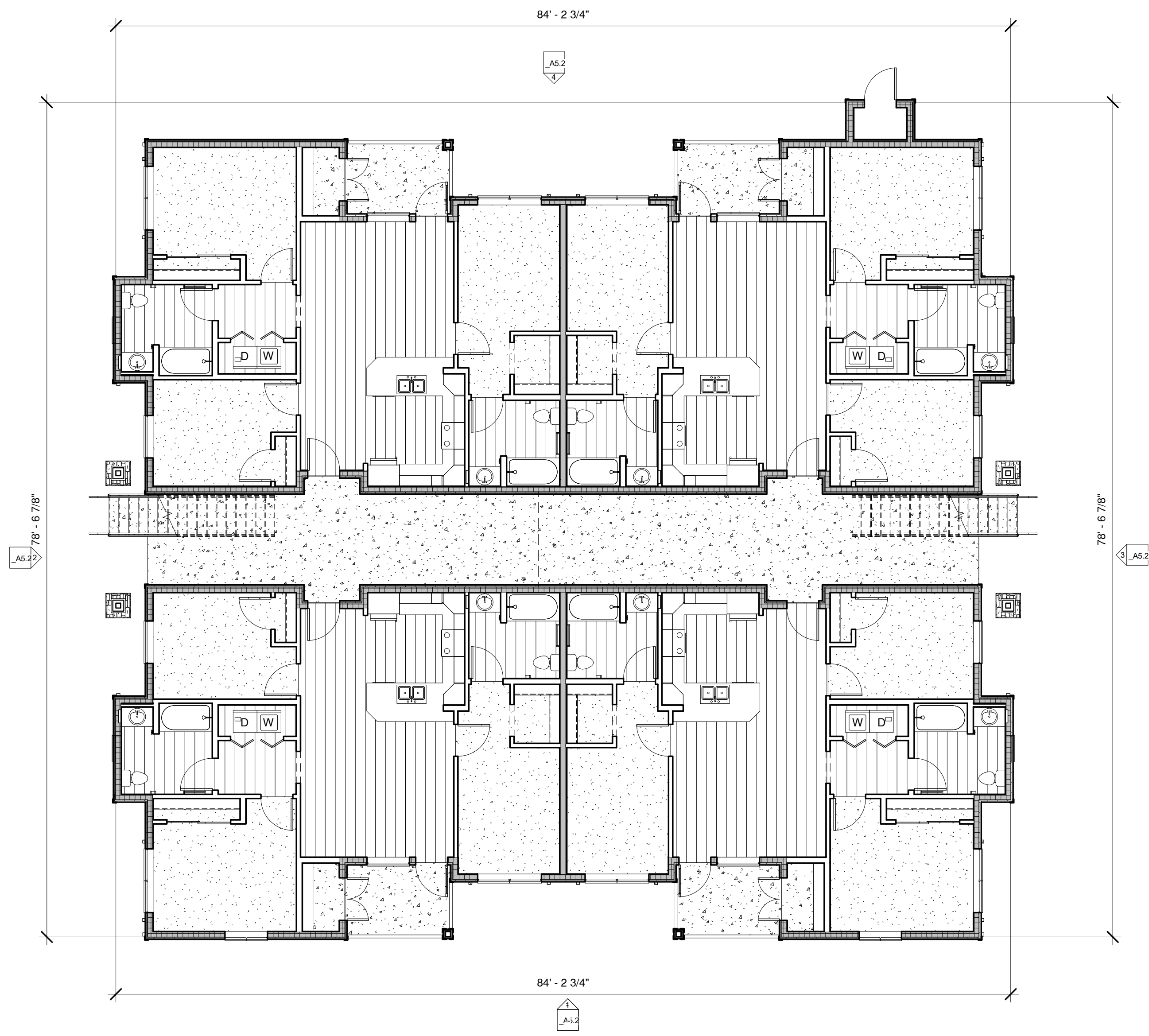
3RD FLOOR PLAN - BLDG. TYPE A

SCHEMATIC SET / NOT FOR CONSTRUCTION



① 3RD FLOOR PLAN - BLDG. TYPE A
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① 1ST FLOOR PLAN - BLDG. TYPE B
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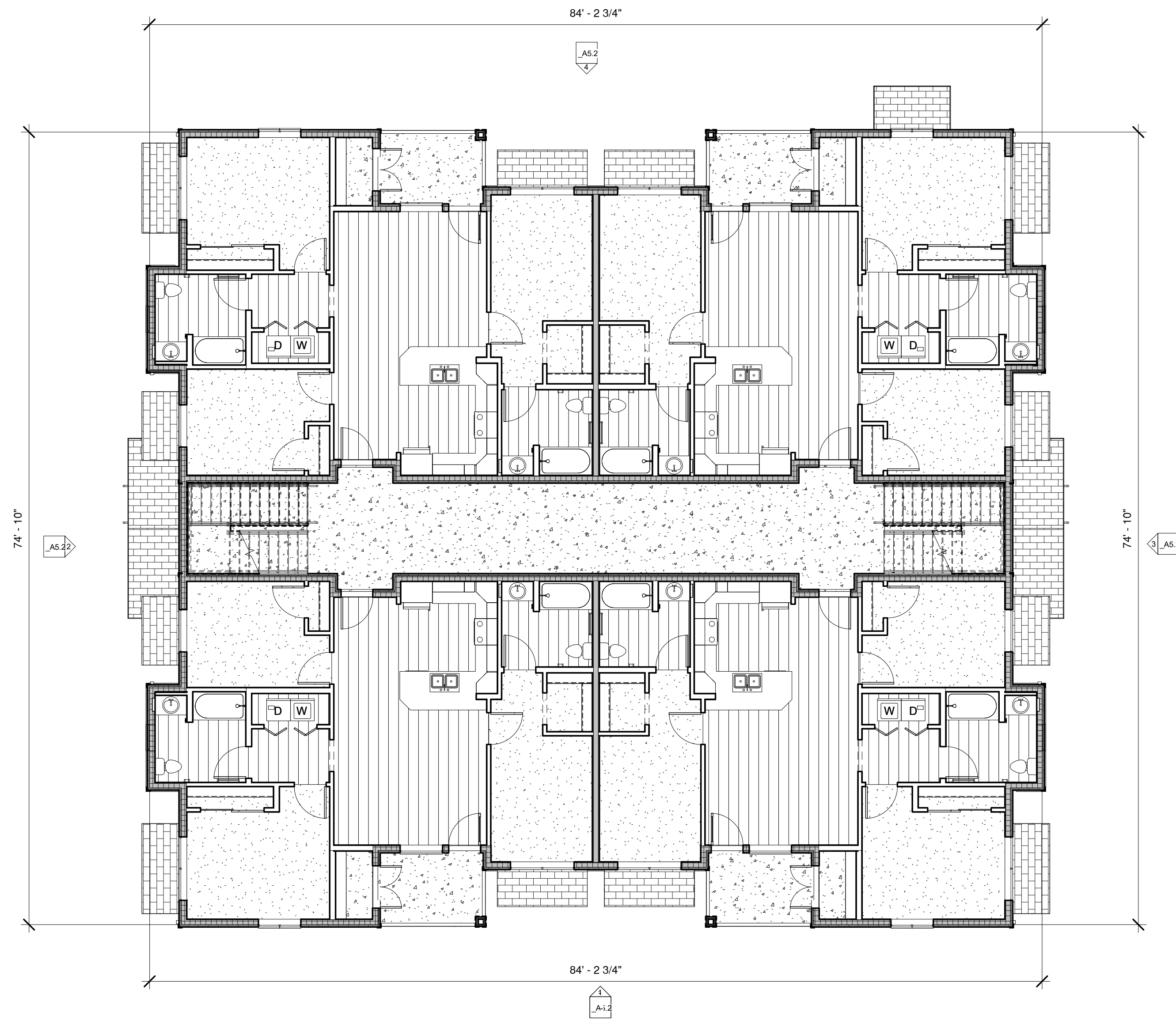
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PROJECT
DEER CREEK APARTMENTS
NATIVE OAK DRIVE
CHICO, CA

A5.1A
1ST FLOOR PLAN - BLDG. TYPE B

SCHEMATIC SET / NOT FOR CONSTRUCTION

① 2ND FLOOR PLAN - BLDG. TYPE B
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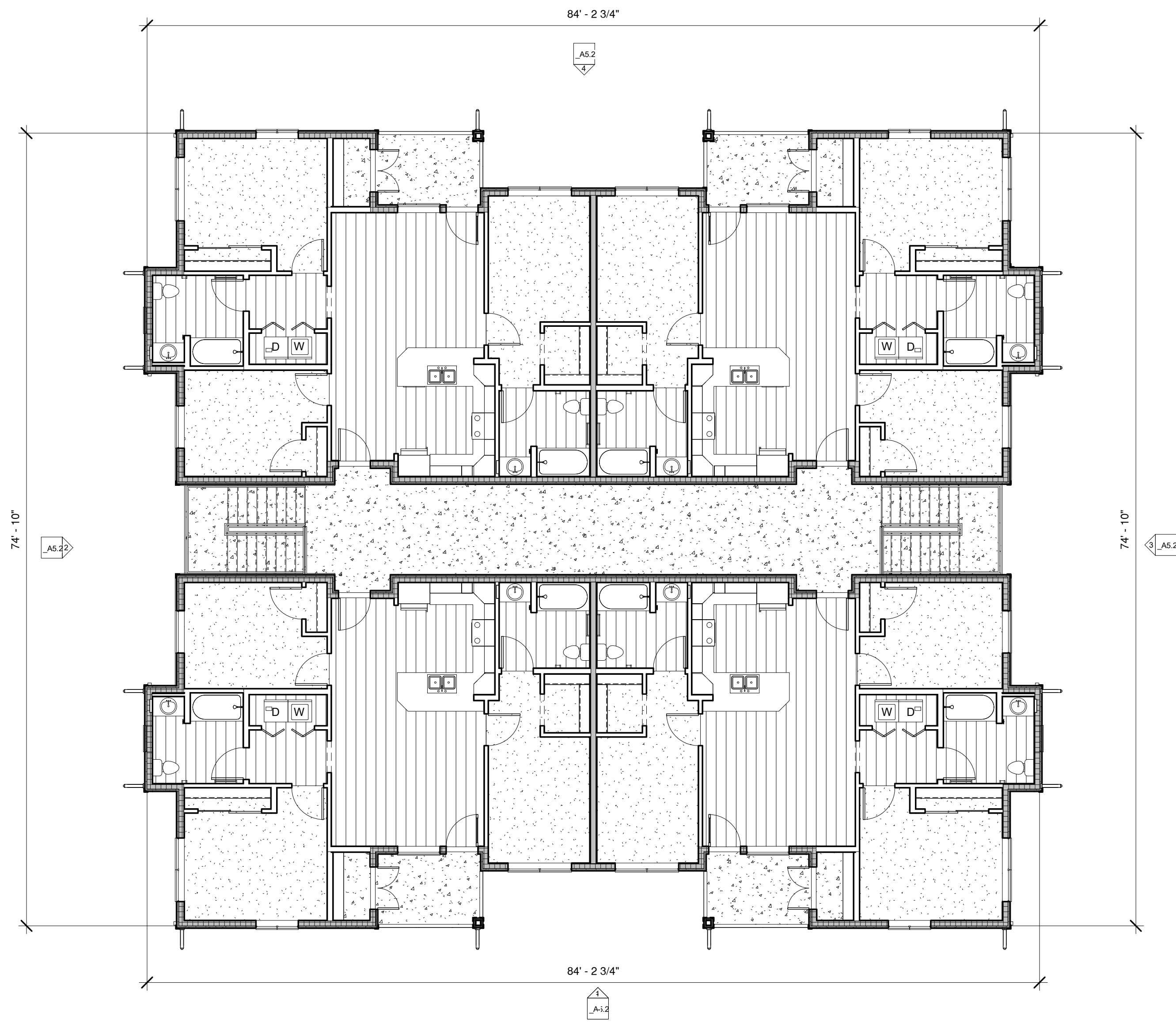
DEER CREEK APARTMENTS

NATIVE OAK DRIVE
CHICO, CA

A5.1B

2ND FLOOR PLAN - BLDG. TYPE B

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① 3RD FLOOR PLAN - BLDG. TYPE B
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PROJECT
DEER CREEK APARTMENTS
NATIVE OAK DRIVE
CHICO, CA

A5.1C
3RD FLOOR PLAN - BLDG. TYPE B

SCHEMATIC SET / NOT FOR CONSTRUCTION



SHADE CALCULATIONS

Shade Calculations: Lendco, Lava Ridge Apts, Native Oak Drive, Chico CA

Botanical Name	Common Name	Quantity	Shade allowed	at 25%	50%	75%	100%	Total
Acer freemanii 'Jeffers'	Red Maple	8	707	0	6	2	0	2,121.00
Pistacia chinensis 'Keith Davey'	Chinese Pistache	4	1,256	0	0	2	2	2,512.00
Quercus ilex	Holly Oak	17	1,256	0	17			10,676.00
Quercus lobata	Valley Oak	5	1,256	0	2	2	1	2,512.00
Quercus rubra	Red Oak	28	1,256	2	3	9	14	20,096.00
Quercus wislizenii	Interior Live Oak	9	1,256	0	9	0	0	5,652.00
Ulmus parvifolia	Chinese Evergreen Elm	15	1,256	0	8	7	0	11,618.00
Total Shade Allowed				98	3	46	25	66,649.00

parking lot area to be shaded **150,840.00**
 Less carport area **35,055.00**
 Shade Provided **66,649.00**
 % Shade Provided* **57.56%**

(*Parking lot area requiring 50% shade / divided by shade provided by new trees)

WATER USE CALCULATIONS

California Water Efficient Landscape Worksheet

Reference Evapotranspiration (E _t)	51.7	Project Type	RESIDENTIAL	0.55
Hydrozone # / Planting Description ^a	Plant Factor (PF)	Irrigation Method ^b	ETAF (PF/E)	Estimated Total Water Use (ETWU) ^d
Regular Landscape Areas				
LAWN	0.7	Overhead	0.75	0.93
SHRUB - M	0.5	Drip	0.81	0.62
SHRUB - L	0.3	Drip	0.81	0.37
TREE - M	0.8	Drip	0.81	0.62
NON-IRR	0	Drip	0.81	0.00
NON-VEG	0	Drip	0.81	0.00
Totals			227377	82149
			ETWU Total	2633207
			Maximum Allowed Water Allowance (MAWA) ^e	4008588
ETAF Calculations				
Regular Landscape Areas				
Total ETAF x Area	82149			
Total Area	227377			
Average ETAF	0.36			
All Landscape Areas				
Total ETAF x Area	82149			
Total Area	227377			
Average ETAF	0.36			

Average ETAF for Regular Landscape Areas must be 0.55 or below for residential areas, and 0.45 or below for non-residential areas.

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 08/31/20
 STATE OF CALIFORNIA

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CHICO, CA

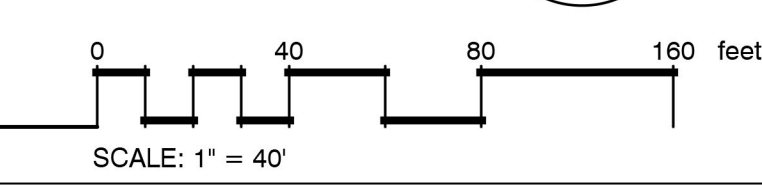


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 thphelps@sbcglobal.net

PROJECT
LAVA RIDGE APARTMENTS
 NATIVE OAK DRIVE
 CHICO, CA

LANDSCAPE PLAN



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PROJECT

DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA

A4.3A

COLOR / MATERIAL BOARD



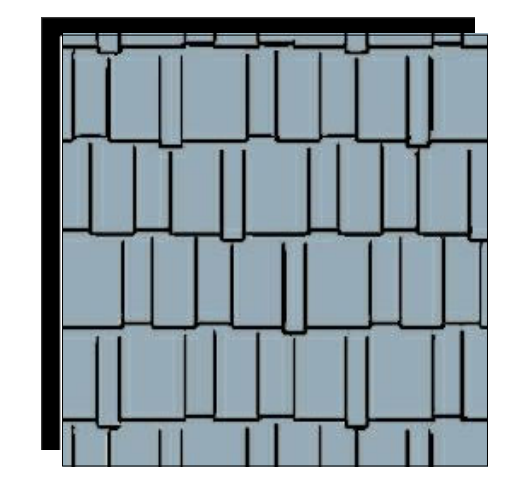
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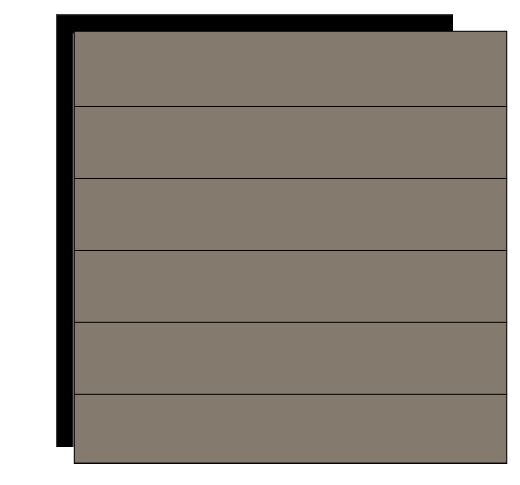
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A] LIMESTONE
BORAL BUCKS COUNTRY RANDOM
ASHLAR



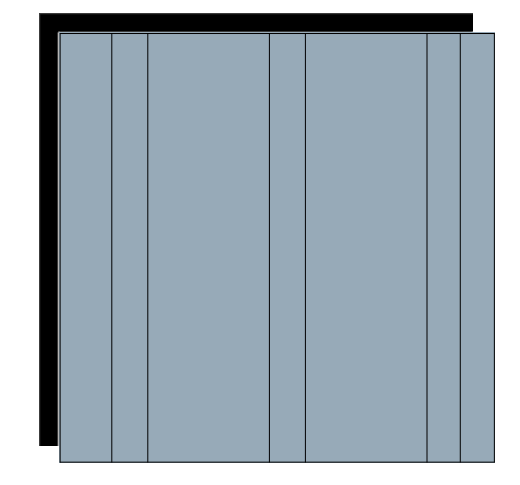
B] CEMENTITIOUS SHINGLE SHAKE SIDING
ALEUTIAN SW 6241



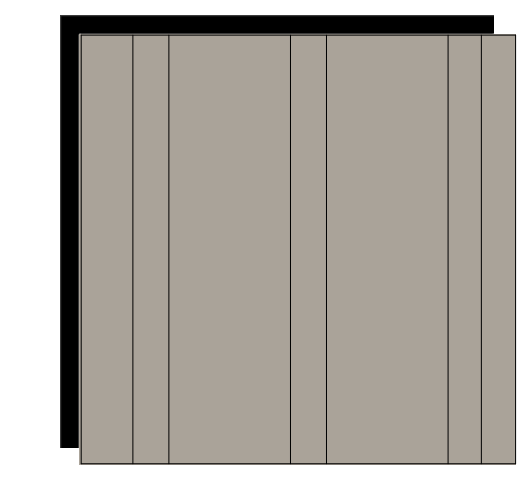
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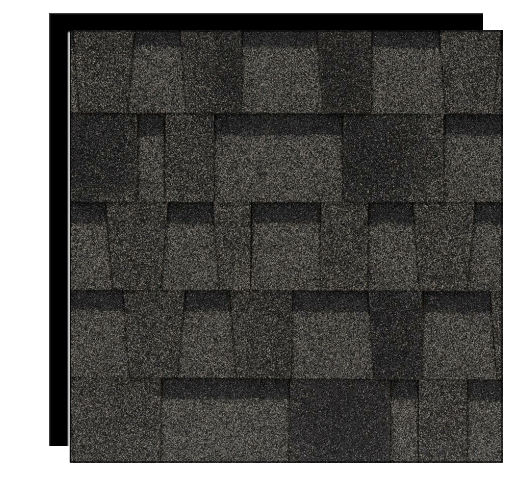
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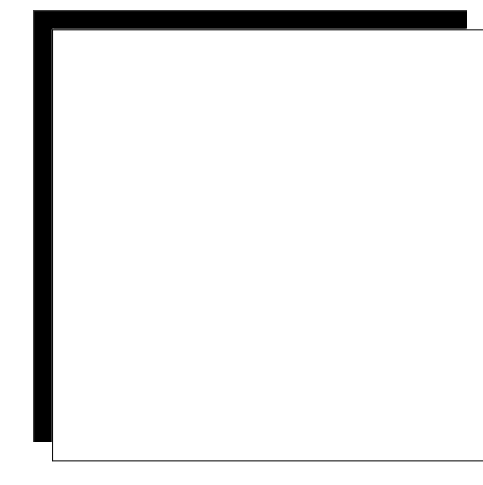
E] CEMENTITIOUS BOARD & BATTEN SIDING
ALEUTIAN SW 6241



F] CEMENTITIOUS BOARD & BATTEN SIDING
FUNCTIONAL GRAY SW 4024



G] 30 YEAR COMPOSITE SHINGLE
PABCO PEWTER GRAY



H] TRIM
WHITE

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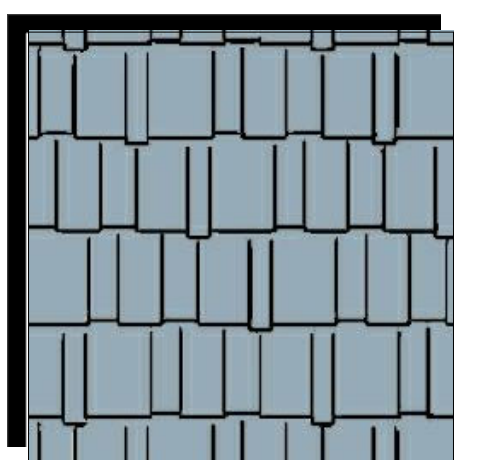
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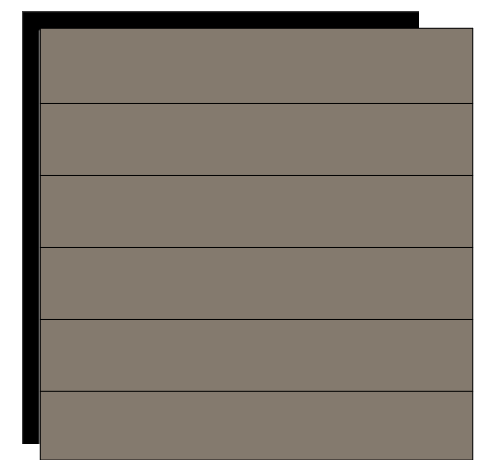
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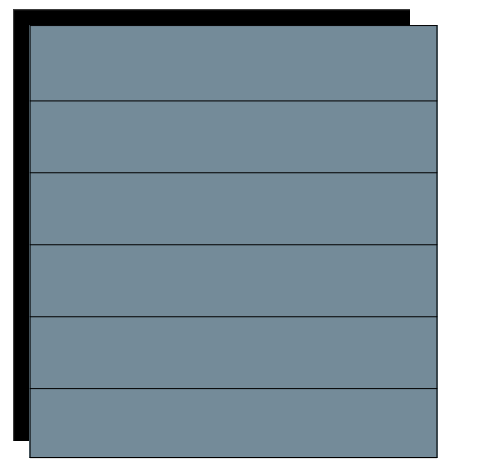
[A] LIMESTONE
BORAL-BUCKS COUNTRY RANDOM ASHLAR



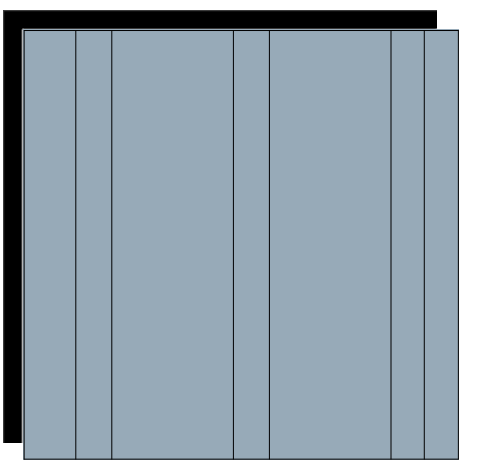
[B] CEMENTITIOUS SHINGLE SHAKE SIDING
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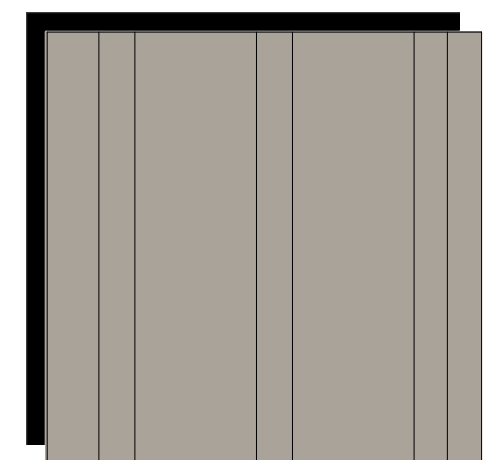
[C] CEMENTITIOUS 7" CLAPBOARD SIDING
BACKDROP SW 7025



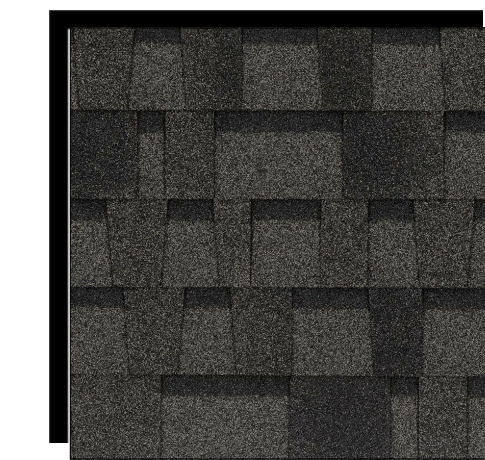
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BRACING BLUE SW 6242



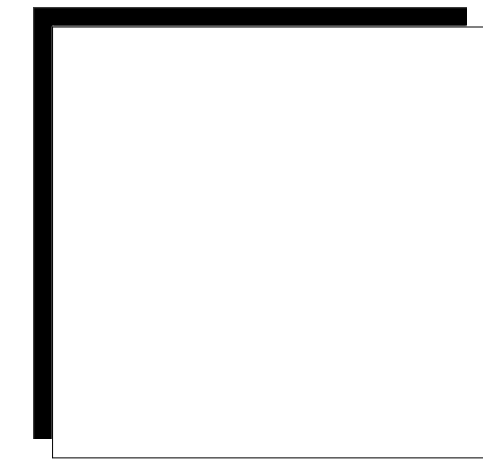
[E] CEMENTITIOUS BOARD & BATTEN SIDING
ALEUTIAN SW 6241



[F] CEMENTITIOUS BOARD & BATTEN SIDING
FUNCTIONAL GRAY SW 4024



[G] 30 YEAR COMPOSITE SHINGLE
PABCO PEWTER GRAY



[H] TRIM, FASCIA, HANDRAILS
WHITE

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PROJECT

DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA

_A4.3B

COLOR / MATERIAL BOARD

SCHEMATIC SET / NOT FOR CONSTRUCTION



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PROJECT
DEER CREEK APARTMENTS
NATIVE OAK DRIVE
CHICO, CA
SCHEMATIC SET / NOT FOR CONSTRUCTION

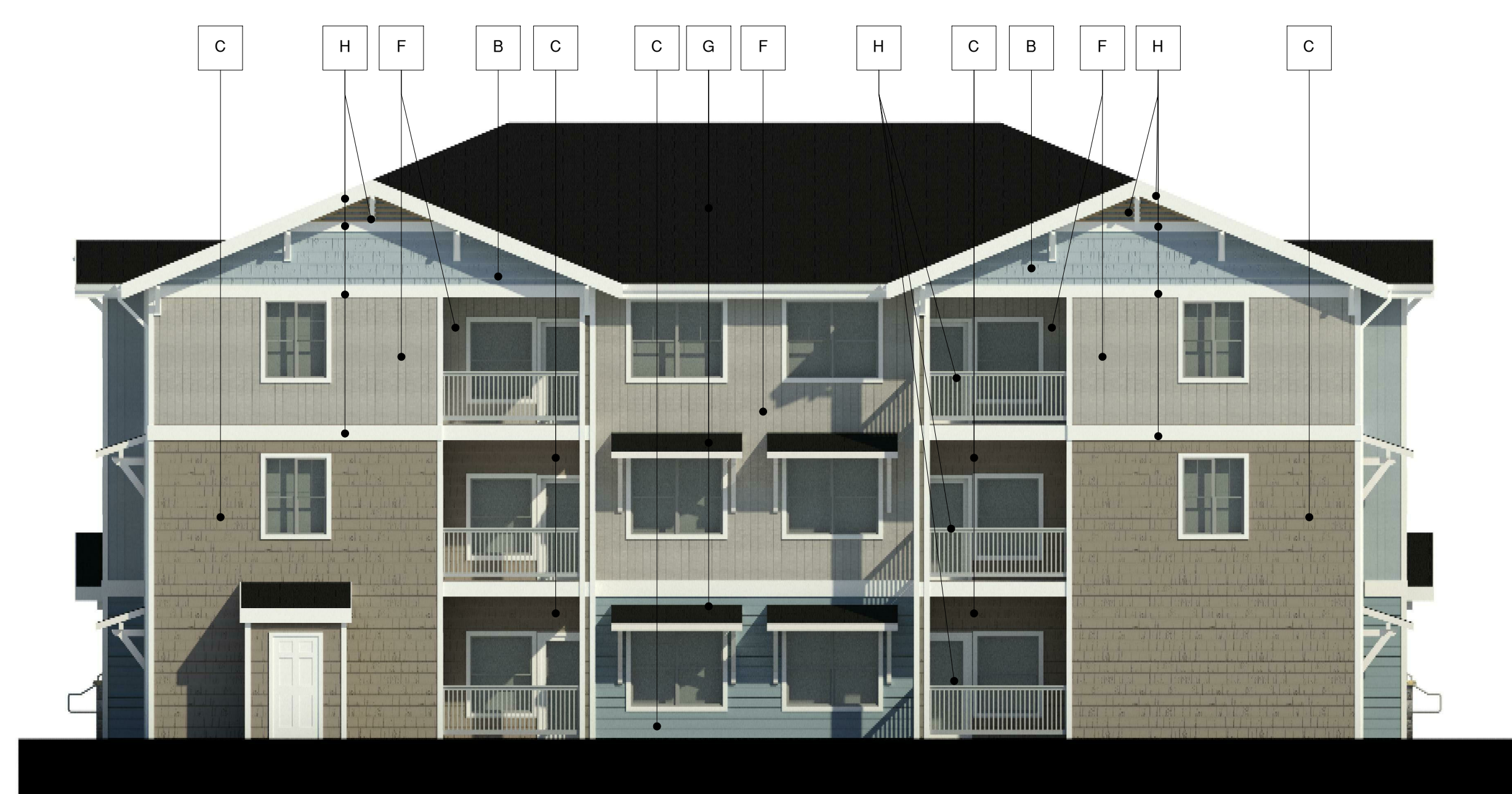
_A5.3
COLOR / MATERIAL BOARD



① FRONT ELEVATION - BLDG. TYPE B
N.T.S.



② LEFT ELEVATION - BLDG. TYPE B
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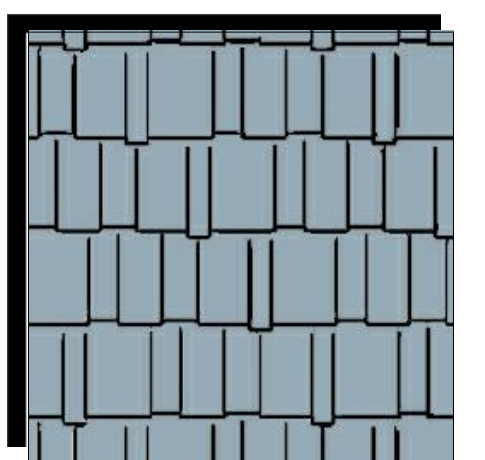
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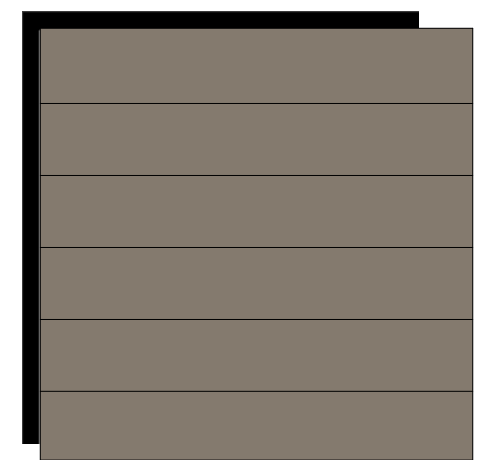
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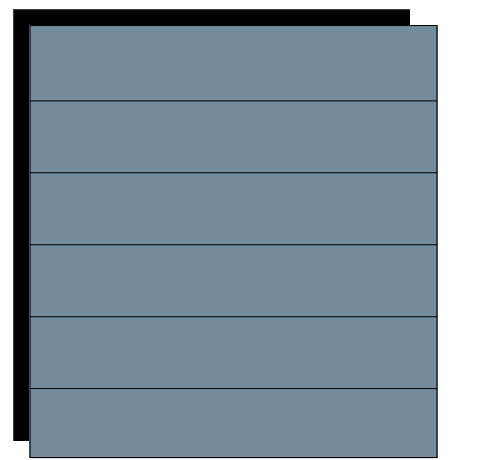
[A] LIMESTONE
BORAL-BUCKS COUNTRY RANDOM
ASHLAR



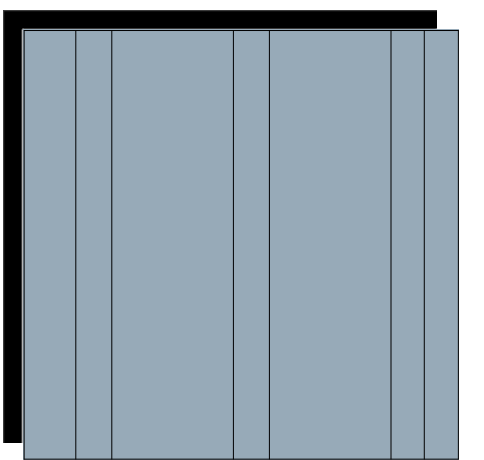
[B] CEMENTITIOUS SHINGLE SHAKE SIDING
ALEUTIAN SW 6241



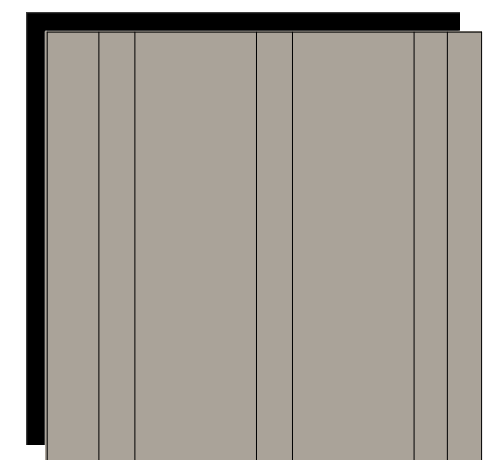
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BACKDROP SW 7025



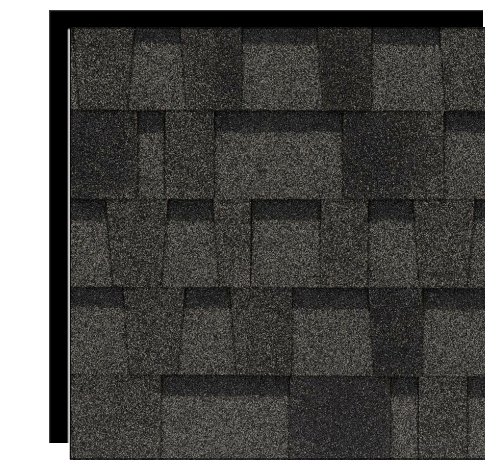
[D] CEMENTITIOUS 7" CLAPBOARD SIDING
BRACING BLUE SW 6242



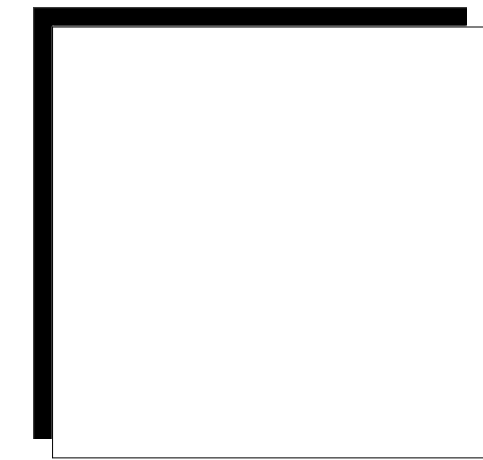
[E] CEMENTITIOUS BOARD & BATTEN SIDING
ALEUTIAN SW 6241



[F] CEMENTITIOUS BOARD & BATTEN SIDING
FUNCTIONAL GRAY SW 4024



[G] 30 YEAR COMPOSITE SHINGLE
PABCO PEWTER GRAY

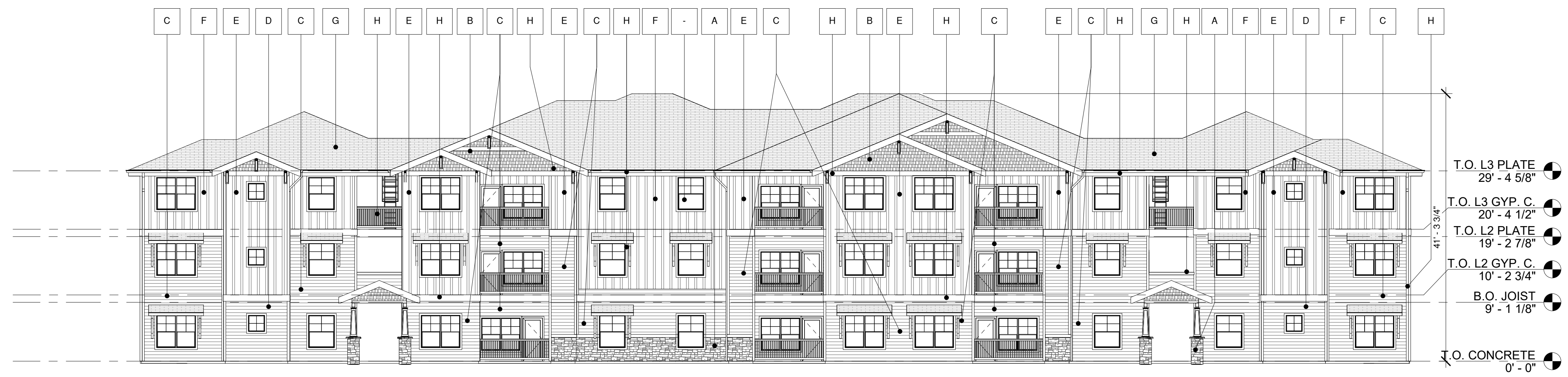


[H] TRIM, FASCIA, HANDRAILS
WHITE

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4/24/20

DRAWN BY
DE

PROJECT #
AMG20-9



1 FRONT ELEVATION - BLDG. TYPE A
3/32" = 1'-0"



2 LEFT ELEVATION - BLDG. TYPE A
3/32" = 1'-0"



3 RIGHT ELEVATION - BLDG. TYPE A
3/32" = 1'-0"

MATERIAL FINISHES : [Symbol]

- A. BORAL BUCKS COUNTRY RANDOM ASHLAR LIMESTONE
- B. CEMENTITIOUS SHINGLE SHAKE SIDING "ALUETIAN" SW 6241 SHERWIN WILLIAMS
- C. CEMENTITIOUS CLAPBOARD SIDING 7" "BACKDROP" SW 7025 SHERWIN WILLIAMS
- D. CEMENTITIOUS CLAPBOARD SIDING 7" "BRACING BLUE" SW 6242 SHERWIN WILLIAMS
- E. CEMENTITIOUS BOARD & BATTEN SIDING "ALUETIAN" SW 6241 SHERWIN WILLIAMS
- F. CEMENTITIOUS BOARD & BATTEN SIDING "FUNCTIONAL GRAY" SW 7024 SHERWIN WILLIAMS
- G. PABCO RADIANCE 30 YEAR COMPOSITE SHINGLE "COOL PEWTER GRAY"
- H. TRIM PAINTED WHITE



4 REAR ELEVATION - BLDG. TYPE A
3/32" = 1'-0"

Pacific West Architecture

430 E. STATE STREET, SUITE 100
 EAGLE, IDAHO 83616
 (208) 461-0022
 fax (208) 461-3267

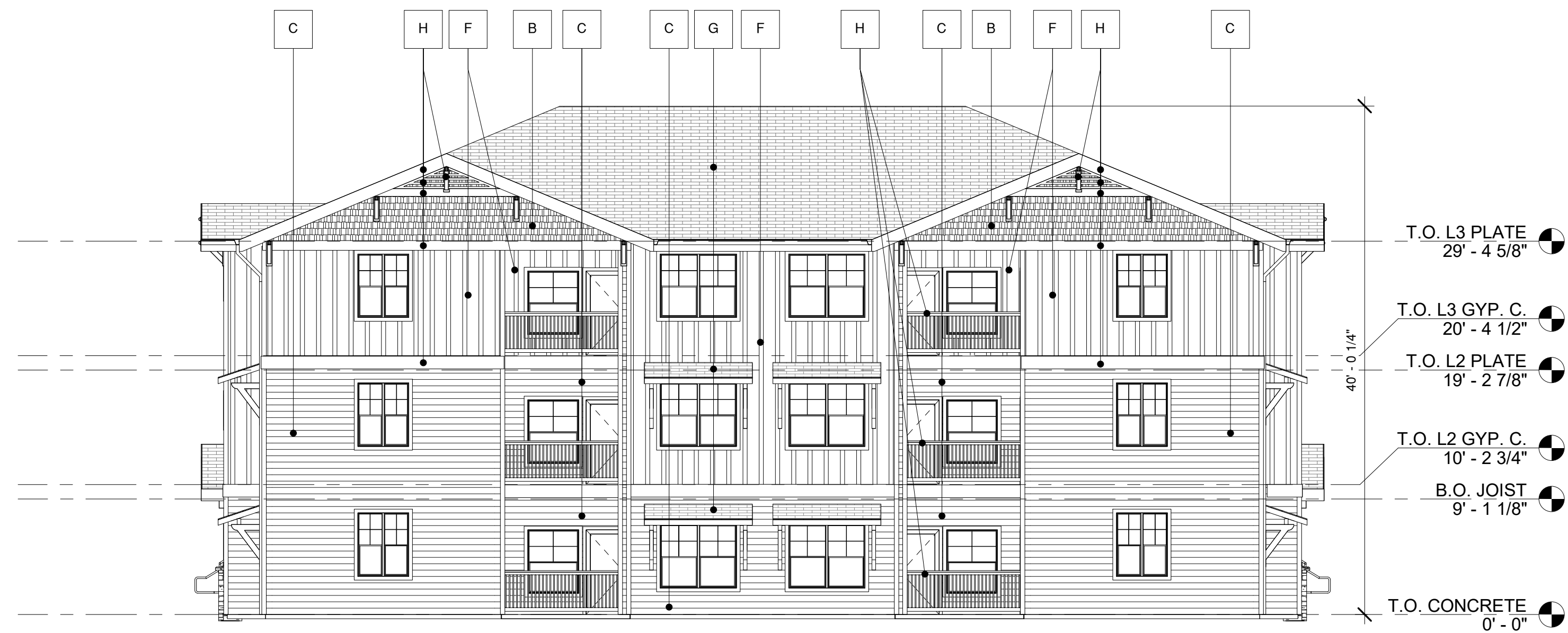
ALASKA - ARIZONA - CALIFORNIA - COLORADO - HAWAII - IDAHO - IOWA - KANSAS - KENTUCKY - LOUISIANA - MARYLAND - MASSACHUSETTS - MICHIGAN - MINNESOTA - MISSISSIPPI - MISSOURI - MONTANA - NEBRASKA - NEVADA - NEW JERSEY - NEW MEXICO - NEW YORK - NORTH CAROLINA - NORTH DAKOTA - OREGON - SOUTH DAKOTA - U.S.V.I. - UTAH - WASHINGTON - WYOMING

PROJECT

DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA
SCHEMATIC SET / NOT FOR CONSTRUCTION

_A4.2
 EXTERIOR ELEVATIONS - BLDG. TYPE A



1 FRONT ELEVATION - BLDG. TYPE B
1/8" = 1'-0"

MATERIAL FINISHES : [] - ●

A.	BORAL BUCKS COUNTRY RANDOM ASHLAR LIMESTONE
B.	CEMENTITIOUS SHINGLE SHAKE SIDING "ALUETIAN" SW 6241 SHERWIN WILLIAMS
C.	CEMENTITIOUS CLAPBOARD SIDING 7" "BACKDROP" SW 7025 SHERWIN WILLIAMS
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F.	CEMENTITIOUS BOARD & BATTEN SIDING "FUNCTIONAL GRAY" SW 7024 SHERWIN WILLIAMS
G.	PABCO RADIANCE 30 YEAR COMPOSITE SHINGLE "COOL PEWTER GRAY"
H.	TRIM PAINTED WHITE



2 LEFT ELEVATION - BLDG. TYPE B
1/8" = 1'-0"



3 RIGHT ELEVATION - BLDG. TYPE B
1/8" = 1'-0"



4 REAR ELEVATION - BLDG. TYPE B
1/8" = 1'-0"

REVISIONS

COPYRIGHT DATE
4/24/20

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DE

PROJECT #
AMG20-9

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PROJECT

DEER CREEK APARTMENTS

NATIVE OAK DRIVE CHICO, CA

A5.2

EXTERIOR ELEVATIONS - BLDG. TYPE B

SCHEMATIC SET / NOT FOR CONSTRUCTION

Dexter O'Connell

From: Cameron Johnson <cjohnson@amgland.com>
Sent: Tuesday, May 19, 2020 10:43 AM
To: Dexter O'Connell
Cc: Jacob Soroudi; drewe@tpchousing.com; pat@stromerrealty.com; thphelps@sbcglobal.net; Doug Gibson
Subject: Re: Incompleteness Letter -- AR 20-08 and PDP 20-01

ATTENTION: This message originated from outside **City of Chico**. Please exercise judgment before opening attachments, clicking on links, or replying.

Hi Dexter,

Per our call earlier, we accept conditions #1 and #2 in your letter. We are working towards providing you responses to planning comments 1-5 and 7 by this Friday. The visual simulation will be provided prior to the Architectural Review meeting on June 17th. We'll make sure my architect, engineer along with myself are available to call into the architectural review meeting at 4pm on the 17th and the planning commission meeting at 6pm on the 18th.

Thanks,

Cameron

On Tue, May 12, 2020 at 9:23 AM Dexter O'Connell <dexter.o'connell@chicoca.gov> wrote:

Folks,

Please see the attached letter and let me know if you have any issues with providing those things in the next couple of weeks, obviously the speedier the turnaround the better. All of the issues are minor and I think we're still on schedule for a June hearing.

Thanks,
Dexter

Dexter N. O'Connell

Associate Planner

(530) 879-6810





Agenda Report

Meeting Date 9/20/05

DATE: SEPTEMBER 12, 2005

File : S 99-12/PDP 02-01

TO: CITY COUNCIL

FROM: PATRICK MURPHY, SENIOR PLANNER (879-6803)
PLANNING DIVISION

KIM SEIDLER, PLANNING DIRECTOR (879-6801)
PLANNING DIVISION

RE: **VESTING TENTATIVE SUBDIVISION MAP S 99-12, PLANNED
DEVELOPMENT PERMIT 02-01, AND CONCEPTUAL MASTER PLAN FOR
OAK VALLEY (FOGARTY INVESTMENTS)**

RECOMMENDATION

The Planning Director recommends that the Council (1) adopt the resolution certifying the Final EIR and adopting statements of overriding considerations and a mitigation monitoring program for the Project and (2) adopt the appropriate resolution approving the Project based upon final Council action. Staff's recommendation on the Project remains the same as set forth in the September 6, 2005 staff report.

SUMMARY

At its September 6, 2005 meeting, the City Council voted (4 in favor, 3 in opposition) to schedule a supplemental public hearing on the Project to consider additional evidence regarding a proposed removal of the additional 80 residential units from the easternmost portion of the site (Lot Q) and a transfer of those units to other locations on the site. Public input at the hearing will be limited to that issue.

Staff has provided the Council with two resolutions for the Project. The first resolution (**Attachment A**) certifies the Final EIR and adopts statements of overriding considerations and the mitigation monitoring program for the Project. The second resolution (**Attachments B**) approves the Project based upon the Council's original motion of intent made at its May 17, 2005 meeting. These are the same resolutions considered by the Council at its meeting of September 6, 2005.

Attachment C consists of substitute pages for the Project resolution (**Attachment B**) to be used if the Council approves the Project based upon the transfer of all residential units from Lot Q to other locations on the site. Under this scenario, Lot Q could be merged with Lot P and a "no development zone" could be established for the easternmost 80 acres of this merged parcel. Condition of Approval #2 in **Attachment C** reflects this action.

The environmental effects of either of the scenarios set forth in the Project resolution and the substitute pages has been analyzed as part of the EIR for the Project. As discussed in the September 6, 2005 staff report, staff is recommending that the Council revise Condition #33 to eliminate the requirement to construct a separated Class I bike path along the Humboldt Road corridor and instead require that the roadway accommodate a Class II bike lane alongside both travel lanes. Both versions of the Project resolution provided reflect this change to the design

of Humboldt Road.

BACKGROUND

Actions Taken at the May 17, 2005 and September 6, 2005 Council Meetings

At its May 17, 2005 meeting, the City Council conducted a public hearing and approved a motion of intent (6 in favor, 1 in opposition) to deny the appeals and uphold the decision of the Planning Commission to (a) certify the Final EIR, adopt a statement of overriding considerations, and adopt the mitigation monitoring program for the project; and (b) approve the vesting tentative subdivision map, planned development permit, and conceptual master plan for the project, as amended. In upholding the Planning Commission's decision, the Council also amended certain conditions of approval adopted by the Planning Commission for the Project, which included reducing the number of R-1 units on the easternmost portion of the site (Lot Q) from a maximum of 160 units to no more than 80 units.

At its September 6, 2005 meeting, the City Council voted to schedule a supplemental public hearing to consider additional evidence regarding a proposed removal of the additional 80 residential units from Lot Q and a transfer of those units to other locations on the site. At the Council's direction, public input at the hearing on September 20, 2005, will be limited to that issue.

DISCUSSION

Project Density

The Council's action on September 6, 2005 allows for the consideration of new evidence at the supplemental hearing as it relates to the possible transfer of additional densities on Lot Q to other locations on the site. The Council also requested that staff provide additional information about possible locations on the site to accommodate the possible transfer of densities from Lot Q. The table below provides a breakdown of the Conceptual Master Plan's (CMP) assumed density on a lot-by-lot basis, as well as a brief summary of the known development constraints associated with each lot. **Attachment D** is a site plan of the CMP which identifies the location of each lot and also provides a comparison of the different densities and design approaches of other built projects in the general vicinity of the Project site (i.e., *Lake Vista Phase I*, *Yosemite Terrace*, *The Retreat at Canyon Oaks*, and *Sierra Sunrise Apartments*). While the table below sets forth "approximate" numbers of units for each lot, the actual number of units for each of the above lots would be dictated by the specific development constraints to be determined at the time each future subdivision map is prepared. As part of the planned development permit for the Project, lots sizes and residential setbacks may be reduced and/or clustered and street sections can be narrowed to minimize the amount of grading.

S 99-12 / PDP 02-01 (OAK VALLEY)

9/20/05

Page 3 of 9

Oak Valley Conceptual Master Plan Assumed Densities and Development Constraints by Lot					
OAK VALLEY CONCEPTUAL MASTER PLAN	Zoning (allowable dwelling units per acre)	Net Acreage	Assumed # of Units and Distribution of Units under the Conceptual Master Plan	Assumed # of Units Per Net Acre in CMP	Known Development Constraints of Parcel
LOTS 1-126 (43-Acre Phase I)	R2 (4.01-14 du/ac.)	34.9 ac.	85 small lot, single-family 78 duplex <u>132 apartments</u> 295 total units	8.5 du/ac.	Highway 32 setback; 100' setback from Dead Horse Slough; power transmission line corridor through site
LOT A	CC	10.7 ac.	109,000 s.f. retail commercial space	0	100' setback for Dead Horse Slough along south end of lot.
LOT B	R3 (14.01-22 du/ac.)	12.3 ac.	Approx. 203 (with 40 additional units per Council motion on 5/17/05 = 243 units¹) (with 40 additional units per Council discussion on 9/06/05= 283 units²)	16.5 du/ac. (with 40 additional units per Council motion on 5/17/05 = 19.7 du/ac.) (with 40 additional units per Council discussion on 9/06/05= 23 du/ac.)	Highway 32 setback; remediated soils on southern 1/4 of lot. ³

¹ Pursuant to the Council's 5/17/05 motion of intent, 80 units would be transferred from Lot Q to the west. Staff has distributed these units to the two R3 lots in the above table (40 units to Lot B and 40 units to Lot E).

² Pursuant to the Council's discussion on 9/06/05, 80 additional units would be transferred from Lot Q to the west. Staff has distributed these unit to the two R3 lots in the above table (40 units to Lot B and 40 units to Lot E.)

³ Pursuant to condition of approval #39, no residential buildings, either single-family or multi-family, may be sited directly on remediated land that is inside or outside of the DTSC fenced area, as depicted on the vesting tentative subdivision map dated-stamped 4/11/05 by the Planning Division.

S 99-12 / PDP 02-01 (OAK VALLEY)

9/20/05

Page 4 of 9

Oak Valley Conceptual Master Plan Assumed Densities and Development Constraints by Lot					
OAK VALLEY CONCEPTUAL MASTER PLAN	Zoning (allowable dwelling units per acre)	Net Acreage	Assumed # of Units and Distribution of Units under the Conceptual Master Plan	Assumed # of Units Per Net Acre in CMP	Known Development Constraints of Parcel
LOT C	Open Space	6.8 ac.	0	0	Containment cell for soil remediation project and 100' setback from Dead Horse Slough
LOT D	R2 (4.01-14 du/ac.)	1.9 ac.	Approx. 19	10 du/ac.	Reqd. buffer for Humboldt Rd. along south end.
LOT E	R3 (14.01-22 du/ac.)	13.5 ac.	Approx. 222 (with 40 additional units per Council motion on 5/17/05 = 262 units) (with 40 additional units per Council discussion on 9/06/05= 302 units⁴)	16.5 (with 40 additional units per Council motion on 5/17/05 = 19.4 du/ac.) (with 40 additional units per Council discussion on 9/06/05= 22 du/ac.)	Approx. western ½ of lot contains remediated soils (see Footnote 1 below); 100' setback from Dead Horse Slough along northern 1/4 of lot; reqd. buffer for Humboldt Rd. along south end.
LOT F	CN	2.9 ac.	10,000 s.f. neighborhood commercial retail space	0	Power transmission line along eastern end; reqd. buffer for Humboldt Rd. along south end.
LOT G (to be combined with Lot H)	R2 (4.01-14 du/ac.)	8.8 ac.	Approx. 88	10 du/ac.	100' setback from Dead Horse Slough across northern 1/3 of site; power transmission lines at west end; remediated soils on western ½ of site (see Footnote 1 on page 1).

⁴ Pursuant to the Council's discussion on 9/06/05, 80 additional units would be transferred from Lot Q to the west. Staff has distributed these unit to the two R3 lots in the above table (40 units to Lot B and 40 units to Lot E.)

S 99-12 / PDP 02-01 (OAK VALLEY)

9/20/05

Page 5 of 9

Oak Valley Conceptual Master Plan Assumed Densities and Development Constraints by Lot					
OAK VALLEY CONCEPTUAL MASTER PLAN	Zoning (allowable dwelling units per acre)	Net Acreage	Assumed # of Units and Distribution of Units under the Conceptual Master Plan	Assumed # of Units Per Net Acre in CMP	Known Development Constraints of Parcel
LOT H (to be combined with Lot G)	R2 (4.01-14 du/ac.)	3.5 ac.	Approx. 35	10 du/ac.	Oak woodland corridor along northern 1/3 of lot; reqd. buffer for Humboldt Rd. along south end.
LOT I (to be combined with Lots J & M)	R1 (2.01-6 du/ac.)	9.7 ac.	Approx. 32	3.3 du/ac.	Oak woodland corridor and moderate to steep slopes (10-20%) along north end; reqd. buffer for Humboldt Rd. at south end
LOT J (to be combined with Lots I & M)	R1 (2.01-6 du/ac.)	17.0 ac.	Approx. 56	3.3 du/ac.	100' setback from Dead Horse Slough and moderate to steep slopes along northern 1/4 of lot; oak woodland corridor borders southern end of lot
LOT K	R1 (2.01-6 du/ac.)	12.6 ac.	Approx. 16	3.3 du/ac.	100' setback from Dead Horse Slough along southern 1/4 of lot; Highway 32 setback along north end; oak woodlands at west and east ends of lot.
LOT L	R1 (2.01-6 du/ac.)	13.1 ac.	Approx. 43	3.3 du/ac.	100' setback from Dead Horse Slough along southern 1/4 of lot; Highway 32 setback along north end; oak woodlands interspersed throughout middle of lot; moderate to steep slopes across middle of lot.

S 99-12 / PDP 02-01 (OAK VALLEY)

9/20/05

Page 6 of 9

Oak Valley Conceptual Master Plan Assumed Densities and Development Constraints by Lot					
OAK VALLEY CONCEPTUAL MASTER PLAN	Zoning (allowable dwelling units per acre)	Net Acreage	Assumed # of Units and Distribution of Units under the Conceptual Master Plan	Assumed # of Units Per Net Acre in CMP	Known Development Constraints of Parcel
LOT M (to be combined with Lots I & J)	R1 (2.01-6 du/ac.)	4.3 ac.	Approx. 14	3.3 du/ac.	Oak woodland corridor and moderate to steep slopes along northern 1/3 of lot; reqd. buffer for Humboldt Rd. along south end.
LOT P	R1 (2.01-6 du/ac.)	55.8 ac.	Approx. 184	3.3 du/ac.	100' setback from Dead Horse Slough in middle of lot; Highway 32 setback along north end; reqd. buffer for Humboldt Rd. along south end; dense oak woodlands interspersed throughout entire lot; moderate to steep slopes across southern 1/2 of lot.
LOT Q	RS-20 (0.2-2 du/ac.)	62.2 ac.	80 (minimum) *80 units previously transferred to west (see Footnote 1 on page 1.	1.3 du/ac.	100' setback from Dead Horse Slough in middle; Highway 32 setback along north end; reqd. for Humboldt Rd. along south end; dense oak woodlands interspersed throughout parcel; moderate to very steep slopes across lot except for northern 1/4 and southern 1/4 of lot.

Discussion: One of the key development concepts set forth in the Conceptual Master Plan (CMP), and as described in the *Oak Valley Project Foothill Design Guidelines*, is to locate residential dwelling units in the most appropriate locations of the site. While the above table sets forth “approximate” numbers of units for each lot, the actual number of units for each of the above lots would be dictated by development constraints to be determined at the time each future subdivision map is prepared. As part of the planned development permit for the Project, lot sizes and residential setbacks may be reduced and/or clustered and street sections can be narrowed to minimize the amount of grading. In addition to the need to comply with required setbacks from Highway 32, Dead Horse Slough, and Humboldt Road, Lots I-P (all zoned R1) also contain areas of steep slopes and oak woodlands. The above “net density” figures represent the subtraction of the acreage for the required setbacks from SHR-32 and Dead Horse Slough as potential development areas; however, they do not account for oak woodlands, steep slopes, and the required setback/buffer zone along Humboldt Road that exist on the various lots. A copy of the Project slope map is included as Attachment H to the 5/17/05 City Council staff report). Therefore, while the overall density of 3.3 dwelling units per acre for the R1 lots (Lots I-P) is at the lower end of the R1 density range (up to 6 du/ac. allowed), when these other site constraints are factored in to determine the actual net developable acreage, the amount of available land to accommodate such additional densities is severely limited. As such, any additional densities that might be shifted from Lot Q would likely need to be accommodated within the R2 or R3 lots.

S 99-12 / PDP 02-01 (OAK VALLEY)

9/20/05

Page 7 of 9

As shown in the above table, the assumed densities for the R2 and R3 lots are already at the high end of the density range and some of these lots have their own development constraints. Specifically, in addition to required setbacks from Highway 32, Dead Horse Slough, and Humboldt Road, approximately one-half of Lot E (zoned R3) and one-half of Lot G (zoned R2) contain remediated soils, which limits the available land for residential structures. As such, it is anticipated that structures on these parcels may need to be constructed to their maximum height (35 feet in R2 and 45 feet in R3) to achieve the assumed densities. Trying to accommodate residential densities at the high end of the allowable density range for any development poses a number of design challenges, namely to balance the number of dwelling units with the need to provide the number of required parking spaces, ornamental landscaping, and adequate useable open space. For that reason, development at the high end of the density range typically requires that the residential structures be constructed at or near the maximum building height for the zoning district.

A summary of the R2 and R3 zoning district development regulations is provided below:

R2 Zoning District Regulations: 4.01 to 14 units per acre is allowed. Maximum building height is 35 feet, which can accommodate three-story structures. The maximum site coverage allowed is 60 percent⁵.

R3 Zoning District Regulations: 14.01 to 22 units per acre is allowed. Maximum building height is 45 feet, which can accommodate four-story structures. The maximum site coverage allowed is 65 percent.

⁵ Title 19 defines "site coverage" as the maximum percentage of the site area that may be occupied by structures, but not including unenclosed front porches and pavement coverage (sidewalks, driveways, parking areas, or other unroofed paved areas or uncovered decks).

As shown in the above table and **Attachment D**, there are numerous site constraints associated with many of the lots. In addition to the need to comply with required setbacks from Highway 32, Dead Horse Slough, and Humboldt Road, Lots I-P (all zoned R1) also contain areas of steep slopes and oak woodlands. The locations of the oak woodlands are depicted on **Attachment D**, while a copy of the Project slope map is included as **Attachment E**. The “net density” figures provided in the above table represent the subtraction of the acreage for the required setbacks from SHR-32 and Dead Horse Slough as potential development areas; however, they do not account for oak woodlands, steep slopes, and the required setback/buffer zone along Humboldt Road for the various lots. Therefore, while the overall density of 3.3 dwelling units per acre for the R1 lots (Lots I-P) is at the lower end of the R1 density range (up to 6 du/ac. allowed), when

these other site constraints are factored in to determine the actual net developable acreage, the land available to accommodate such additional densities is severely limited. As such, any additional densities that might be shifted from Lot Q would likely need to be accommodated within the R2 or R3 lots, unless a significant number of the units on Lots I-P are clustered/attached units similar to *The Retreat at Canyon Oaks*, which was developed at a density of 22 units per acre (see **Attachments D and F.3.**).

Trying to accommodate residential densities at the high end of the allowable density range for any development poses a number of design challenges, namely to balance the number of dwelling units with the need to provide the number of required parking spaces, landscaping, and adequate useable open space. For that reason, development at the high end of the density range typically requires that the residential structures be constructed at or near the maximum building height for the zoning district. As shown in the table above, the assumed densities for the R2 and R3 lots are already at the high end of the density range and some of these lots have their own development constraints. Specifically, in addition to required setbacks from Highway 32, Dead Horse Slough, and Humboldt Road, approximately one-half of Lot E (zoned R3) and one-half of Lot G (zoned R2) contain remediated soils which pursuant to earlier direction by the Council⁶ limits the available land for residential structures. As such, it is anticipated that structures on these parcels may need to be constructed close to their maximum height (35 feet in R2 and 45 feet in R3) to achieve the assumed densities and any additional densities transferred from Lot Q.

General Plan Policies and Special Design Considerations Overlay Zone

A discussion of the applicable General Plan policies and zoning regulations (i.e., Special Design Considerations Overlay zone) governing development of the site is provided on Pages 19-23 and Page 28 of the May 17, 2005 City Council staff report, as well as Pages 24 and 37 of staff's response to the Shute, Mihaly & Weinberger letter included as Attachment D to the September 6, 2005 City Council staff report. A copy of the September 6, 2005 staff report is included as **Attachment G** for additional background information.

⁶ In connection with its actions on remediation of the Humboldt Road Burn Dump, the Council determined that no residential units would be developed on remediated soils (although these areas could be used for parking, landscaping, and non-residential uses).

S 99-12 / PDP 02-01 (OAK VALLEY)

9/20/05

Page 9 of 9

DISTRIBUTION

City Council/Clerk (18)

Planning Director

Principal Planner

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Thomas Fogarty, Fogarty Investments, 500 Lyndsey Lane, Yuba City CA 95993

Jim Mann, Rural Consulting Associates, 70 Declaration Drive, Chico CA 95973

Wes Gilbert, Gilbert Engineering, 70 Declaration Drive, Chico CA 95973

Francis Farley, 70 Rose Avenue, Chico, CA 95928

Nora Todenhagen, 2298 E. 8th Street, Chico, CA 95928

ATTACHMENTS

- A. City Council Resolution certifying the FEIR, adopting statements of overriding considerations, and adopting a mitigation monitoring program.
 - ~Exhibit "I"- Mitigation Monitoring Program
- B. City Council Resolution Approving Vesting Tentative Subdivision Map S 99-12, Planned Development Permit PDP 02-01, and Conceptual Master Plan for Oak Valley based upon 5/17/05 City Council Motion of Intent
 - ~Exhibit "I"- Conditions of Approval
 - ~Exhibit "II" - Public Works Department Subdivision Report dated April 6, 2005
- C. Substitute pages 2 and 3 and substitute page 1 of Exhibit "I" for the Project resolution (Attachment B) to be used if the Council transfers all units from Lot Q to other locations.
- D. Conceptual Master Plan and Comparison of Other Built Projects in Project Vicinity
- E. Slope Map
- F. Site Plans from Other Built Residential Projects in Project Vicinity (F.1.-F.5)
- G. September 6, 2005 City Council staff report

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RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHICO
CERTIFYING THE ADEQUACY OF THE FINAL ENVIRONMENTAL IMPACT REPORT,
MAKING FINDINGS REGARDING ENVIRONMENTAL EFFECTS, AND
ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION
MONITORING PROGRAM FOR THE OAK VALLEY VESTING TENTATIVE
SUBDIVISION MAP S 99-12, PLANNED DEVELOPMENT PERMIT 02-01 AND
CONCEPTUAL MASTER PLAN (FOGARTY INVESTMENTS)**

WHEREAS, an application for approval of a vesting tentative subdivision map, planned development permit, and conceptual master plan has been submitted for the Oak Valley development, a large-scale, mixed-use residential/commercial real estate development to be built out in several phases over a possible 10- to 15-year horizon, generally bounded by Bruce Road on the west, State Highway Route 32 on the north, a PG&E 500 kV transmission line on the east, and Humboldt Road on the south (the "Project"); and

WHEREAS, the Project is a major component of the Land Use and Housing Elements of the City of Chico General Plan as adopted in 1994 and as amended, and construction of the Project will implement and be consistent with the General Plan; and

WHEREAS, the City Planning Director determined that the City would serve as Lead Agency for the purpose of compliance with the California Environmental Quality Act ("CEQA"), and would prepare an Environmental Impact Report ("EIR") in order to analyze the potential environmental effects of the Project pursuant to CEQA and the CEQA Guidelines, both as a "Project EIR", as set forth in CEQA Guideline 15161, in evaluating the 43-acre Phase I subdivision and as a "Program EIR", as set forth by CEQA Guideline 15168, in evaluating the remaining phases of the Project; and

WHEREAS, the independent private environmental consulting firm of EIP Associates was retained by the City to prepare the Draft and Final EIRs for the Project; and

WHEREAS, on March 27, 1998, the City Planning Director issued a Notice of Preparation, stating that an EIR would be prepared for the Project, caused such notice to be mailed to each Responsible Agency which would approve any portion of the Project and each Trustee Agency responsible for natural resources affected by the Project and, thereafter, consulted with those persons and organizations which the City Planning Director believed would be concerned with the

1 environmental effects of the Project; and

2 WHEREAS, on April 18, 2000, after preparation of the Draft EIR (“DEIR”) for the Project, the
3 City Planning Director issued a Notice of Completion which was filed with the State Office of Planning
4 and Research, requested comments on the DEIR from all responsible agencies, all trustee agencies
5 responsible for natural resources affected by the Project, as well as all federal, state and local agencies
6 which exercise authority over natural resources affected by the Project, prepared and mailed the Notice
7 of Availability of the DEIR to all persons and organizations having requested notice of same and caused
8 the Notice of Availability of the DEIR to be published in a newspaper of general circulation within the
9 City; and

10 WHEREAS, before the Final EIR (“FEIR”) was prepared, in accordance with CEQA Guideline
11 15088.5, the City elected to revise and recirculate for additional public review three chapters (Hazards
12 and Human Health, Transportation and Circulation, and Cultural Resources) as part of a Recirculated
13 Draft EIR (“RDEIR”) in order to: (1) provide an update on the status of the Humboldt Road Burn Dump
14 and modify the mitigation measures previously identified in the original EIR; (2) show the planned road
15 connecting SHR-32 to Humboldt Road being changed from the alignment along the transmission line
16 corridor as depicted in the original DEIR to now an alignment with Yosemite Drive; and (3) address the
17 potential historical significance of Humboldt Road and the effects of the project on the road; and

18 WHEREAS, on April 30, 2004, after preparation of the RDEIR for the Project, the City Planning
19 Director issued a Notice of Completion which was filed with the State Office of Planning and Research,
20 requested comments on the RDEIR from all responsible agencies, all trustee agencies responsible for
21 natural resources affected by the Project, as well as all federal, state and local agencies which exercise
22 authority over natural resources affected by the Project, prepared and mailed the Notice of Availability
23 of the DEIR to all persons and organizations having requested notice of same and caused the Notice of
24 Availability of the RDEIR to be published in a newspaper of general circulation within the City; and

25 WHEREAS, two separate 45-day public and State agency review and comment periods have
26 been conducted on the EIR, one on the DEIR which began April 18, 2000, and ended on June 2, 2000,
27 and a second on the RDEIR which began on April 30, 2004, and ended on June 14, 2004; and

28 WHEREAS, the City held a noticed public meeting on May 24, 2000, to receive additional

1 comments and testimony on the DEIR and another noticed public meeting on May 27, 2004, to receive
2 additional comments and testimony on the RDEIR; and

3 WHEREAS, subsequent to the close of the 2004 RDEIR public review and comment period, and
4 after consultation with the City staff, the FEIR was prepared in accordance with CEQA requirements,
5 which responds to all public comments which had been received about the Project's potential
6 environmental effects and which, taken together with the original DEIR and the RDEIR, fully addresses
7 all potentially significant adverse environmental effects of implementation of the Project; and

8 WHEREAS, this Council has independently reviewed, analyzed and considered the FEIR, the
9 studies and supporting materials referred to or incorporated therein, written comments received from
10 affected agencies and members of the general public and the City's responses to such comments; and

11 WHEREAS, the FEIR was prepared for the City as Lead Agency pursuant to the California
12 Environmental Quality Act ("CEQA") which fully analyzes the potential environmental effects of
13 construction of the mixed-use residential and commercial development comprising the Project,
14 associated municipal infrastructure improvements and implementing governmental decisions described
15 in the FEIR; and

16 WHEREAS, the Planning Commission conducted duly noticed meetings or hearings on January
17 20, 2005, February 24, 2005, March 3, 2005, March 10, 2005, and April 21, 2005; and

18 WHEREAS, the Planning Commission considered the Project application, including the vesting
19 tentative subdivision map, planned development permit, and conceptual master plan, as well as the staff
20 report and comments submitted at all public hearings and meetings; and

21 WHEREAS, the Planning Commission certified the EIR, adopted Statements of Overriding
22 Considerations, and adopted a mitigation monitoring program for the Project at its April 21, 2005
23 meeting; and

24 WHEREAS, an appeal of the Planning Commission's certification of the EIR as described above
25 was filed, asserting that the EIR did not adequately address the potential impacts to the setting of
26 historic Humboldt Road, and that the setting for the historic features (wagon wheel ruts, rock wall)
27 would be adversely affected by the project, and another appeal of the certification of the EIR was filed,
28 asserting that the EIR did not adequately address traffic mitigation measures, impacts to the viewshed

1 and natural character of the foothills, impacts to the natural open space recreational qualities of upper
2 Humboldt Road, and the effects of allowing housing construction and occupancy in the area of the
3 Humboldt Road Burn Dump (HRBD) before the HRBD is remediated; and

4 WHEREAS, the City Council held a duly noticed public hearing on the Project on May 17, 2005
5 to consider the appeal and a supplemental public hearing on September 20, 2005; and

6 WHEREAS, the City Council has independently reviewed, analyzed and considered the
7 environmental record for the Project, including the DEIR, RDEIR, comments from affected agencies
8 and members of the general public and responses to those comments, the FEIR and supporting materials
9 referred to or incorporated therein, as well as the staff report; and

10 WHEREAS, the City Council, exercising its independent judgment on the DEIR, RDEIR, and
11 FEIR, to consider the adequacy of that document, all in a manner provided for by the California
12 Environmental Quality Act; and

13 WHEREAS, the City Council has fully considered the effects of the proposed applications upon
14 adjacent properties, the overall community, and the City General Plan.

15 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
16 CHICO AS FOLLOWS:

17 Section 1: Definitions. For the purpose of this resolution, the following definitions shall apply:

- 18 A. "Administrative Record" means the following documents and records:
- 19 1. the EIR, as defined herein;
 - 20 2. the City of Chico General Plan and all amendments;
 - 21 3. the Final Environmental Impact Report for the City of Chico Comprehensive General
22 Plan and its certifying Resolution;
 - 23 4. the Mitigation Monitoring Program attached hereto as Exhibit "I";
 - 24 5. all non-draft and non-confidential reports, memoranda and other planning documents
25 prepared by City staff and consultants regarding the Project;
 - 26 6. all correspondence, documentary evidence and other materials regarding the Draft
27 EIR for the Project submitted by the public and public agencies to the City; and
 - 28 7. matters of common knowledge to the City Council, particularly including currently

1 enacted federal, State and local laws, regulations, policies, reports and studies
2 pertaining to the Project and its environmental and planning effects.

3 B. "CEQA" means the California Environmental Quality Act.

4 C. "City" means the City of Chico, California.

5 D. "EIR" means:

- 6 1. the Programmatic Draft EIR for the Oak Valley Conceptual Master Plan and Project-
7 Specific Draft EIR for the 43-acre Portion of the Subdivision ("DEIR") document
8 dated April 2000 and on file in the City Planning Division;
- 9 2. the Recirculated Draft Environmental Impact Report ("RDEIR") document dated
10 April 2004 and on file in the City Planning Division;
- 11 3. all written comments and responses to those comments presented to the City Council
12 by members of the public concerning the DEIR and the RDEIR;
- 13 4. the Final Environmental Impact Report ("FEIR") document dated November 2004
14 and on file in the City Planning Division;
- 15 5. the written reports concerning the Project prepared by City staff and reviewed by the
16 City Council;
- 17 6. all oral comments presented to the City Council by members of the public concerning
18 the DEIR, the RDEIR, and the FEIR and all oral responses thereto by City officials,
19 as recorded in official City transcripts and minutes of public hearings on the Project;
20 and
- 21 7. all other supporting materials referred to or incorporated into the FEIR.

22 E. "Mitigation Monitoring Program" means the mitigation monitoring program described in
23 the FEIR and attached hereto as Exhibit "I."

24 F. "Project" means the Oak Valley Project consisting of the subdivision of a vacant 340-acre
25 site into 141 parcels to be developed pursuant to a Conceptual Master Plan (Plan), whereby
26 Phase I of the Plan includes 126 smaller lots to be developed on a 43-acre portion of the
27 site, including two parcels for medium-density residential development. Development of
28 the remaining 15 larger parcels would take place in future phases after the processing of

1 individual subdivision maps or planned development permits resulting in a total of
2 approximately 1,324 residential units, 109,000 sq. ft. of commercial retail space on 10
3 acres, and 87.5 acres of open space. Approval of each subsequent development phase may
4 include the following components and incidental activities:

- 5 1. City discretionary approval of Project land use entitlements, design approvals, and
6 grading permits.
- 7 2. City discretionary approval of Project improvement plans in accordance with the
8 approved Butte County Air Quality Management District approval of a permit to
9 construct.
- 10 3. State Regional Water Quality Board issuance of a National Pollutant Discharge
11 Elimination System (NPDES) general construction permit.
- 12 4. U.S. Army Corps of Engineers approval of a permit authorizing the fill of
13 jurisdictional waters, including consultation with the U.S. Fish and Wildlife Service
14 pursuant to Section 7 of the Federal Endangered Species Act, if required, together
15 with all associated municipal infrastructure improvements, mitigation measures and
16 other physical work required by the Project approvals.
- 17 5. Construction and extension of municipal infrastructure systems, utilities and
18 associated fixtures and improvements necessary to serve the Project, all as described
19 in the Chico General Plan, as amended. Buildout of the Project site, the properties
20 in the vicinity of the Project, and the municipal infrastructure systems necessary to
21 serve them, has been analyzed for CEQA compliance purposes in the EIR prepared
22 for enactment of the 1994 General Plan.

23 **Section 2: General Provisions.** The City Council makes the following General Findings based upon
24 the evidence in the EIR, referred to or incorporated into the FEIR and found elsewhere in the record of
25 these proceedings:

- 26 A. The City of Chico is the lead agency for the Project and EIR. The City further finds that
27 in considering the EIR, the City has discharged its responsibility as the lead agency in
28 conformance with CEQA and the CEQA Guidelines.

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- B. The Project is located within the planning area and incorporated limits of the City of Chico. Pursuant to State statutes and local Codes, the City is authorized to consider certain discretionary approvals.
- C. Each of the Project design alternatives not selected is infeasible or otherwise not selected for the economic, social, environmental and other reasons set forth in the EIR and in Section 4 of this Resolution, "Special Findings Regarding Project Alternatives."
- D. The EIR identifies potentially significant environmental effects. The EIR recommends mitigation measures that will avoid or substantially lessen all impacts to a level of less than significant, except for the following: increase of traffic congestion on local roadways over existing levels; cumulative increase in traffic congestion on the local roadways; generation of criteria air pollutants that would exceed the Butte County Air Quality Management District (BCAQMD) thresholds; total long-term operational activities that would violate adopted air quality thresholds for reactive organic gases (ROGs); operational emissions, along with cumulative land use development in the City of Chico, could further contribute to criteria air pollutant emissions in Butte County; extension of Cal Water's service distribution infrastructure (cumulative impact on increased water demand); contribution to the cumulative loss and degradation of foothill, grassland, and riparian habitat supporting native plants and wildlife; conversion of undeveloped landscape to urban development; alteration of views from surrounding areas; and cumulative development which would alter existing views and the visual character of the City of Chico. These impacts remain as potentially significant and unavoidable impacts despite the implementation of available mitigation measures.
- E. The City Council finds that the potentially significant environmental effects from the Project, all but those identified above, will be avoided or reduced to a level of "less than significant" through implementation of the mitigation measures recommended in the EIR and do not require a statement of overriding considerations.
- F. The City of Chico, 411 Main Street, Chico, California is the custodian of all materials that constitute the Administrative Record for this Project and these proceedings.

1 G. The specific mitigation measures identified in the EIR and this Resolution will be
2 incorporated into the Project design, along with all Project conditions of approval. The
3 City as Lead Agency commits itself to monitor and enforce all conditions.

4 Section 3: Certification. Having independently prepared, analyzed and considered the EIR for the
5 Project and the issues raised in the appeals of the certification of the FEIR, the City Council hereby
6 certifies that the document has been prepared, circulated for agency and public review, and completed
7 in compliance with the requirements of the CEQA and fully and adequately discloses and addresses all
8 environmental issues associated with the Project. With respect to the items raised in the appeals, the
9 City Council finds that the Project would result in a change to the setting of Humboldt Road, however,
10 this change of setting would not result in the Old Humboldt Road becoming ineligible for the California
11 Register of Historic Resources and would be reduced by retention of the visual buffer zone between the
12 Old Humboldt Road and concludes that the change in setting would not be a significant environmental
13 impact; that the identified mitigation measures for local road impacts and SHR-32 impacts requires that
14 appropriate mitigation measures be implemented at various Project milestones and Caltrans staff have
15 reviewed and accepted all of the final mitigation measures and conditions of approval for the Project;
16 that the SD-2 Overlay Zone allows cluster development at the higher elevations to the least visible areas
17 and that the Project Foothill Design Guidelines implement this ordinance; that the City does not have
18 any jurisdiction over the soil remediation process, as it is administered by the Regional Water Quality
19 Control Board (RWQCB) and the BCAQMD and that one of the conditions of approval set forth in the
20 RWQCB's Certificate of Completion specifically addresses the issue of construction timing; and that
21 the reasons for rejecting the various Project alternatives are outlined in this Resolution.

22 Section 4: Special Findings Regarding Project Alternatives. CEQA requires the EIR to describe a
23 range of alternatives to the Project and its location which "would feasibly attain most of the basic
24 objectives of the Project, but would avoid or substantially lessen any of the significant effects" of the
25 Project. See Guideline 15126.6(a). The EIR identifies the Partial Master Plan Alternative as the
26 "environmentally superior alternative" and notes that the Reduced Density Alternative also results in
27 slightly less severe impacts than the Project. As described below, the No Project/No Development
28 Alternative does not meet the objectives of the Project nor implement the City's General Plan and was,

1 therefore, not selected. **The Reduced Density Alternative and Partial Master Plan Alternative offer**
2 **marginal decreases in impacts related to air quality, biological resources, aesthetics and visual resources,**
3 **hydrology and drainage, cultural resources, noise, and hydrology and drainage, but these decreases**
4 **would be small and** impacts would still remain significant unavoidable. Balanced against General Plan
5 objectives for providing a diversity of housing types consistent with the Housing and Land Use
6 Elements of the General Plan, those Project alternatives were not selected.

7 The Project alternatives described in the EIR are rejected for the following reasons:

8 A. The No Project Alternative included a No Project/No Development Alternative and a No
9 Project/No Action Alternative.

10 1. The No Project/No Development Alternative assumes no development would occur
11 on the Project site and that it would remain vacant. The No Project/No Development
12 Alternative would not meet the main Project objectives because it would not
13 implement General Plan goals and policies related to the development of the site, it
14 would not provide commercial and residential uses on a site that has been designated
15 for development by the Chico General Plan since the 1970's, nor would it establish
16 Dead Horse Slough as a public resource and amenity for the Chico community as
17 designated by the Resource Management Area designation for the Project site.
18 While the No Project/No Development Alternative would avoid the significant and
19 unavoidable air quality, public services and utilities, biological resources, and visual
20 resources impacts identified for the Project, retention of the Project site in its current
21 use as vacant land would not further the objectives and policies of the City General
22 Plan. Specifically, the land use policy of the City General Plan calls for development
23 of the Project area as part of the City's orderly urban growth and to meet the needed
24 supply of residential housing opportunities for current and future Chico residents.

25 Leaving the Project site vacant would not provide housing numbers necessary
26 to accommodate the population growth anticipated by the City General Plan and
27 would not implement the General Plan goals of providing efficient, master-planned
28 housing opportunities in a range of potential types, tenancies, styles and prices, as

1 set forth in General Plan Housing Element policies H-G-6, H-G-8, H-G-23, and H-G-
2 29. Agriculture and grazing uses of the property are economically infeasible, as are
3 recreational uses. Based on the above, the City Council finds that the No Project/No
4 Development alternative is not a feasible alternative.

5 2. The No Project/No Action Alternative assumes that the Project, would be denied and
6 that the site would be developed consistent with the current General Plan
7 designations and zoning classifications for the site. Under the No Project/No Action
8 Alternative, development would be more intense than under the Project
9 (approximately 1,881 dwelling units and 185,566 square feet of commercial space
10 compared to 1,324 dwelling units and 109,000 square feet of commercial space under
11 the Project). As a result, the increase in intensity of development under this
12 alternative would result in greater impacts than the Project on traffic, air quality,
13 noise, public services, drainage, biological resources, open space, hazardous
14 materials, and an increase the number of homes fronting Old Humboldt Road which
15 could have a significant impact on the historic significance of Old Humboldt Road.
16 In addition, development under this alternative would not necessarily take place as
17 part of an overall master plan. No significant impacts would be eliminated or
18 reduced under this alternative. Development of the site under the No Project/No
19 Action Alternative would result in the same significant and unavoidable air quality,
20 public services and utilities, cumulative biological resources, and visual impacts as
21 the Project; thus, choosing this alternative would not avoid the Project's significant
22 environmental effects. Because this alternative may not fulfill Project objective of
23 developing in accordance with an approved master plan for the comprehensive
24 planning for the site, the City Council rejects this alternative.

25 B. The 43-acre Subdivision Only Alternative assumes denial of the full Conceptual Master
26 Plan and large "Master" parcel subdivision, and approval of the proposed 43-acre portion
27 of the Subdivision as described in the EIR. Under this alternative, subsequent
28 development applications for the remainder of the Project site would be submitted

1 implementing the current General Plan designations and policies, but would not take place
2 in accordance with an overall master development plan. In effect, this alternative is a
3 combination of the Project’s proposed design for the 43-acre portion of the Master
4 Subdivision, plus the “Applications Denied” scenario for the rest of the site summarized
5 above, in which new, separate development applications are approved and developed in
6 the near future; presumably by different developers and at different times. This alternative
7 would include 1,958 dwelling units (317 units for the 43-acre site and General Plan
8 designations on the remainder of the site would allow for 1,641 units), 185,566 square feet
9 of commercial space, and 16.4 acres of open space, compared to 1,324 dwelling units,
10 109,000 square feet of commercial space, and 87.5 acres of open space under the Project.
11 Because this alternative would include more development, the 43-acre Portion of the
12 Subdivision Only Alternative could result in greater impacts than the Project on traffic; air
13 quality; noise; demand for public services; drainage; biological resources; open space;
14 hazardous materials; and a potential increase in the number of homes fronting Old
15 Humboldt Road which could have a significant impact on the historic significance of Old
16 Humboldt Road. Because development of the 43-acre portion and the Conceptual Master
17 Plan area would not necessarily be integrated, timed or designed to harmonize effectively
18 and, since it is likely those areas would be owned and developed by multiple developers
19 at various times, they would be separately designed and developed without unifying design
20 guidelines, circulation patterns, architectural themes or logically phased infrastructure
21 improvements. Such developments would not fulfill the General Plan goals and objectives
22 of developing the site pursuant to an overall master plan, efficiently maximizing affordable
23 housing opportunities and beneficial interrelationships among component portions of the
24 Project site. The 43-Acre Portion of the Subdivision alternative, therefore, for the reasons
25 set forth in the EIR and summarized herein, hereby is determined to be infeasible and is
26 rejected because it would result in more severe environmental impacts and does not fulfill
27 General Plan policies as set forth above.

28 C. The Partial Master Plan Alternative assumes construction of both the 43-acre portion of

1 the Subdivision and the Conceptual Master Plan with approximately the same number of
2 residential units as described under the Project. However, development would be
3 concentrated in the western, flatter portion of the Project site, which is also closer to the
4 City’s urban core (see Figure 6-1 on page 6-14 of the DEIR). The 485 residential units that
5 are assumed for the eastern portion of the site under the Project would be added to the
6 western half of the Project site on approximately 205 acres. The easternmost 135 acres
7 would remain undeveloped. The average residential density of the Project site to be
8 developed would change from approximately 3.9 dwelling units per acre to 6.5 dwelling
9 units per acre. The open space and commercial designations in the western portion of the
10 Project site would be the same as those of the Project.

11 Although this alternative would result in less development on the eastern portion of
12 the site, the increased density on the western portion of the site would increase the area and
13 environmental resources disturbed on that portion of the site. Impacts relating to
14 biological resources, hydrology and drainage, and aesthetics and visual resources and
15 would be less severe under this alternative, which is identified as the “environmentally
16 superior alternative” in the DEIR, however, these same impacts would still be reduced to
17 less than significant levels under the Project.

18 The number of trips generated by the Partial Master Plan Alternative would be
19 similar to the Project, because the number of residential units and the amount of
20 commercial development would be the same. Therefore, impacts on most roadways would
21 be the same. However, the circulation system for the Project site would need to
22 accommodate higher volumes, and the number of connections to Highway 32 that would
23 be allowed under Caltrans standards may not have the capacity to ensure that intersections
24 with the highway operate at acceptable levels. Access to both Bruce Road and Humboldt
25 Road would be provided. Under this Alternative traffic impacts could be slightly more
26 severe than under the Project.

27 Development under the Partial Master Plan Alternative would result in the same
28 significant and unavoidable air quality, public services and utilities, cumulative biological

1 resources, and visual impacts as the Project. **Thus, choosing this alternative would lessen,**
2 **but not avoid the Project's significant environmental effects.** It would also remove 135
3 acres of lands designated for single-family residences and require that these 485 units be
4 moved to the west, resulting in only 29 acres of R1 lands for the remainder of the
5 Conceptual Master Plan (Parcel K and portions of Parcels I and J as depicted on the
6 vesting tentative subdivision map included as Attachment G in the 5/17/05 City Council
7 staff report). These 29 acres are already accommodating a limited number of R1 lots at an
8 anticipated gross density of 3.3 units per acre and given site constraints (oak trees and
9 required setbacks from Dead Horse Slough and State Highway Route 32) these 29 acres
10 could not absorb the 485 units being transferred from the east under this Alternative. As
11 a result, the vast majority of the 485 units could only be accommodated in lands zoned R2,
12 R3 or CC. The western portion of the property is limited in its ability to absorb additional
13 housing units given its required setbacks from Dead Horse Slough and State Highway
14 Route 32 and the prohibition of placing residential housing units directly on lands with
15 remediated soils (Condition of Approval #39). While it is possible that every R2 and R3
16 parcel be developed at maximum densities (14 units per acre for R2 lands and 22 units per
17 acre for R3 lands), this will result in large, multiple story buildings on each parcel with
18 large parking lots. As a result, the density on the western portion of the site would increase
19 very substantially, with resultant adverse effects on aesthetics, air quality, drainage,
20 biotics, and traffic.

21 The development of low-density units on the site is a component of the City's
22 adopted Land Use Element and Housing Element. The Partial Master Plan Alternative
23 would constitute a very different housing project than the Project. The Project would
24 better implement General Plan and Housing Element policies compared to this Alternative
25 in that the Project would provide much greater variety in housing types as called for by
26 Housing Element policy H-G-29 and as reiterated by the wide variety of General Plan and
27 zoning designations for the site. **While the General Plan requires a graduated blend of**
28 **densities (decreasing from east to west) it does not prohibit development on the eastern**

1 portion of the site. In designating lands for RS and R1 development, the General Plan and
2 the SD-2 implementing ordinance for the site acknowledged that there could be low
3 density residential development at the eastern portion of site. The Partial Master Plan
4 Alternative, therefore, is rejected because it would result in a vastly different housing
5 project which would not fulfill Project objectives of providing a wide variety of housing
6 types consistent with the Housing and Land Use Elements of the General Plan because 485
7 single-family units would be converted to multi-family units no significant environmental
8 effects would be substantially reduced under this Alternative.

9 D. The Reduced Density Alternative would develop the same area as the Project, but fewer
10 units would be developed in the easternmost portion of the site. The Reduced Density
11 Alternative would require the rezoning of the easternmost 80 acres of the Project site,
12 currently designated as RS-20, to a residential density of 0.2 units per acre (1 unit per 5
13 acres), resulting in the development of 16 residential units on the eastern portion of the
14 Project site compared to 200 units under the Project. The commercial uses and open space
15 would be the same as those under the Project. Development under this alternative would
16 result in a total of 1,140 residential units compared to 1,324 units under the Project. All
17 parcel boundaries would remain the same as for the Project. The commercial uses and
18 open space would be the same as those under the Project. The 43-acre portion of the
19 subdivision would be developed as described in the EIR, and development of the
20 remainder of the site would require a conceptual master plan similar to the one prepared
21 for the Project. Impacts under this alternative would be very similar to those identified
22 for the Project, but because fewer acres would be disturbed and overall density somewhat
23 decreased, the impacts would be slightly less severe.

24 The Reduced Density Alternative would result in the same significant air quality,
25 public services and utilities, cumulative biological resources, and visual impacts as the
26 Project. Thus, choosing this alternative would not measurably or feasibly reduce or lessen
27 the Project's significant environmental effects, if indeed it were economically feasible to
28 develop it at all as defined. This alternative is rejected because this alternative would not

1 fulfill the Project objective of providing lower-density, large-lot clustered housing
2 opportunities in numbers and price ranges sufficient to attain relevant General Plan and
3 Housing Element goals of providing a wide variety of housing types, and it would not
4 substantially lessen or reduce, or avoid, significant Project effects on the environment.

5 In addition, reducing the number of housing units under Alternative #4 would not be
6 consistent with CEQA, (Public Resources Code section 21159.26) which states that when
7 a project includes a housing development, a public agency may not reduce the proposed
8 number of housing units as a mitigation measure or project alternative for a particular
9 significant effect on the environment if it determines that there is another feasible specific
10 mitigation measure or project alternative that would provide a comparable level of
11 mitigation. The significant and unavoidable impacts identified under the Project are still
12 significant and unavoidable under this Alternative and the Project does provide a
13 comparable level of mitigation compared to this Alternative.

14 E. The Off-Site Alternative considers an alternative location within the City that could
15 potentially reduce significant effects of the Project. The location selected for this Off-Site
16 Alternative is the 397-acre site south of the Project site, south of Humboldt Road and
17 north-east of Stilson Canyon Road (see Figure 6-3 on page 6-23 of the DEIR). The site is
18 currently zoned for Single-family Residential, Medium-density Residential, and Suburban
19 Residential (1 acre lot minimum), and is currently used for grazing. The Off-Site
20 Alternative would leave the Project site in an undeveloped state and would instead develop
21 the alternative site. The number of dwelling units and square footage for commercial and
22 other non-residential uses are assumed to be the same as the Project. As provided in
23 Chapter 6 of the DEIR, the Off-site Alternative would also result in the same significant
24 and unavoidable air quality, public services and utilities, cumulative biological resources,
25 and visual impacts as the Project. Thus, choosing this alternative would not avoid the
26 Project's significant environmental effect and not developing the Project site as a mixed-
27 use housing and commercial development would not implement the City's General Plan
28 including the Housing Element. The off-site property is not owned by the Project applicant

1 and is not known to be for sale or otherwise available to the applicant to develop. This
2 alternative also does not meet the Project objective of developing the Oak Valley property
3 consistent with the General Plan land use designations. As a result, this alternative is
4 determined to be infeasible and is rejected by the City Council.

5 Section 5: Findings Regarding Mitigated Effects. The potential environmental impacts identified in
6 detail in the EIR as resulting from the Project and set forth below in this section are fully mitigated or
7 mitigated to a level of “less than significant,” except for: **increase of traffic congestion on local**
8 **roadways over existing levels; cumulative increase in traffic congestion on the local roadways;**
9 **generation of criteria air pollutants that would exceed the BCAQMD thresholds; total long-term**
10 **operational activities that would violate adopted air quality thresholds for ROG;s; operational emissions,**
11 **along with cumulative land use development in the City of Chico, could further contribute to criteria air**
12 **pollutant emissions in Butte County; extension of Cal Water’s service distribution infrastructure**
13 **(cumulative impact on increased water demand); contribution to the cumulative loss and degradation**
14 **of foothill, grassland, and riparian habitat supporting native plants and wildlife; conversion of**
15 **undeveloped landscape to urban development; alteration of views from surrounding areas; and**
16 **cumulative development which would alter existing views and the visual character of the City of Chico,**
17 each of which remain as potentially significant and unavoidable impacts of the Project, and is the proper
18 subject a Statement of Overriding Considerations as set forth in Section 6 of this resolution.

19 A. Consistency with the General Plan. The DEIR, in Impact 4.2-2, finds the Project would
20 be generally consistent with the City of Chico General Plan policies and goals but
21 concludes that consistency cannot be determined for all applicable goals and policies
22 because the Project’s building design is not known. The EIR concludes that this impact
23 can be reduced to less than significant with implementation of the following mitigation
24 measures:

25 Mitigation Measure:

26 4.2-2 Prior to recordation of the Final Map(s), the Community Development
27 Department shall review Design Standards provided by the applicant to
28 ensure that building design will meet the following standards:

- buildings are oriented to the pedestrian and create positive transitions to the street (CD-G-57), and small-lot design will be of high quality (CD-G-58) (43-acre portion of the subdivision and Conceptual Master Plan).

In addition, the Conceptual Master Plan must meet the following standard:

- neighborhoods and buildings are oriented to the street (CD-G-51) (Conceptual Master Plan).

Finding: For the reasons stated in the DEIR (page 4.2-12), incorporation of this mitigation measure into the Project will reduce this impact to a less-than-significant level.

B. Degradation of safety conditions along Highway 32 and on Bruce Road. The RDEIR, in Impact 4.3-2 on page 4.3-24, concludes that the Project would generate a significant number of northbound left turns and some eastbound right turn movements on Highway 32 at the Project entrance. The addition of these turn movements on this higher speed section of road could impair traffic safety conditions along Highway 32. The EIR concludes that this is a significant impact but that this impact can be reduced to a less than significant level through the following mitigation measures:

Mitigation Measures:

4.3-2 (a) The project applicant shall provide a traffic signal at the intersection of Highway 32/Yosemite Drive and the primary project access. The project applicant shall ensure the placement of an eastbound right turn deceleration lane on Highway 32 with a minimum storage capacity of 200 feet and appropriate taper indicated by Caltrans design standards. A westbound left turn lane with 50 feet of storage and eastbound left turn lane with 250 feet of storage and appropriate transition indicated by Caltrans design standards must also be provided by the project applicant on Highway 32 at the intersection of Yosemite Drive. (43-acre portion of the Subdivision and Conceptual Master Plan)

1 This mitigation would result in LOS C conditions or better.

2 4.3-2 (b) The project applicant shall ensure that the placement of the secondary
3 access points on Highway 32, east of the primary access near Yosemite
4 Drive, be limited to right turns in and right turns out only. This may
5 include an on-site channelization island. An acceleration and deceleration
6 taper must also be provided on the eastern access. (Conceptual Master
7 Plan)

8 4.3-2 (c) The project applicant shall provide a left turn lane on Bruce Road at the
9 entrance to the community commercial. Left turn movements out of the
10 access shall be prohibited. (Conceptual Master Plan)

11 Finding: For the reasons stated in the RDEIR (page 4.3-24) and this Resolution,
12 incorporation of these mitigation measures into the Project would reduce this impact
13 to a less than significant level by ensuring adequate traffic safety by controlling
14 movements into and out of the Project site onto heavily traveled roadways (e.g., SR 32)
15 in accordance with reasonable and accepted traffic engineering practices.

16 C. Degradation of pedestrian and bicycle safety (Conceptual Master Plan). The RDEIR, in
17 Impact 4.3-3 on page 4.3-25, concludes that the Conceptual Master Plan would result in
18 the potential for pedestrian and bicycle recreational trips from the Project site to the
19 bicycle path adjacent to the Humboldt Road corridor. Without adequate access for
20 pedestrians and bicyclists from the Project site to the bicycle path, a potential for conflicts
21 between vehicles and bicycles and pedestrians could occur. The EIR identifies this as a
22 significant impact for the Conceptual Master Plan but concludes that this impact can be
23 reduced to a less than significant level through the following mitigation measures:

24 Mitigation Measure:

25 4.3-3(a) Humboldt Road shall be de-emphasized as a project access component by
26 providing a narrow street width, bike lanes or paths, and limited access to
27 residential development within the project site, especially east of Potter
28 Road. (Conceptual Master Plan)

1 4.3-3(b) A series of pedestrian and bicycle recreational trails shall be provided
2 which connect residential development with the Humboldt Road corridor.
3 (Conceptual Master Plan)

4 Finding: For the reasons stated in the RDEIR (page 4.3-26), incorporation of these
5 mitigation measures into the Project would reduce the impact to a less than significant
6 level by providing better access and circulation, which would minimize conflicts
7 between bicycles, pedestrians and vehicles.

8 D. Cumulative degradation to pedestrian and bicycle safety. The RDEIR, in Impact 4.3-5 on
9 page 4.3-31, finds that the Project, under cumulative conditions, would produce congestion
10 of local roadways and could increase the potential for conflicts between vehicles and
11 bicycles and pedestrians. The EIR identifies this as a significant impact for the Project but
12 concludes that this impact can be reduced to a less than significant level through the
13 following mitigation measures:

14 Mitigation Measure:

15 4.3-5 Implement Mitigation Measure 4.3-3(a) and 4.3-3(b) as set forth in C.,
16 above.

17 Findings: For the reasons stated in the RDEIR (page 4.3-26) and this Resolution,
18 incorporation of this mitigation measure into the Project would reduce the impact to
19 a less than significant level by providing better access and circulation, which would
20 minimize conflicts between bicycles, pedestrians and vehicles.

21 E. Increase of traffic congestion on local roadways over existing levels. The RDEIR, in
22 Impact 4.3-1 on page 4.3-22, finds that the Conceptual Master Plan could result in
23 significant levels of traffic congestion at two intersections. The intersection of East 8th
24 Street/Fir Street/State Route 99 would operate at LOS E and would exceed City standards.
25 The northbound and southbound approaches of Fir Street at the intersection with East 9th
26 Street would operate at LOS F during the p.m. peak hour and would exceed City standards.
27 The EIR concludes that this is a significant impact for the Conceptual Master Plan but
28 concludes that this impact can be reduced to a less than significant level through the

1 following mitigation measures:

2 Mitigation Measures:

3 4.3-1(a) The project applicant shall install a traffic signal at 8th Street/Fir
4 Street/S.R. 99 and in consultation with Caltrans or pay the fair share
5 transportation impact fees if this improvement is added to the City's
6 Capital Improvement Program (CIP). (Conceptual Master Plan)

7 This would result in LOS B conditions at this intersection.

8 4.3-1(b) The project applicant shall install a traffic signal at Fir Street/East 9th
9 Street and in consultation with Caltrans or pay the fair share transportation
10 impact fees if this improvement is added to the City's CIP. (Conceptual
11 Master Plan)

12 This would result in LOS B conditions at this intersection.

13 Finding: These mitigation measures are within the responsibility and jurisdiction of
14 another public agency (Caltrans), not the City, and Caltrans has indicated that it is
15 unlikely that it will approve the installation of the traffic signals called for in these
16 mitigation measures. It must be assumed, therefore, that these mitigation measures are
17 infeasible and that the impact is significant and unavoidable and is one for which a
18 statement of overriding considerations must be adopted, as set forth below.

19 F. Cumulative increase in traffic congestion on the local roadways. The RDEIR, in Impact
20 4.3-4 on page 4.3-26, finds that the Project, under cumulative conditions, would cause
21 intersections to operate at unacceptable levels of service. The intersections of Highway
22 32/Bruce Road, Highway 32/Forest Avenue, East 8th Street/Fir Street and East 9th
23 Street/Fir Street are projected to operate at LOS F conditions under the Conceptual Master
24 Plan and the 43-acre Portion of the Subdivision. The eastbound approach to the Bruce
25 Road/Humboldt Road intersection would be expected to operate with LOS F conditions
26 under the 43-acre Portion of the Subdivision. The intersection of Bruce Road/Humboldt
27 Road would be expected to operate with a LOS F overall under the Conceptual Master
28 Plan. The EIR concludes that this is a significant impact. The EIR identifies the following

1 mitigation measures as feasible mitigation measures which will reduce the impact but not
2 to a level which is less than significant:

3 Mitigation Measure:

4 4.3-4(a) The project applicant shall install traffic signals, including separate left turn
5 pockets on all four approaches to the intersection of Bruce Road and
6 Humboldt Road. (43-Acre Subdivision and Conceptual Master Plan)

7 This would result in LOS C conditions or better.

8 4.3-4(b) The project applicant shall build improvements or, if these projects are
9 included in the City's CIP, provide fair share funding for separate right turn
10 lanes in the northbound and westbound directions and a right turn overlap
11 phase for the southbound right-turn at the intersection of Highway 32 and
12 Bruce Road. (43-Acre Subdivision)

13 This mitigation would result in LOS D conditions.

14 4.3-4(c) The project applicant shall build improvements or if these projects are
15 included in the City's CIP, provide fair share funding for the following lane
16 improvements at the intersection of Highway 32 and Forest Avenue:

- 17 • The northbound approach shall be widened from one lane to two left
18 turn lanes, one through and one right turn lane.
- 19 • The southbound approach shall be widened to include two lanes.
- 20 • The eastbound and westbound approaches should be widened to
21 include an additional through lane. (Highway 32 currently transitions
22 from four to two lanes, east of Fir Street. This mitigation would require
23 that the four-lane section be extended to east of Forest Avenue).

24 (43-acre portion of the Subdivision)

25 These improvements would result in LOS D conditions.

26 4.3-4(d) Implement Mitigation Measure 4.3-1(a); and

- 27 • The southbound approach at the 8th Street/Fir Street/SR99 intersection
28 shall be widened to include a right turn lane and a through/right turn

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lane (43-Acre portion of the Subdivision).

This would result in LOS D conditions or better.

4.3-4(e) Implement Mitigation Measure 4.3-1(b); (43-Acre portion of the Subdivision)

This would result in LOS B conditions or better.

4.3-4(f) The project applicant shall provide a traffic signal at the intersection of Highway 32/Yosemite Drive and the primary project access at the time warrants are met. The project applicant shall ensure the placement of an eastbound right turn deceleration lane on Highway 32 with a minimum storage capacity of 200 feet and appropriate taper indicated by Caltrans design standards. A westbound left turn lane with 50 feet of storage and eastbound left turn lane with 250 feet of storage and appropriate transition indicated by Caltrans design standards must also be provided by the project applicant. (43-acre portion of the Subdivision and Conceptual Master Plan)

This mitigation would result in LOS C conditions.

4.3-4(g) At the intersection of Bruce Road and the project access, restrict left turn movements from the project access. All other movements including inbound left turns could be allowed while maintaining acceptable traffic conditions with free flow operations for traffic on Bruce Road. Provide a southbound left turn lane and a northbound right turn lane on Bruce Road. (Conceptual Master Plan)

Findings:

1. Mitigation Measures 4.3-1(a) and 4.3-1(b) as set forth in E., above, have not been incorporated into the Project because these mitigation measures are within the responsibility and jurisdiction of another public agency (Caltrans), not the City, and Caltrans has indicated that it is unlikely that it will approve the installation of the traffic signals called for in these mitigation measures. It must be assumed, therefore, that these mitigation measures are infeasible and that the impact is

1 significant and unavoidable and is one for which a statement of overriding
2 considerations must be adopted, as set forth below.

3 2. Mitigation Measures 4.3-4(a) through 4.3-4(g) have been incorporated into the
4 Project and reduce this impact. However, even after the incorporation of these
5 mitigation measures, this impact remains potentially significant and unavoidable
6 and no additional feasible mitigation measures which could further mitigate this
7 impact have been identified.

8 3. All feasible mitigation measures have been incorporated into the Project and for
9 the reasons set forth in Section 4, no feasible Project alternatives exist which would
10 reduce these impacts and meet the Project objectives.

11 4. This impact is overridden by Project benefits as set forth in the Statement of
12 Overriding Considerations set forth below.

13 G. Generation of criteria air pollutants that would exceed the BCAQMD thresholds. The
14 DEIR, in Impact 4.4-1 on page 4.4-12, finds that construction of the Project would
15 produce dust and generate fugitive dust/PM10 from earth moving and site preparation
16 activities and from equipment traffic over temporary dirt roads within the construction site.
17 Other sources of dust emissions associated with Project development would include
18 excavation, earth movement, grading and wind erosion from exposed surfaces. In addition
19 to the fugitive dust/PM10, the use of construction equipment, architectural equipment,
20 architectural coatings and asphalt, and construction worker vehicles would generate ROG
21 and NOx emissions, which would contribute to regional O3 problems. Because predicted
22 ROG and NOx emissions exceed BCAQMD thresholds, construction of the Project was
23 identified in the EIR as a short-term significant impact. The EIR identifies the following
24 mitigation measures as feasible mitigation measures which will reduce the impact but not
25 to a level which is less than significant.

26 Mitigation Measure:

27 4.4-1(a) In accordance with Rule 207 of the BCAQMD pertaining to fugitive dust
28 emissions, apply nontoxic soil stabilizers according to manufacturer's

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- specification to all inactive construction areas (previously graded areas).
(Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(b) Provide temporary traffic controls (e.g., flag person) as appropriate during all phases of construction to improve traffic flow. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(c) Schedule construction activities that affect traffic flow for off-peak hours. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(d) Sweep streets at the end of the day if visible soil materials are carried onto adjacent public paved roads. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(e) Properly maintain equipment and do not allow construction equipment to be left idling for long periods during smog seasons (May through October). (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(f) Use low VOC asphalt, if available and feasible. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(g) All clearing, grading, earth-moving, or excavation activities shall cease when winds exceed 15 mph averaged over 1 hour. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(h) All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust. (Conceptual Master Plan and 43-acre portion of the subdivision)

Findings:

1. Mitigation Measures 4.4-1(a) through 4.4-1(h) have been incorporated into the Project and reduce this impact. However, even after the incorporation of these mitigation measures, this impact remains potentially significant and unavoidable and no additional feasible mitigation measures which could further mitigate this impact have been identified.
2. All feasible mitigation measures have been incorporated into the Project and for

1 the reasons set forth in Section 4, no feasible Project alternatives exist which would
2 reduce these impacts and meet the Project objectives.

3 3. This impact is overridden by Project benefits as set forth in the Statement of
4 Overriding Considerations set forth below.

5 H. Total long-term operational activities that would violate adopted air quality thresholds for
6 ROGs. The DEIR, in Impact 4.4-2 on page 4.4-15, finds that both area-source and vehicle
7 emissions would generate air pollutant emissions after full implementation of the Project.
8 Area-source emissions are comprised of several sources: natural gas, woodstoves,
9 fireplaces and landscaping equipment. Woodburning stoves and fireplaces constitute the
10 majority of emissions for ROG and CO emissions, while vehicle emissions primarily create
11 CO emissions. Operational emissions from the Conceptual Master Plan and the 43-acre
12 Portion of the Subdivision would exceed Air District thresholds. The EIR identifies the
13 following mitigation measures as feasible mitigation measures which will reduce the
14 impact but not to a level which is less than significant:

15 Mitigation Measure:

- 16 4.4-2(a) Install a natural gas hook up in proposed fireplaces; or
17 Limit the number of woodburning devices on the average to one per
18 dwelling unit;
- 19 4.4-2(b) In accordance with the Chico General Plan policy OS-I-13, install low-
20 NOX water heaters;
- 21 4.4-2(c) In accordance with Chico General Plan policy OS-I-11, require all wood
22 burning devices installed in any residence to be U.S. EPA Phase-II
23 certified or meet U.S. EPA standards applicable at the time of project
24 approval;
- 25 4.4-2(d) Install electrical outlets at the front and back of all residential units for
26 electrical yard equipment. (Conceptual Master Plan and 43-acre portion of
27 the Subdivision)

28 Findings:

- 1 1. Mitigation Measures 4.4-2(a) through 4.4-2(d) have been incorporated into the
- 2 Project. However, even after the incorporation of these mitigation measures, this
- 3 impact remains potentially significant and unavoidable and no additional feasible
- 4 mitigation measures which could further mitigate this impact have been identified.
- 5 2. All feasible mitigation measures have been incorporated into the Project and for
- 6 the reasons set forth in Section 4, no feasible Project alternatives exist which would
- 7 reduce these impacts and meet the Project objectives.
- 8 3. This impact is overridden by Project benefits as set forth in the Statement of
- 9 Overriding Considerations set forth below.

10 I. Operational emissions, along with cumulative land use development in the City of Chico,

11 could further contribute to criteria air pollutant emissions in Butte County. The DEIR, in

12 Impact 4.4-3 on page 4.4-16, finds that Project-related energy consumption and Project-

13 generated motor vehicle trips, in combination with cumulative emissions from cumulative

14 development and resultant construction activities could lead to continued violations of both

15 State and federal air quality standards. Because the Project would increase the difficulty

16 of attaining air quality standards, the EIR concludes that this is a significant and

17 unavoidable impact. The EIR identifies the following mitigation measures as feasible

18 mitigation measures which will reduce the impact but not to a level which is less than

19 significant.

20 Mitigation Measure:

- 21 4.4-3(a) Provide pedestrian access between bus service and major transportation
- 22 points within the project. (Conceptual Master Plan and 43-acre portion of
- 23 the subdivision)
- 24 4.4-3(b) Implement Mitigation Measures 4.4-1 and 4.4-2 shown below:
- 25 4.4-1(a) In accordance with Rule 207, apply nontoxic soil stabilizers according to
- 26 manufacturer's specification to all inactive construction areas (previously
- 27 graded areas). (Conceptual Master Plan and 43-acre portion of the
- 28 subdivision).

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- 4.4-1(b) Provide temporary traffic controls (e.g., flag person) as appropriate during all phases of construction to improve traffic flow. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(c) Schedule construction activities that affect traffic flow for off-peak hours. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(d) Sweep streets at the end of the day if visible soil materials are carried onto adjacent public paved roads. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(e) Properly maintain equipment and do not allow construction equipment to be left idling for long periods during smog seasons (May through October). (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(f) Use low VOC asphalt, if available and feasible. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(g) All clearing, grading, earth-moving, or excavation activities shall cease when winds exceed 15 mph averaged over 1 hour. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-1(h) All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust. (Conceptual Master Plan and 43-acre portion of the subdivision)
- 4.4-2(a) Install a natural gas hook up in proposed fireplaces; or
Limit the number of woodburning devices on the average to one per dwelling unit;
- 4.4-2(b) In accordance with the Chico General Plan policy OS-I-13, install low-NOX water heaters;
- 4.4-2(c) In accordance with Chico General Plan policy OS-I-11, require all wood burning devices installed in any residence to be U.S. EPA Phase-II certified or meet U.S. EPA standards applicable at the time of project approval;

1 4.4-2(d) Install electrical outlets at the front and back of all residential units for
2 electrical yard equipment. (Conceptual Master Plan and 43-acre portion of
3 the Subdivision)

4 Findings:

- 5 1. Mitigation Measures 4.4-3(a), 4.4-3(b), 4.4-1(a) through (h), and 4.4-2(a) through
6 (d) have been incorporated into the Project. However, even after the incorporation
7 of these mitigation measures, this impact remains potentially significant and
8 unavoidable and no additional feasible mitigation measures which could further
9 mitigate this impact have been identified.
- 10 2. All feasible mitigation measures have been incorporated into the Project and for
11 the reasons set forth in Section 4, no feasible Project alternatives exist which would
12 reduce these impacts and meet the Project objectives.
- 13 3. This impact is overridden by Project benefits as set forth in the Statement of
14 Overriding Considerations set forth below.

- 15 J. Exposures of residents to high levels of traffic noise. The DEIR, in Impact 4.5-2 on page
16 4.5-11 finds that the Project would construct homes along State Route 32, where the 60 dB
17 Ldn contour would be 119 to 228 feet from the centerline of the highway. The potential
18 for placement of residential development in areas exceeding 60 dB Ldn is considered a
19 significant noise impact. The EIR concludes that this impact can be reduced to a less than
20 significant level through implementation of the following mitigation measures:

21 Mitigation Measure:

22 4.5-2(a) Residential uses constructed on the project site shall be located outside of
23 the 60 dB Ldn traffic noise contours shown in Table 4.5-4.

24 OR

25 4.5-2(b) The project applicant shall demonstrate that a combination of setbacks,
26 topography, and noise barriers has been designed to reduce noise levels at
27 all residential parcels to a state of compliance with City of Chico exterior
28 noise level standards. Barriers could take the form of solid walls, earth

berms, or a combination of the two. A detailed analysis of site grading would be required to develop specific barrier height and location recommendations for this project, and the use of barriers for this project may conflict with the City's design criteria (43-acre portion of the Subdivision and Conceptual Master Plan).

Finding: For the reasons stated in the DEIR (page 4.5-13), incorporation of this mitigation measure into the Project will mitigate this impact to a less than significant level by providing two methodological approaches to ensure that new residents are not subject to unacceptable traffic noise levels, through the use of setbacks alone (4.5-2(a)) or a combination of setbacks and barriers, which would reduce the size of the 60dB contour. Either approach would protect Project residents from unacceptable noise levels by dispersal and buffering of traffic noises.

K. Exposures of residents to high levels of cumulative traffic noise. The DEIR, in Impact 4.5-4 on page 4.5-14, finds that the Project would construct homes along State Route 32, where the 60 dB Ldn contour would be 149 to 274 feet from the centerline of the highway. The distance to the 60 dB Ldn noise contour is even greater under cumulative conditions than under existing plus Project conditions, due to increases in traffic along State Route 32 and City roadways. The EIR identifies this as a significant cumulative impact but that this impact can be reduced to a less than significant level through the following mitigation measures:

Mitigation Measure:

4.5-4 Implement Mitigation Measure 4.5-2, shown below, using the cumulative plus Conceptual Master Plan column in Table 4.5-4.

4.5-2(a) Residential uses constructed on the project site shall be located outside of the 60 dB Ldn traffic noise contours shown in Table 4.5-4.

OR

4.5-2(b) The project applicant shall demonstrate that a combination of setbacks, topography and noise barriers has been designed to reduce noise levels at

1 all residential parcels to a state of compliance with City of Chico exterior
2 noise level standards. Barriers could take the form of solid walls, earth
3 berms, or a combination of the two. A detailed analysis of site grading
4 would be required to develop specific barrier height and location
5 recommendations for this project, and the use of barriers for this project
6 may conflict with the City's design criteria (43-acre portion of the
7 Subdivision and Conceptual Master Plan).

8 Finding: For the reasons stated in the DEIR (page 4.5-13), incorporation of this
9 mitigation into the Project will mitigate this impact to a less than significant level by
10 providing two alternative methodological approaches to ensure that new residents are
11 not subject to unacceptable traffic noise levels, through the use of setbacks alone or a
12 combination of setbacks and barriers, which would reduce the size of the 60dB
13 contour. Either approach would protect Project residents from unacceptable noise
14 levels by dispersal and buffering of traffic noises.

- 15 L. Extension of Cal Water's Service distribution infrastructure. The DEIR, in Impact 4.6-2
16 on page 4.6-6, finds that the Project would require additional water to serve new
17 connections. Distribution infrastructure could be provided to the Project site by extending
18 the existing main from the well at Yosemite Drive and Idylwild Drive across SR 32 to loop
19 with the existing main on Bruce Road. However, specific plans for water supply
20 infrastructure for the Conceptual Master Plan and the 43-acre Portion of the Subdivision
21 are not available, and it is not certain how water infrastructure would be extended to
22 Project development. The EIR identified this as a significant impact but concludes that
23 this impact can be reduced to a less than significant level through the following mitigation
24 measures:

25 Mitigation Measure:

- 26 4.6-2(a) The project applicant shall obtain a fire-flow analysis to determine if fire
27 flows to the project site are adequate. If fire flows are not adequate, the
28 applicant shall install, or provide funds for, a well and pump and/or an

1 above ground welded steel storage tank.

2 4.6-2(b) The project applicant shall be obligated through project approval conditions
3 to fund and install the infrastructure required to provide for water needs
4 and fire flow requirements for each development implemented under the
5 project. (43-acre portion of the subdivision and Conceptual Master Plan)

6 Finding: For the reasons stated in the DEIR (page 4.6-6), incorporation of these
7 mitigation measures into the Project will mitigate this impact to a less than significant
8 level by ensuring that water infrastructure is designed, funded and constructed for each
9 Project under the Conceptual Master Plan, including the 43-acre portion of the
10 Subdivision.

11 M. Extension of Cal Water's service distribution infrastructure. The DEIR, in Impact 4.6-3
12 on page 4.6-7, finds that the Project demand for water would contribute to the cumulative
13 increase in groundwater demand. This increased water demand would be a significant
14 cumulative impact. However, Project water demand would not increase impacts on water
15 supply beyond the level addressed in the General Plan. The City determined that the
16 benefits of development under the General Plan outweighed the significant and
17 unavoidable impact on water supply (Resolution 80-94/95).

18 Mitigation Measure: The DEIR concludes on page 4.6-7 that there are no mitigation
19 measures available to reduce this impact. Therefore, this impact would be significant
20 and unavoidable.

21 Findings:

22 All feasible mitigation measures have been incorporated into the Project and for the
23 reasons set forth in Section 4, no feasible Project alternatives exist which would reduce
24 these impacts and meet the Project objectives. For the reasons set forth in the
25 Statement of Overriding Considerations below, this impact is overridden by the Project
26 benefits.

27 N. Increased flow contributing to localized flooding and exceeding existing drainage capacity.
28 The DEIR, in Impact 4.7-1 on page 4.7-7, finds that the Conceptual Master Plan would

1 increase the amount of impervious surface, thereby increasing the rate and amount of
2 surface runoff. An analysis comparing post-project peak flow runoff to pre-project
3 conditions has not been conducted for the Conceptual Master Plan. Since this flow
4 comparison is not yet known, the increase in runoff is considered a significant impact. The
5 EIR concludes that this impact can be reduced to less than significant with implementation
6 of the following mitigation measure:

7 Mitigation Measure:

8 4.7-1 Prior to approval of any improvement plans for the Conceptual Master
9 Plan, applicants shall submit and obtain approval of final drainage plans
10 from the City of Chico Public Works Director. Final drainage plans shall
11 demonstrate that post-development surface drainage peak flows shall be
12 reduced to pre-development conditions. The drainage plan shall be
13 prepared by a registered civil engineer and shall be in conformance with
14 City of Chico requirements. The drainage plan shall include at a minimum
15 a description of existing conditions, pre- and post-development runoff,
16 proposed on-site improvements, appropriate calculations, a watershed map,
17 and maintenance responsibilities. (Conceptual Master Plan)

18 Finding: For the reasons stated in the DEIR (page 4.7-9), incorporation of this
19 mitigation measure into the Project will mitigate this impact to a less-than-significant
20 level by providing for the approval of drainage plans for improvement plans for the
21 Conceptual Master Plan prior to development. Incorporating appropriately sized
22 drainage features into the Project will ensure that post-project runoff does not exceed
23 pre-project levels, so that the Project does not exacerbate existing flood conditions.

- 24 O. Cumulative contribution to localized flooding and exceeding existing drainage capacity.
25 The DEIR, in Impact 4.7-2 on page 4.7-9 finds that the Project would increase the amount
26 of impervious surfaces, thereby increasing the cumulative rate and amount of surface
27 runoff. In large storm events, Dead Horse Slough and Chico Creek experience inadequate
28 flow capacity. Any increase in runoff would only exacerbate flooding. The Project

1 applicants must demonstrate a no net increase in post-project peak flow runoff when
2 compared to pre-project conditions. The EIR concludes that with implementation of
3 Mitigation Measure 4.7-1 below, increased peak stormwater runoff would be reduced to
4 a less than significant level.

5 Mitigation Measure:

6 4.7-2 Implement Mitigation Measure 4.7-1, shown below:

7 4.7-1 Prior to approval of any improvement plans for the Conceptual Master
8 Plan, applicants shall submit and obtain approval of final drainage plans
9 from the City of Chico Public Works Director. Final drainage plans shall
10 demonstrate that post-development surface drainage peak flows shall be
11 reduced to pre-development conditions. The drainage plan shall be
12 prepared by a registered civil engineer and shall be in conformance with
13 City of Chico requirements. The drainage plan shall include at a minimum
14 a description of existing conditions, pre- and post-development runoff,
15 proposed on-site improvements, appropriate calculations, a watershed map,
16 and maintenance responsibilities. (Conceptual Master Plan)

17 Finding: For the reasons stated in the FEIR (page 4.7-10), incorporation of this
18 mitigation measure into the Project will mitigate this impact to a less-than-significant
19 level by providing for the approval of drainage plans for improvement plans for the
20 Conceptual Master Plan prior to development. Incorporating appropriately sized
21 drainage features into the Project will ensure that post-project runoff does not exceed
22 pre-project levels, so that the Project does not exacerbate existing flood conditions.

23 P. Removal of native trees, heritage trees, and/or the loss of riparian habitat. The DEIR, in
24 Impact 4.8-1 on page 4.8-16, finds that the Project would remove oak trees during
25 construction of housing and roadways. In addition, the Conceptual Master Plan would
26 remove oak trees during construction of commercial development. Stream crossings for
27 the Conceptual Master Plan would remove oak trees in the riparian corridor. The potential
28 loss of native oak trees with a diameter at breast height (dbh) of six inches or greater is

1 considered significant for the Conceptual Master Plan. The EIR concludes that this impact
2 can be reduced to a less than significant level through implementation of the following
3 mitigation measures:

4 Mitigation Measure:

5 4.8-1(a) Project design shall avoid oak trees and riparian habitat to the maximum
6 extent feasible. In particular, the alignment of stream crossings shall be
7 designed to avoid trees within the riparian habitat along the south branch
8 of Dead Horse Slough. All individual trees and groups of trees shall be
9 clearly marked for avoidance in the field and on construction plans.
10 (Conceptual Master Plan).

11 4.8-1(b) When tree removal is necessary, the project applicant shall implement a
12 tree planting restoration program that will plant two trees for every one tree
13 removed which has as a dbh of at least six inches. Plantings shall occur on-
14 site in areas that are designated as open space or preserve areas.
15 (Conceptual Master Plan).

16 Findings: **Incorporation of these mitigation measures into the Project would reduce the**
17 **impact to a less than significant level by avoiding oak trees and riparian habitat to the**
18 **maximum extent feasible and implementing a tree planting restoration program for tree**
19 **that must be removed.**

20 Q. Potential loss of nesting raptors. The DEIR, in Impact 4.8-2 on page 4.8-18, finds that the
21 Project could require the removal of trees. Several different species of raptors were
22 observed on the Project site, and it is possible that the site provides nesting habitat for
23 these species. Tree removal would violate the California Department of Fish and Game
24 Code (Section 3503.5) if active nesting sites are removed or destroyed. Therefore, the
25 potential loss of an active raptor nest is considered to be significant for the Conceptual
26 Master Plan. The EIR concludes that this impact can be reduced to a less than significant
27 level through implementation of the following mitigation measure:

28 Mitigation Measure:

1 4.8-2 To protect any active raptor nest sites, the project applicant shall conduct
2 a raptor survey during the nesting season (March through July). A
3 qualified biologist shall assess the nesting activity on the project site. If
4 active nests are located on-site, no construction activities shall be allowed
5 within 250 feet of the nest until the young have fledged. If construction
6 activities are planned during the non-breeding period (August through
7 February), a raptor nest survey is not necessary. (Conceptual Master Plan)

8 Finding: For the reasons stated in the DEIR (page 4.8-19), incorporation of this
9 mitigation measure into the Project will mitigate this impact to a less than significant
10 level by ensuring that construction activities would not occur near active nests, so that
11 fledglings are not disturbed by or subject to abandonment due to construction
12 activities.

13 R. Loss of seasonal wetlands and/or realignment of creek channels. The DEIR, in Impact 4.8-
14 3 on page 4.8-19, finds that the Project would fill the channel of the South Branch of Dead
15 Horse Slough, which is considered jurisdictional waters of the U.S. This is considered a
16 significant impact. The EIR concludes that this impact can be reduced to a less than
17 significant level through implementation of the following mitigation measures:

18 Mitigation Measure:

19 4.8-3(a) The project applicant shall avoid to the maximum extent feasible, vernal
20 pools, seasonal wetlands and other waters of the United States, as shown
21 in Figure 4.8-2. (43-acre portion of the Subdivision and Conceptual Master
22 Plan)

23 4.8-3(b) For waters of the United States that will be filled, the project applicant
24 shall ensure that no net loss of wetlands occurs. Measures to achieve no
25 net loss may include preservation, creation on-site or off-site, and/or
26 purchase of credits in an approved mitigation bank. This measure may be
27 implemented by first demonstrating that no alternative to the project, which
28 avoids fill of jurisdictional waters while meeting the purpose and need of

1 the project, can be feasibly implemented (Clean Water Act Section
2 404(b)(1)). This measure may be further implemented by obtaining a
3 Clean Water Act Section 404 permit from the Corps and conducting all
4 measures required as provisions of the permit. (Conceptual Master Plan)

5 4.8-3(c) The project applicant shall obtain a Streambed Alteration Agreement for
6 all stream crossings, and comply with the terms of those agreements. (43-
7 acre portion of the Subdivision and Conceptual Master Plan)

8 Finding: For the reasons stated in the DEIR (page 4.8-22), incorporation of this
9 mitigation measure into the Project will mitigate this impact to a less than significant
10 level by ensuring that there is no net loss of wetland or stream habitat value.

11 S. Potential loss of habitat for federally-listed vernal pool crustaceans. The DEIR, in Impact
12 4.8-4 on page 4.8-22 finds that part of the Conceptual Master Plan site could be suitable
13 habitat for federally-listed vernal pool crustaceans. However, surveys to determine the
14 presence or absence of vernal pool crustaceans have not been completed. Therefore, it is
15 not known whether these species occur on the site. Construction and/or other activities
16 that fill or disturb vernal pools could reduce or degrade habitat for federally-listed vernal
17 pool crustaceans, if present. This is a significant impact for the Conceptual Master Plan.
18 The EIR concludes that this impact can be reduced to a less than significant level through
19 implementation of the following mitigation measures:

20 Mitigation Measure:

21 4.8-4(a) The project applicant shall complete the USFWS's two-year survey
22 protocol for federally-listed vernal pool crustaceans or the applicant may
23 assume federally-listed vernal pool crustaceans are present and comply
24 with Mitigation Measure 4.8-4(c) below. If an absence finding is
25 determined and accepted by the USFWS, then no further mitigation shall
26 be required for federally-listed vernal pool crustaceans. (Conceptual
27 Master Plan)

28 4.8-4(b) Implement Mitigation Measures 4.8-3(a) and (b), as set forth in R., above.

1 4.8-4(c) If federally-listed vernal pool crustaceans are found to be present within
2 vernal pools affected by the Project, the project applicant shall provide for
3 no net loss of habitat value. Measures to ensure no net loss may include
4 on-site or off-site creation and/or preservation of vernal pool crustacean
5 habitat at ratios ranging from 2:1 to 5:1, depending on the affected habitat
6 and where creation or preservation occurs. Mitigation could also involve
7 the purchase of mitigation credit through an accredited mitigation bank.
8 This mitigation may be implemented through the USFWS requirements of
9 the Programmatic Biological Opinion on Issuance of 404 Permits for
10 Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans
11 Within the Jurisdiction of the Sacramento Field Office, California.
12 (Conceptual Master Plan)

13 Finding: For the reasons stated in the DEIR (page 4.8-23), incorporation of this
14 measure into the Project will mitigate this impact to a less than significant level by
15 ensuring that there is no net loss of habitat values for federally-listed vernal pool
16 crustaceans.

17 T. Potential loss of habitat for rare wetland and/or vernal pool plant species. The DEIR, in
18 Impact 4.8-5 on page 4.8-23, finds that development associated with the Conceptual
19 Master Plan would occur in areas that could support rare wetland plant species. However,
20 surveys have not revealed the presence of any rare plant species on the Project site. The
21 Project's building of commercial development could require filling of vernal pools and
22 wetlands on the site, potentially resulting in the loss of rare plant species habitat. This was
23 identified as a significant impact for the Conceptual Master Plan. The EIR concludes that
24 this impact can be reduced to less than significant with implementation of the following
25 mitigation measures:

26 Mitigation Measure:

27 4.8-5(a) Prior to development of areas that support vernal pools and seasonal
28 wetlands (shown in Figure 4.8-2), the project applicant shall conduct

1 surveys to identify and delineate any special-status plant species
2 populations within the designated development areas, proposed stream
3 crossings, and heavy equipment staging areas. (Conceptual Master Plan)

4 4.8-5(b) Vernal pools and wetlands that are to be retained shall be clearly marked
5 with highly visible fencing to protect and delineate the special-status plant
6 population(s). The fenced area shall be free of parking, material storage,
7 vehicular access, etc. (Conceptual Master Plan)

8 4.8-5(c) For vernal pools and wetland areas that are to be filled or disturbed
9 pursuant to California Fish and Game Code Chapter 10. Native Plant
10 Protection, §1913 paragraph (c), the applicant shall notify the California
11 Department of Fish and Game at least ten (10) days in advance of ground
12 disturbing activities to allow for salvage of special-status plant species.
13 (Conceptual Master Plan)

14 4.8-5(d) Require replacement wetland construction.

15 4.8-5(e) Comply with Mitigation Measure 4.8-4(c), as set forth in S., above.

16 Finding: For the reasons stated in the DEIR (page 4.8-24), incorporation of this
17 mitigation measure into the Project will mitigate this impact to a less than significant
18 level by protecting rare plant species and ensures no net loss of habitat for rare plants
19 that would be destroyed due to the Project.

20 U. Potential loss of suitable habitat for the valley elderberry longhorn beetle (VELB). The
21 DEIR, in Impact 4.8-6 on page 4.8-24, finds that the valley elderberry longhorn beetle, a
22 threatened species protected by the Federal Endangered Species Act, depends entirely on
23 elderberry shrubs for food and reproduction. Elderberry shrubs are found on a portion of
24 the Conceptual Master Plan area, and it is not yet known if development will avoid these
25 shrubs. The loss of this habitat would be considered a significant impact for the
26 Conceptual Master Plan. The EIR concludes that this impact can be reduced to a less than
27 significant level with implementation of the following mitigation measures:

28 Mitigation Measure:

1 4.8-6(a) The project applicant shall ensure through surveys conducted by a qualified
2 biologist and protective fencing if applicable, that direct and indirect
3 disturbance (such as trenching or placement of fill within the dripline) of
4 all elderberry shrubs is avoided. (Conceptual Master Plan)

5 4.8-6(b) Should elderberry shrubs be affected by the Project, the project applicant
6 shall obtain the necessary authorization/permit from the USFWS for take
7 of the species and develop and implement an on-site VELB mitigation plan
8 in accordance with the most current USFWS guidelines to compensate for
9 the loss of VELB habitat. The applicant shall ensure no net loss of VELB
10 habitat. The mitigation plan may include relocation of elderberry shrubs,
11 planting of elderberry shrubs, and monitoring of relocated and planted
12 elderberry shrubs, or purchase of credits in an approved VELB habitat
13 bank. (Conceptual Master Plan)

14 Finding: For the reasons stated in the DEIR (page 4.8-25), incorporation of these
15 mitigation measures into the Project will mitigate this impact to a less than significant
16 level by reducing the impact on VELB by ensuring no net loss of VELB habitat.

17 V. Contribution to the cumulative loss and degradation of foothill, grassland, and riparian
18 habitat supporting native plants and wildlife. The DEIR, in Impact 4.8-7 on page 4.8-25
19 finds that encroachment of urban development into the western foothills would reduce the
20 number and diversity of plants and wildlife species that currently exist. The Project, in
21 combination with other planned development in western Butte County, including the Chico
22 area, would have a cumulative adverse effect on natural plant communities and resident
23 and migratory wildlife species through the elimination of habitat. Also, “islands” of
24 habitat are created as development occurs, isolating natural areas and blocking the free
25 movement and dispersal of wildlife and plants. The General Plan EIR recognizes that
26 degradation of habitat cannot be avoided entirely, and that the cumulative loss of
27 biological resources would be a significant and unavoidable consequence of buildout of
28 the General Plan. Therefore, this impact is considered significant and unavoidable. The

1 EIR identifies the following mitigation measures as feasible mitigation measures which
2 will reduce the impact but not to a level which is less than significant.

3 Mitigation Measure:

4 4.8-7 Implement Mitigation Measures 4.8-1 through 4.8-6.

5 //

6 Findings:

- 7 1. Mitigation Measure 4.8-7 has been incorporated into the Project and reduce this
8 impact. However, even after the incorporation of that mitigation measure, this
9 impact remains potentially significant and unavoidable and no additional feasible
10 mitigation measures which could further mitigate this impact has been identified.
11 2. All feasible mitigation measures have been incorporated into the Project and for
12 the reasons set forth in Section 4, no feasible Project alternatives exist which would
13 reduce these impacts and meet the Project objectives.
14 3. This impact is overridden by Project benefits as set forth in the Statement of
15 Overriding Considerations set forth below.

16 W. Nightlighting could contribute to existing ambient light, which would alter existing
17 nighttime views of and from the Project site. The DEIR, in Impact 4.9-3 on page 4.9-21,
18 finds that the Project would introduce a new source of light visible from offsite, thereby
19 changing the Project site's nighttime visual character. Artificial light from residential and
20 commercial development would cause nighttime views to be substantially different from
21 current conditions. This was identified as a significant impact for the Project. The EIR
22 concludes that this impact can be reduced to a less than significant level through
23 implementation of the following mitigation measures:

24 Mitigation Measure:

25 4.9-3 Implement Mitigation Measure 4.9-1, as shown below:

26 4.9-1 Development of both the Conceptual Master Plan and the 43-acre portion
27 of the Subdivision shall be consistent with the City's adopted development
28 standards and the Foothill Design Criteria for project areas which are at the

1 250-foot and above elevation line. Development of both the Conceptual
2 Master Plan and the 43-acre portion of the subdivision shall also be
3 consistent with City of Chico lighting standards and the City's architectural
4 review process for commercial development. (Conceptual Master Plan and
5 43-Acre portion of the subdivision).

6 Finding: For the reasons stated in the DEIR (page 4.9-22), incorporation of these
7 mitigation measures into the Project will mitigate this impact to a less than significant
8 level by requiring that light be shielded to prevent glare and spillover, and that low-
9 level and multiple low fixtures should be used rather than fewer tall fixtures. These
10 measures would minimize the obtrusiveness of lighting on the Project site.

11 X. Significant and Unavoidable Cumulative Impact - Conversion of undeveloped landscape
12 to urban development. The DEIR, in Impact 4.9-1 on page 4.9-18, finds that the Project
13 would alter the landscape from open, rolling grasslands to an urban area, further extending
14 the urban edge. There is also riparian habitat along Dead Horse Slough and groves of
15 mature Blue Oak trees on the Conceptual Master Plan site. While the Project would
16 preserve some open space, many areas would be permanently converted to urban uses.
17 This permanent conversion of land is considered a significant and unavoidable impact.
18 The EIR identifies the following mitigation measures as feasible mitigation measures
19 which will reduce the impact but not to a level which is less than significant:

20 Mitigation Measure:

21 4.9-1 Development of both the Conceptual Master Plan and the 43-acre portion
22 of the Subdivision shall be consistent with the City's adopted development
23 standards and the Foothill Design Criteria for project areas which are at the
24 250-foot and above elevation line. Development of both the Conceptual
25 Master Plan and the 43-acre portion of the subdivision shall also be
26 consistent with City of Chico lighting standards and the City's architectural
27 review process for commercial development. (Conceptual Master Plan and
28 43-Acre portion of the subdivision).

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Findings:

1. Mitigation Measure 4.9-1 has been incorporated into the Project and will reduce this impact. However, even after the incorporation of these mitigation measures, this impact remains potentially significant and unavoidable and no additional feasible mitigation measures which could further mitigate this impact have been identified.
2. All feasible mitigation measures have been incorporated into the Project and for the reasons set forth in Section 4, no feasible Project alternatives exist which would reduce these impacts and meet the Project objectives.
3. This impact is overridden by Project benefits as set forth in the Statement of Overriding Considerations set forth below.

Y. Alteration of views from surrounding areas. The DEIR, in Impact 4.9-2 on page 4.9-19, finds that the Project would alter views from State Route 32, Humboldt Road, and the bike trail along Little Chico Creek. However, development would be required to be compatible with the character of the eastern foothills. This alteration of views from surrounding areas is considered a significant and unavoidable impact. The EIR identifies the following mitigation measures as feasible mitigation measures which will reduce the impact but not to a level which is less than significant:

Mitigation Measure:

- 4.9-2 Implement Mitigation Measure 4.9-1, as shown below:
- 4.9-1 Development of both the Conceptual Master Plan and the 43-acre portion of the Subdivision shall be consistent with the City’s adopted development standards and the Foothill Design Criteria for project areas which are at the 250-foot and above elevation line. Development of both the Conceptual Master Plan and the 43-acre portion of the subdivision shall also be consistent with City of Chico lighting standards and the City’s architectural review process for commercial development. (Conceptual Master Plan and 43-Acre portion of the subdivision).

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Findings:

1. Mitigation Measure 4.9-2 has been incorporated into the Project and will reduce this impact. However, even after the incorporation of this mitigation measure, this impact remains potentially significant and unavoidable and no additional feasible mitigation measures which could further mitigate this impact have been identified.
2. All feasible mitigation measures have been incorporated into the Project and for the reasons set forth in Section 4, no feasible Project alternatives exist which would reduce these impacts and meet the Project objectives.
3. This impact is overridden by Project benefits as set forth in the Statement of Overriding Considerations set forth below.

Z. Cumulative development would alter existing views and the visual character of the City of Chico. The DEIR, in Impact 4.9-4 on page 4.9-22, finds that the Project would, in conjunction with other Projects, result in substantial areas of open space being converted to urban development. This conversion would permanently alter the character of the site. Environmental protection is also an issue in dealing with additional development. This alteration of existing views and the visual character of the City is considered a significant and unavoidable impact. The EIR identifies the following mitigation measures as feasible mitigation measures which will reduce the impact but not to a level which is less than significant:

Mitigation Measure:

- 4.9-4 Implement Mitigation Measure 4.9-1, as shown below:
- 4.9-1 Development of both the Conceptual Master Plan and the 43-acre portion of the Subdivision shall be consistent with the City’s adopted development standards and the Foothill Design Criteria for project areas which are at the 250-foot and above elevation line. Development of both the Conceptual Master Plan and the 43-acre portion of the subdivision shall also be consistent with City of Chico lighting standards and the City’s architectural review process for commercial development. (Conceptual Master Plan and

43-Acre portion of the subdivision).

Findings:

1. Mitigation Measure 4.9-4 has been incorporated into the Project and will reduce this impact. However, even after the incorporation of these mitigation measures, this impact remains potentially significant and unavoidable and no additional feasible mitigation measures which could further mitigate this impact have been identified.
2. All feasible mitigation measures have been incorporated into the Project and for the reasons set forth in Section 4, no feasible Project alternatives exist which would reduce these impacts and meet the Project objectives.
3. This impact is overridden by Project benefits as set forth in the Statement of Overriding Considerations set forth below.

AA. Exposure of hazards associated with contaminated soils to construction workers, nearby residents, and future occupants. The RDEIR, in Impact 4.10-1 on page 4.10-27, finds that construction activities and other soil-disturbing activities could expose humans to potential hazards associated with chemical compounds in the soil. Parts of the site have not been remediated, and pose a risk that represents a potentially significant impact unless appropriate precautions are taken. The EIR concludes that this impact can be reduced to a less than significant level through implementation of the following mitigation measures:

Mitigation Measure:

- 4.10-1(a) No grading permit or building permit shall be issued until after: (1) the locations to be developed, which are part of this Project, that are included in the RWQCB Cleanup and Abatement Order #R5-2003-0707, are remediated in accordance with a RWQCB-approved Remedial Action Plan; and (2) remediated locations have received regulatory closure from the agency with jurisdiction over the cleanup. (43-acre portion of the Subdivision and Conceptual Master Plan)
- 4.10-1(b) Where required by OSHA, a site health and safety plan that meets

1 applicable OSHA requirements shall be prepared and in place prior to
2 commencing work on any locations where the need for risk management
3 measures has been identified. (43-acre portion of the Subdivision and
4 Conceptual Master Plan)

5 4.10-1(c) Near-term or interim infrastructure development activities (e.g., the
6 westerly temporary access road) shall only be allowed when it can be
7 demonstrated that construction and use of such features that would cross
8 any property listed in the Cleanup and Abatement Order #R5-2003-0707
9 would not result in an increased risk of adverse effects on human health
10 and the environment. (43-acre portion of the Subdivision and Conceptual
11 Master Plan)

12 Findings: For the reasons stated in the RDEIR (page 4.10-29), incorporation of these
13 mitigation measures into the Project will reduce this impact to a less than significant
14 level by requiring risk management actions meeting all applicable standards enforced
15 by the state and local agencies having jurisdiction, relating to the remediation of soil
16 to prevent a human health or environmental hazard during construction or occupancy.

17 BB. Construction of the Project could interfere with remediation efforts. The RDEIR, in
18 Impact 4.10-3 on page 4.10-31, finds that unless planned and coordinated with site
19 remediation activities, Project construction could inadvertently spread contaminated soil
20 on-site or off-site if haul routes that avoid the remediation area(s) are not defined. There
21 is also an increased risk of damaging or interfering with remediation site controls such as
22 soil containment areas, monitoring wells, or air sampling devices. The EIR concludes that
23 this potentially significant impact can be reduced to a less than significant level through
24 implementation of the following mitigation measures:

25 Mitigation Measure:

26 4.10-3(a) Project developers and their contractors shall coordinate with the City,
27 RWQCB, DTSC, and other involved agencies, as appropriate, to assure that
28 project construction shall not interfere with any adjacent and/or on-site

1 remediation activities or unduly delay any on site remediation activities.

2 (43-Acre portion of the Subdivision and Conceptual Master Plan)

3 4.10-3(b) The Project developers shall comply with all applicable site controls
4 established for HRBD site remediation activities and shall ensure that
5 project construction does not prevent such compliance. (43-Acre portion
6 of the Subdivision and Conceptual Master Plan)

7 Finding: For the reasons stated in the RDEIR (page 4.10-31), incorporation of these
8 measures into the Project will reduce this impact to a less than significant level by
9 ensuring Project developers and their contractors are aware of the timing, locations,
10 and types of remediation activities so that construction activities do not inadvertently
11 or adversely affect HRBD cleanup activities, and that remediation contractors are
12 aware of planned construction activities. Such efforts would ensure that contaminated
13 materials would not be inadvertently encountered and that soils or contaminated
14 materials are not inappropriately moved or used within the site.

15 Section 6. Adoption of a Statement of Overriding Considerations.

16 As discussed in Sections 2 and 5 of this Resolution, the following impacts will remain as potentially
17 significant effects even after implementation of mitigation measures and no other mitigation measures
18 have been suggested or identified which could further reduce these potential impacts: increase of traffic
19 congestion on local roadways over existing levels; **cumulative increase in traffic congestion on the local**
20 **roadways; generation of criteria air pollutants that would exceed the BCAQMD thresholds; total long-**
21 **term operational activities that would violate adopted air quality thresholds for reactive organic gases**
22 **(ROGs); operational emissions, along with cumulative land use development in the City of Chico, could**
23 **further contribute to criteria air pollutant emissions in Butte County; extension of Cal Water's service**
24 **distribution infrastructure** (cumulative impact on increased water demand); **contribution to the**
25 **cumulative loss and degradation of foothill, grassland, and riparian habitat supporting native plants and**
26 **wildlife; conversion of undeveloped landscape to urban development; alteration of views from**
27 **surrounding areas; and cumulative development which would alter existing views and the visual**
28 **character of the City of Chico.**

1 The fundamental policy considerations supporting the Project are set forth in this Resolution and
2 the EIR. Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15091 and
3 15093, the City Council makes the following Statement of Overriding Considerations in support of its
4 findings regarding the identified significant unavoidable impacts.

5 The City Council finds that implementation of the Project would result in the following
6 substantial public benefits:

- 7 1. The Project furthers the objectives of the Housing and Land Use Elements of the General
8 Plan, which call for residential and related commercial development of the Project site as
9 part of the City's orderly urban growth and plan to maintain a compact urban form. In
10 particular, the Project will further General Plan policies of preserving agricultural uses in
11 the western areas of the City by directing growth to easterly areas within City limits where
12 urban infrastructure extensions already have been planned and installed. The General Plan
13 designates a limited number of locations for the construction of new residential units, thus
14 constraining the City's ability to accommodate growth at alternative locations.
- 15 2. At full buildout, the Project will include approximately 1,324 residential units (572
16 low-density single-family homes, 471 duplex units, and 260 medium-density residential
17 units), and 109,000 sq. ft. of commercial retail space, consistent with the City's
18 Comprehensive General Plan and adopted Housing Element, which are needed to
19 accommodate anticipated growth within the City and prevent the unnecessary inflation of
20 housing costs due to inadequate housing supply. The Project would provide a mix of
21 residential types and densities as promoted by General Plan policy H-G-29 and as
22 envisioned by the variety of zoning designations for the property. To accomplish this, the
23 Project uses a variety of lot sizes, clustering of units, and allowing the transfer of allowable
24 densities to locations across the site which are appropriate for development and provide
25 permanent protection for those portions of the site which are not appropriate for
26 development.
- 27 3. Development of the Project plays a key role in implementing the City's Housing Element
28 by providing approximately 1,324 housing units to help meet the City's "fair share" of the

1 Regional Housing Allocation Plan adopted by the Butte County Association of
2 Governments.

- 3 4. Development of the Project will take place in accordance with the Oak Valley Project
4 Foothill Design Guidelines (Design Guidelines) prepared specifically for the project which
5 would implement the City’s Foothill Development Standards, as well as special design
6 criteria set forth in the Special Design Considerations Overlay (SD-2) and Resource
7 Management (-RM) Area policies which apply to the site. The primary objectives of the
8 Design Guidelines are to implement policies and strategies found in the Chico General
9 Plan pertaining to foothill development; promote quality architecture and landscaping;
10 provide for site and street designs that will enhance the aesthetic character of a foothill
11 setting; protect and preserve important environmental resources and significant natural
12 features valuable to the overall community by providing housing and commercial
13 development at appropriate densities and intensities that are compatible with the natural
14 character of the area by providing increased densities and intensities on the lower westerly
15 portions of the site and clustering and open space areas on the higher easterly portions of
16 the Project site; preserve other unique natural and historic features present on the site,
17 including the “ribbons” of blue oaks and the historic wagon wheel ruts along Humboldt
18 Road; and ensure that foothill development incorporates public safety measures relating
19 to fire defensibility and access.
- 20 5. The Project provides a conceptual master plan which provides for a comprehensive
21 planning approach for the 340-acre Project site, designated land uses with environmental
22 guidelines and mitigations which can be assessed at each development phase over the
23 buildout of the Project site, and an economically feasible phasing of development over
24 time to provide adequate infrastructure with appropriate offsite and onsite improvements.
- 25 6. The Project includes the dedication of a continuous greenway (averaging 100 feet from top
26 of bank) adjacent to the north and south banks of Dead Horse Slough which preserves
27 riparian habitat along the slough and provides (outside of the riparian habitat area) a
28 continuous recreational walking/biking path which will be a valuable community amenity.

- 1 7. The Project provides an integrated pattern of streets and neighborhoods by connecting
2 existing streets and accommodating connections to planned streets and neighborhoods,
3 both on- and off-site.
- 4 8. The Project will increase employment opportunities for residents of Chico by creating
5 construction-related jobs during the several years anticipated for complete Project buildout.
- 6 9. The Project will increase property tax revenue upon its development and retail sales tax
7 revenues through consumption of materials and supplies locally.
- 8 10. Approval and implementation of the Project has been determined to be the most
9 appropriate means of addressing the future development of this Special Development Area,
10 as designated in the City’s General Plan. Development consistent with the General Plan
11 provides social and economic benefits including single- and multi-family housing,
12 commercial, and recreational and business opportunities, amongst others. Beneficial
13 considerations of the General Plan from the 1994 Resolution adopting the General Plan
14 EIR are incorporated herein by reference.

15 The City Council has carefully considered the benefits of the Project and the potential
16 environmental impacts identified in the EIR, including potentially significant impacts identified above
17 which may remain at significant levels despite mitigation efforts. The City Council finds that all of the
18 feasible mitigation measures identified in the EIR will be incorporated into the Project and that no
19 additional mitigation measures exist which can further mitigate those effects that remain significant and
20 unavoidable.

21 After thorough review and consideration, the City Council hereby determines that the benefits
22 of the Project, as discussed above, outweigh the potentially unavoidable adverse environmental effects
23 associated with the Project. Therefore, the City Council further determines that these potentially
24 unavoidable adverse environmental effects are an acceptable consequence of the Project.

25 Section 7. Adoption of Mitigation Measures and Monitoring Program. The City Council does hereby
26 adopt and impose as conditions of approval of any subsequent action related to implementation of the
27 Oak Valley Project, each of the mitigation measures stated in Section 5 above and more fully described
28 in the EIR and the mitigation monitoring program except mitigation measures 4.3-1(a) and 4.3-1(b)

1 which have been found herein to be infeasible. The mitigation monitoring program is attached to this
2 resolution as Exhibit "I." All subsequent approvals implementing the Oak Valley Project, shall be
3 subject to inclusion of the aforementioned environmental mitigation measures.

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7 THE FOREGOING RESOLUTION WAS ADOPTED at a meeting of the City Council of the
8 City of Chico held on September 20, 2005, by the following vote:

9 AYES:

10 NOES:

11 DISQUALIFIED:

12 ABSENT:

13 ABSTAIN:

14 ATTEST:

APPROVED AS TO FORM:

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17 DEBORAH R. PRESSON
City Clerk

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LORI J. BARKER
Assistant City Attorney

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Exhibit "I".

Mitigation Monitoring Program
(MMP)

for the Oak Valley Conceptual Master
Plan and for the 43-acre Portion of the
Subdivision
(SCH #1998032048)

Prepared for:

The City of Chico

Prepared by:

EIP Associates

November 2004

Mitigation Monitoring Program (MMP)

**for the
Oak Valley Conceptual Master Plan and for the
43-acre Portion of the Subdivision
(SCH #1998032048)**

Prepared for:

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Prepared by:

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Sacramento, California

November 2004

MITIGATION MONITORING PROGRAM

PURPOSE OF THIS DOCUMENT

This Mitigation Monitoring Program (MMP) has been required by and prepared for the City of Chico Community Development Department, 411 Main Street, Chico, CA 95928, pursuant to CEQA Guidelines section 15097.

Project Description

Project Name: Oak Valley Conceptual Master Plan and 43-acre Portion of the Subdivision

City of Chico Contact Person: Patrick Murphy
Community Development Department
411 Main Street
Chico, CA 95927
(530)895-4752

Applicant: Fogarty Investments

Address: Jim Mann
Rural Consulting Associates
70 Independence Circle, Suite 101
Chico, CA 95973

PROJECT DESCRIPTION

Background

An Initial Study and Notice of Preparation (IS/NOP) for the 2000 DEIR was prepared and circulated on March 27, 1998. The 2000 DEIR evaluated five alternatives, including a no project alternative, a 43-acre subdivision alternative, a partial master plan alternative, a reduced density alternative, and an off-site alternative (see Section 6.0, Alternatives Analysis, of the 2000 DEIR). A Notice of Availability for the Recirculated DEIR was prepared and circulated on April 26, 2004.

The EIR is both a Project EIR and Program EIR, pursuant to Sections 15161 and 15168 of the CEQA Guidelines (see page 1-1 of the DEIR). A programmatic evaluation is provided for the Conceptual Master Plan. The tentative subdivision map identifies a 43-acre portion of the project site, which is evaluated at a project-specific level in the EIR.

Project Description

The project area encompasses approximately 340 acres and is generally bounded by Bruce Road on the west, State Route 32 on the north, two PG&E 500 kilovolt (kV) transmission lines on the east and Humboldt Road on the south. The Conceptual Master Plan would include 230 acres of single and multi-family residential units, 87.5 acres designated as open space for resource protection and passive recreation use, and approximately 109,000 square feet of community commercial uses on 15 acres. The Master Plan would include a total of approximately 864 single-family units and 260 multi-family units. In addition, 200 very low density residential units would be developed using the clustered housing concept. Phase I of the Master Plan includes a 43-acre subdivision with a mix of low, medium and high density residential units and open space. The 43-acre portion of the site would include 138 parcels for a total of 87 low density single-family homes on 10 acres, 98 medium density duplex units on six acres, and 132 multi-family high density units on eight acres. Approximately eight acres would be designated for buffers, setbacks, and open space while the remaining 10 acres would be designated for road rights-of-way (see page 3-6 of the Recirculated DEIR for a description).

MITIGATION MONITORING PROGRAM

Introduction

This document provides the Migration Monitoring Program (MMP) for the Oak Valley Project Environmental Impact Report (EIR), pursuant to section 21080.6 of the California Public Resources Code, which requires public agencies to “adopt a reporting and monitoring program for the changes to the project which it had adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment.” A Mitigation Monitoring Program is required for the Proposed Project because the EIR has identified significant adverse impacts, and mitigation measures have been identified to mitigate those impacts.

The Proposed Project would be subject to all applicable mitigation measures identified in the EIR.

The numbering of the individual mitigation measures follows the numbering sequence in the EIR. Adoption of the MMP shall occur prior to, or concurrent with, adoption of the Proposed Project for which the program has been developed.

Purpose of the MMP

The purposed of a MMP is to:

- ensure that mitigation measures are implemented;
- provide feedback to agency staff and decision makers about the effectiveness of the mitigation measures;
- provide adaptive management opportunities for improving mitigation measures on future projects; and
- identify the need for enforcement action before irreversible environmental damage occurs.

The components of the MMP are addressed briefly below.

Impacts and Mitigation Measures: The impacts and mitigation measures are taken verbatim from the EIR.

Monitoring and Reporting Procedure: For every mitigation measures, one or more actions are described. These are the heart of the MMP, as they delineate the means for implementing EIR measures and, in many cases, the criteria for determining whether a measure has been implemented.

Mitigation Timing: Each action must take place during or prior to some part of implementation of the Specific Plan or project development or approval. Generally, the timing of actions falls into one of the following categories:

- I Prior to approval of Improvement Plans
- B Prior to issuance of Building Permit
- G Prior to Grading Permit
- D During Grading Permit
- C During construction
- O Prior to the issuance of Occupancy Permit
- Q Prior to Final Map

Mitigation Responsibility: This column identifies the entity that will undertake the required action. Where actions apply to the entire project area, the project proponents are named. For specific projects, such as residential subdivisions and roadway improvements, the developers of each individual project are responsible for implementation. The contractor is named for actions occurring during grading or construction. On-site inspections will be performed by City staff.

Monitoring Party: The City of Chico will have ultimate and legal responsibility for implementation of all mitigation measures. This column indicates which office within the City (usually the Community Development Department or the City Engineer) will conduct the actual monitoring and reporting, as well as take corrective actions when a measure has not been properly implemented.

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.2 Land Use				
<p>4.2-2 Prior to recordation of the Final Map(s), the Community Development Department shall review Design Standards provided by the applicant to ensure that building design will meet the following standards:</p> <ul style="list-style-type: none"> buildings are oriented to the pedestrian and create positive transitions to the street (CD-G-57), and small-lot design will be of high quality (CD-G-58). (43-acre portion of the subdivision and Conceptual Master Plan) <p>In addition, the Conceptual Master Plan must meet the following standard:</p> <ul style="list-style-type: none"> neighborhoods and buildings are oriented to the street (CD-G-51) (Conceptual Master Plan) 	<ol style="list-style-type: none"> Submit and comply with Design Standards, per Mitigation Measure 4.2-2. Review Design Standards for compliance with Mitigation Measure 4.2-2. 	<ol style="list-style-type: none"> Prior to recordation of the Final Map(s) Prior to recordation of Final Map(s) 	<ol style="list-style-type: none"> Project Developer City of Chico Community Development Department (CDD) 	<ol style="list-style-type: none"> City of Chico, CDD City of Chico, CDD
4.3 Transportation and Circulation				
<p>4.3-1(a) The project applicant shall install a traffic signal at 8th Street/Fir Street/S.R. 99 and in consultation with Caltrans or pay the fair share transportation impact fees if this improvement is added to the City's Capital Improvement Program (CIP). (Conceptual Master Plan)</p>	<p>Pay development impact fees according to the provisions of the Capital Improvement Program.</p> <p>If adequate fees are not available through the financing plan, the project developer shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-1.</p>	<p>Prior to issuance of building permit</p> <p>Prior to occupancy</p>	<p>Project Developer</p> <p>Project Developer</p>	<p>City of Chico, Public Works Department</p> <p>City of Chico, Public Works Department</p>
<p>4.3-1(b) The project applicant shall install a traffic signal at Fir Street/East 9th Street and in consultation with Caltrans or pay the fair share transportation impact fees if this improvement is added to the City's CIP. (Conceptual Master Plan)</p>	<p>Pay development impact fees according to the provisions of the Capital Improvement Program.</p> <p>If adequate fees are not available through the financing plan, the project developer shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-1.</p>	<p>Prior to issuance of building permit</p> <p>Prior to occupancy</p>	<p>Project Developer</p> <p>Project Developer</p>	<p>City of Chico, Public Works Department</p> <p>City of Chico, Public Works Department</p>

OAK VALLEY MITIGATION MONITORING PROGRAM				
Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.3-2 (a) The project applicant shall provide a traffic signal at the intersection of Highway 32/Yosemite Drive and the primary project access. The project applicant shall ensure the placement of an eastbound right turn deceleration lane on Highway 32 with a minimum storage capacity of 200 feet and appropriate taper indicated by Caltrans design standards. A westbound left turn lane with 50 feet of storage and eastbound left turn lane with 250 feet of storage and appropriate transition indicated by Caltrans design standards must also be provided by the project applicant on Highway 32 at the intersection of Yosemite Drive. (43-Acre portion of the Subdivision and Conceptual Master Plan)	The applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-2(a).	Prior to occupancy	Project Developer	City of Chico, Public Works Department
4.3-2 (b) The project applicant shall ensure that the placement of the secondary access points on Highway 32, east of the primary access near Yosemite Drive, be limited to right turns in and right turns out only. This may include an on-site channelization island. An acceleration and deceleration taper must also be provided on the eastern access. (Conceptual Master Plan)	The applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-2(b).	Prior to occupancy	Project Developer	City of Chico, Public Works Department
4.3-2(c) The project applicant shall provide a left turn lane on Bruce Road at the entrance to the community commercial. Left turn movements out of the access shall be prohibited. (Conceptual Master Plan)	The applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-2(c).	Prior to occupancy	Project Developer	City of Chico, Public Works Department
4.3-3(a) Humboldt Road shall be de-emphasized as a project access component by providing a narrow street width, bike lanes or paths, and limited access to residential development within the project site, especially east of Potter Road. (Conceptual Master Plan)	Pay development fees according to the provisions of the Capital Improvement Plan. If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-3(a).	Prior to issuance of building permit	Project Developer	City of Chico, Public Works Department
4.3-3(b) A series of pedestrian and bicycle recreational trails shall be provided which connect residential development with the Humboldt Road corridor. (Conceptual Master Plan)	Pay development fees according to the provisions of the Capital Improvement Plan.	Prior to issuance of building permit	Project Developer	City of Chico, Public Works Department

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
	If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-3(b).	Prior to occupancy	Project Developer	City of Chico, Public Works Department
4.3-4 (a) The project applicant shall install traffic signals, including separate left turn pockets on all four approaches to the intersection of Bruce Road and Humboldt Road. (43-acre portion of the Subdivision and Conceptual Master Plan)	Pay development impact fees according to the provisions of the Capital Improvement Program. If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-4(a).	Prior to issuance of building permit Prior to occupancy	Project Developer Project Developer	City of Chico, Public Works Department City of Chico, Public Works Department
4.3-4(b) The project applicant shall build improvements or, if these projects are included in the City's CIP, provide fair share funding for separate right turn lanes in the northbound and westbound directions and a right turn overlap phase for the southbound right-turn at the intersection of Highway 32 and Bruce Road. (43-Acre Subdivision)	Pay development impact fees according to the provisions of the Capital Improvement Program. If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-4(b).	Prior to issuance of building permit Prior to occupancy	Project Developer Project Developer	City of Chico, Public Works Department City of Chico, Public Works Department

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
<p>4.3-4(c) The project applicant shall build improvements or if these projects are included in the City's CIP, provide fair share funding for the following lane improvements at the intersection of Highway 32 and Forest Avenue:</p> <ul style="list-style-type: none"> The northbound approach shall be widened from one lane to two left turn lanes, one through and one right turn lane. The southbound approach shall be widened to include two lanes. The eastbound and westbound approaches should be widened to include an additional through lane. (Highway 32 currently transitions from four to two lanes, east of Fir Street. This mitigation would require that the four-lane section be extended to east of Forest Avenue). (43-Acre Subdivision) 	<p>Pay development impact fees according to the provisions of the Capital Improvement Program.</p> <p>If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-4(c).</p>	<p>Prior to issuance of building permit</p> <p>Prior to occupancy</p>	<p>Project Developer</p> <p>Project Developer</p>	<p>City of Chico, Public Works Department</p> <p>City of Chico, Public Works Department</p>
<p>4.3-4(d) Implement Mitigation Measure 4.3-1 (a); and</p> <ul style="list-style-type: none"> The southbound approach at the 8th Street/Fir Street/SR 99 intersection shall be widened to include a right turn lane and a through/right turn lane. (43-Acre portion of the Subdivision) 	<p>Pay development impact fees according to the provisions of the Capital Improvement Program.</p> <p>If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-4(d).</p>	<p>Prior to issuance of building permit</p> <p>Prior to occupancy</p>	<p>Project Developer</p> <p>Project Developer</p>	<p>City of Chico, Public Works Department</p> <p>City of Chico, Public Works Department</p>
<p>4.3-4(e) Implement Mitigation Measure 4.3-1 (b). (43-Acre portion of the Subdivision)</p>	<p>See 4.3-1(b).</p>	<p>See 4.3-1(b)</p>	<p>See 4.3-1(b)</p>	<p>See 4.3-1(b)</p>
<p>4.3-4(f) The project applicant shall provide a traffic signal at the intersection of Highway 32/Yosemite Drive and the primary project access at the time warrants are met. The project applicant shall ensure the placement of an eastbound right turn deceleration lane on Highway 32 with a minimum storage capacity of 200 feet and appropriate taper indicated by Caltrans design standards. A westbound left turn lane with 50 feet of storage and eastbound left turn lane with 250 feet of storage and appropriate transition indicated by Caltrans design standards must also be provided by the project applicant. (43-Acre portion of the Subdivision and Conceptual Master Plan)</p>	<p>Pay development impact fees according to the provisions of the Capital Improvement Program.</p> <p>If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-4(f).</p>	<p>Prior to issuance of building permit</p> <p>Prior to occupancy</p>	<p>Project Developer</p> <p>Project Developer</p>	<p>City of Chico, Public Works Department</p> <p>City of Chico, Public Works Department</p>

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.3-4(g) At the intersection of Bruce Road and the project access, restrict left turn movements from the project access. All other movements including inbound left turns could be allowed while maintaining acceptable traffic conditions with free flow operations for traffic on Bruce Road. Provide a southbound left turn lane and a northbound right turn lane on Bruce Road. (Conceptual Master Plan)	Pay development impact fees according to the provisions of the Capital Improvement Program. If adequate fees are not available through the financing plan, the applicant shall design and construct all of the infrastructure and improvements specified for Mitigation Measure 4.3-4(g).	Prior to issuance of building permit Prior to occupancy	Project Developer Project Developer	City of Chico, Public Works Department City of Chico, Public Works Department
4.3-5 Implement Mitigation Measure 4.3-3(a) and 4.3-3(b)	See 4.3-3	See 4.3-3	See 4.3-3	See 4.3-3
4.4 Air Quality				
4.4-1(a) In accordance with Rule 207, apply nontoxic soil stabilizers according to manufacturer's specification to all inactive construction areas (previously graded areas). (Conceptual Master Plan and 43-Acre portion of the subdivision)	Submit construction-related air quality mitigation plan, including provisions of Mitigation Measure 4.4-1(a) through (h), to the satisfaction of the City.	Grading and Building permit	Project Developer	City of Chico, CDD
4.4-1(b) Provide temporary traffic control (e.g., flag person) as appropriate during all phases of construction to improve traffic flow. (Conceptual Master Plan and 43-Acre portion of the subdivision)	Conduct preliminary pre-construction site visit to verify compliance with the Air Quality mitigation plan.	Periodically during grading and construction	City of Chico, CDD	City of Chico, CDD
4.4-1(c) Schedule construction activities that affect traffic flow for off-peak hours. (Conceptual Master Plan and 43-Acre portion of the subdivision)				
4.4-1(d) Sweep streets at the end of the day if visible soil materials are carried onto adjacent public paved roads. (Conceptual Master Plan and 43-Acre portion of the subdivision)				
4.4-1(e) Properly maintain equipment and do not allow construction equipment to be left idling for long periods during smog seasons (May through October). (Conceptual Master Plan and 43-Acre portion of the subdivision)				
4.4-1(f) Use low VOC asphalt, if available and feasible. (Conceptual Master Plan and 43-Acre portion of the subdivision)				

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.4-1(g) All clearing, grading, earth-moving, or excavation activities shall cease when winds exceed 15 mph averaged over 1 hour. (Conceptual Master Plan and 43-Acre portion of the subdivision)				
4.4-1(h) All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust. (Conceptual Master Plan and 43-Acre portion of the subdivision)				
4.4-2(a) Install a natural gas hook up in proposed fireplaces; or Limit the number of woodburning devices on the average to one per dwelling unit;	<ol style="list-style-type: none"> 1. Verify that building plans include specifications identified in Mitigation Measure 4.4-2(a) through (d). 2. Conduct preliminary pre-construction site visit to verify that plans comply with Mitigation Measure 4.4-2(a) through (h). 	<ol style="list-style-type: none"> 1. Prior to issuance of building permit 2. Prior to issuance of building permit 	<ol style="list-style-type: none"> 1. Project Developer 2. City of Chico, CDD 	<ol style="list-style-type: none"> 1. City of Chico, CDD 2. City of Chico, CDD
4.4-2(b) In accordance with the Chico General Plan policy OS-I-13, install low-NO _x water heaters;				
4.4-2(c) In accordance with Chico General Plan policy OS-I-11, require all wood burning devices installed in any residence to be U.S. EPA Phase-II certified or meet U.S. EPA standards applicable at the time of project approval;				
4.4-2(d) Install electrical outlets at the front and back of all residential units for electrical yard equipment. (Conceptual Master Plan and 43-Acre portion of the subdivision)				
4.4-3(a) Provide pedestrian access between bus service and major transportation points within the project. (Conceptual Master Plan and 43-acre portion of the subdivision)	Verify that street improvement plans include specifications identified in Mitigation Measure 4.4-3(a).	Prior to issuance of building permit.	Project Developer	City of Chico, CDD
4.4-3(b) Implement Mitigation Measures 4.4-1 and 4.4-2.	Sec 4.4-1 and 4.4-2	Sec 4.4-1 and 4.4-2	Sec 4.4-1 and 4.4-2	Sec 4.4-1 and 4.4-2.

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.5 Noise				
4.5-2(a) Residential uses constructed on the project site shall be located outside of the 60 dB L _{dn} traffic noise contours shown in Table 4.5-4.	Verify that residential buildings are outside of the 60 dB L _{dn} traffic noise contours.	Prior to issuance of building permit	Project Developer	City of Chico, CDD
OR 4.5-2(b) The project applicant shall demonstrate that a combination of setbacks, topography, and noise barriers has been designed to reduce noise levels at all residential parcels to a state of compliance with City of Chico exterior noise level standards. Barriers could take the form of solid walls, earth berms, or a combination of the two. A detailed analysis of site grading would be required to develop specific barrier height and location recommendations for this project, and the use of barriers for this project may conflict with the City's design criteria.	Verify that building plans include specifications identified in Mitigation Measure 4.5-2.	Prior to issuance of building permit	Project Developer	City of Chico, CDD
4.5-4 Implement Mitigation Measure 4.5-2 using the cumulative plus Conceptual Master Plan column in Table 4.5-4.	See Mitigation Measure 4.5-2 and Table 4.5-4			
4.6 Public Services and Utilities				
4.6-2(a) The project applicant shall obtain a fire-flow analysis to determine if fire flows to the project site are adequate. If fire flows are not adequate, the applicant shall install, or provide funds for, a well and pump and/or an above ground welded steel storage tank.	1. Obtain fire-flow analysis.	1. Prior to issuance of building permit	1. Project Developer	1. City of Chico, CDD
4.6-2(b) The project applicant shall be obligated through project approval conditions to fund and install the infrastructure required to provide for water needs and fire flow requirements for each development implemented under the project. (Conceptual Master Plan and 43-Acre Subdivision)	2. If necessary, provide funds for, or install a well and pump and/or an above-ground welded steel storage tank to provide adequate fire-flow to the project.	2. Prior to issuance of building permit	2. Project Developer	2. City of Chico, CDD
4.7 Hydrology and Drainage				
4.7-1 Prior to approval of any improvement plans for the Conceptual Master Plan, applicants shall submit and obtain approval of final drainage plans from the City of Chico Public Works Director. Final drainage plans shall demonstrate that post-development surface drainage peak flows shall be reduced to pre-development conditions. The drainage plan shall be	Submit and obtain approval of final drainage plans, per Mitigation Measure 4.7-1.	Prior to approval of each tentative map	Project Developer	City of Chico, Public Works Department

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.7-2	Implement Mitigation Measure 4.7-1.	See Mitigation Measure 4.7-1		
4.8 Biological Resources				
4.8-1(a)	Project design shall avoid oak trees and riparian habitat to the maximum extent feasible. In particular, the alignment of stream crossings shall be designed to avoid trees within the riparian habitat along the south branch of Dead Horse Slough. All individual trees and groups of trees shall be clearly marked for avoidance in the field and on construction plans. (Conceptual Master Plan).	Verify project design preserves existing trees, to the extent feasible, and avoids trees in the riparian habitat along the south branch of Dead Horse Slough.	Prior to grading permit	Project Developer
4.8-1(b)	When tree removal is necessary, the project applicant shall implement a tree planting restoration program that will plant two trees for every one tree removed which has a dbh of at least six inches. Plantings shall occur on-site in areas that are designated as open space or preserve areas. (Conceptual Master Plan).	Prepare and implement tree planting restoration program per Mitigation Measure 4.8-1(b).	Prior to grading permit	Project Developer
4.8-2	To protect any active raptor nest sites, the project applicant shall conduct a raptor survey during the nesting season (March through July). A qualified biologist shall assess the nesting activity on the project site. If active nests are located on-site, no construction activities shall be allowed within 250 feet of the nest until the young have fledged. If construction activities are planned during the non-breeding period (August through February), a raptor nest survey is not necessary. (Conceptual Master Plan)	Conduct survey and document findings. If necessary, modify project schedule to accommodate active raptor nests. Verify that identified young have fledged.	March through July, prior to construction activities	Project Developer
4.8-3(a)	The project applicant shall avoid to the maximum extent feasible, vernal pools, seasonal wetlands and other waters of the United States, as shown in Figure 4.8-2 and in Figure 3-2. (43-acre portion of the Subdivision and Conceptual Master Plan).	Demonstrate that wetlands have been avoided to extent feasible, to satisfaction of City.	Prior to issuance of grading permit	Project Developer

OAK VALLEY MITIGATION MONITORING PROGRAM				
Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.8-3(b) For waters of the United States that will be filled, the project applicant shall ensure that no net loss of wetlands occurs. Measures to achieve no net loss may include preservation, creation on-site or offsite, and/or purchase of credits in an approved mitigation bank. This measure may be implemented by first demonstrating that no alternative to the project, which avoids fill of jurisdictional waters while meeting the purpose and need of the project, can be feasibly implemented (Clean Water Act Section 404(b)(1)). This measure may be further implemented by obtaining a Clean Water Act Section 404 permit from the Corps and conducting all measures required as provisions of the permit. (Conceptual Master Plan)	Secure appropriate federal permit	Prior to approval of each tentative map	Project Developer	City of Chico, Public Works Department
4.8-3(c) The project applicant shall obtain a Streambed Alteration Agreement for all stream crossings, and comply with the terms of those agreements. (43-acre Subdivision and Conceptual Master Plan)	Secure appropriate federal permit	Prior to approval of each tentative map	Project Developer	City of Chico, Public Works Department
4.8-4(a) The project applicant shall complete the USFWS's two-year survey protocol for federally-listed vernal pool crustaceans or the applicant may assume federally-listed vernal pool crustaceans are present and comply with Mitigation Measure 4.8-4(c) below. If an absence finding is determined and accepted by the USFWS, then no further mitigation shall be required for federally-listed vernal pool crustaceans. (Conceptual Master Plan)	Complete the USFWS two-year survey for federally-listed vernal pool crustaceans.	Prior to building permit	Project Developer	City of Chico, Public Works Department
4.8-4(b) Implement Mitigation Measures 4.8-3(a) and (b).	See Mitigation Measures 4.8-3 (a) and (b)			
4.8-4(c) If federally-listed vernal pool crustaceans are found to be present within vernal pools affected by the Project, the project applicant shall provide for no net loss of habitat value. Measures to ensure no net loss may include on-site or off-site creation and/or preservation of vernal pool crustacean habitat at ratios ranging from 2:1 to 5:1, depending on the affected habitat and where creation or preservation occurs. Mitigation could also involve the purchase of mitigation credit through an accredited mitigation bank. This mitigation may be implemented through the USFWS requirements of the Programmatic Biological Opinion on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans Within the Jurisdiction of the Sacramento Field Office, California. (Conceptual Master Plan)	Document mitigation on vernal pools as required, including preservation of habitat in appropriate ratios, as necessary. Or, document rationale for purchase of mitigation credits in lieu of mitigation plan for project impacts.	Prior to construction	Project Developer	City of Chico, Public Works Department

OAK VALLEY MITIGATION MONITORING PROGRAM				
Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.8-5(a) Prior to development of areas that support vernal pools and seasonal wetlands (shown in Figure 4.8-2), the project applicant shall conduct surveys to identify and delineate any special-status plant species populations within the designated development areas, proposed stream crossings, and heavy equipment staging areas. (Conceptual Master Plan)	Prepare and review surveys for significant impact to any special-status plant species.	Prior to building permits	Project Developer	City of Chico, Public Works Department
4.8-5(b) Vernal pools and wetlands that are to be retained shall be clearly marked with highly visible fencing to protect and delineate the special-status plant population(s). The fenced area shall be free of parking, material storage, vehicular access, etc. (Conceptual Master Plan)	Identify area to be retained per Mitigation Measure 4.8-5(b).	Prior to construction	Project Developer	City of Chico, Public Works Department
4.8-5(c) For vernal pools and wetland areas that are to be filled or disturbed pursuant to California Fish and Game Code Chapter 10, Native Plant Protection, §1913 paragraph (c), the applicant shall notify the California Department of Fish and Game at least ten (10) days in advance of ground disturbing activities to allow for salvage of special-status plant species. (Conceptual Master Plan)	Conduct preliminary pre-construction site visit to verify compliance with Mitigation Measure 4.8-5.	Periodically during grading and construction	City of Chico, CDD	City of Chico, Public Works Department
4.8-5(d) Require replacement wetland construction.	Document that California Department of Fish and Game has been notified, per the California Fish and Game Code.	At least ten days prior to first ground disturbing activities	Project Developer	City of Chico, Public Works Department
4.8-5(e) Comply with Mitigation Measure 4.8-4(c).	See Mitigation Measure 4.8-4 (c)			
4.8-6(a) The project applicant shall ensure through surveys conducted by a qualified biologist and protective fencing if applicable, that direct and indirect disturbance (such as trenching or placement of fill within the dripline) of all elderberry shrubs is avoided. (Conceptual Master Plan)	1. Conduct VELB habitat survey and document findings. Avoid and protect habitat where feasible. 2. Conduct site visits to monitor compliance with Mitigation Measure 4.8-6.	1. Prior to grading 2. Periodically during grading and construction	1. Project Developer 2. City of Chico, CDD	1. City of Chico, CDD 2. City of Chico, CDD

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
4.8-6(b) Should elderberry shrubs be affected by the Project, the project applicant shall obtain the necessary authorization/permit from the USFWS for take of the species and develop and implement an on-site VELB mitigation plan in accordance with the most current USFWS guidelines to compensate for the loss of VELB habitat. The applicant shall ensure no net loss of VELB habitat. The mitigation plan may include relocation of elderberry shrubs, planting of elderberry shrubs, and monitoring of relocated and planted elderberry shrubs, or purchase of credits in an approved VELB habitat bank. (Conceptual Master Plan)	3. If avoidance is infeasible, develop and implement a mitigation plan. Verify habitat protection standards. Implement mitigation plan as recommended by U.S. Fish and Wildlife Service for unavoidable "taking," including mandatory relocation, planning and monitoring of elderberry plants.	3. Prior to grading	3. Project Developer	3. City of Chico, CDD
4.8-7 Implement Mitigation Measures 4.8-1 through 4.8-6.	See Mitigation Measures 4.8-1 through 4.8-6			
4.9 Aesthetics and Visual Resources				
4.9-1 Development of both the Conceptual Master Plan and the 43-acre portion of the Subdivision shall be consistent with the City's adopted development standards and the Foothill Design Criteria for project areas which are at the 250-foot and above elevation line. Development of both the Conceptual Master Plan and the 43-acre portion of the subdivision shall also be consistent with City of Chico lighting standards and the City's architectural review process for commercial development. (Conceptual Master Plan and 43-Acre portion of the subdivision).	Submit design plans demonstrating compliance with Mitigation Measure 4.9-1.	Prior to approval of building permit	Project Developer	City of Chico, CDD
4.9-2 Implement Mitigation Measure 4.9-1.	See Mitigation Measure 4.9-1			
4.9-3 Implement Mitigation Measure 4.9-1.	See Mitigation Measure 4.9-1			
4.9-4 Implement Mitigation Measure 4.9-1. (Conceptual Master Plan and 43-Acre portion of the Subdivision)	See Mitigation Measure 4.9-1			
4.10 Hazards and Human Health				

OAK VALLEY MITIGATION MONITORING PROGRAM				
Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
<p>4.10-1(a) No grading permit or building permit shall be issued until after: (1) the locations to be developed, which are part of this Project, that are included in the RWQCB Cleanup and Abatement Order #R5-2003-0707, are remediated in accordance with a RWQCB-approved Remedial Action Plan; and (2) remediated locations have received regulatory closure from the agency with jurisdiction over the cleanup. (43-acre portion of the Subdivision and Conceptual Master Plan)</p> <p>4.10-1(b) Where required by OSHA, a site health and safety plan that meets applicable OSHA requirements shall be prepared and in place prior to commencing work on any locations where the need for risk management measures has been identified. (43-Acre Portion of the Subdivision and Conceptual Master Plan)</p>	<p>Demonstrate that areas to be developed are mediated to protective levels.</p> <ol style="list-style-type: none"> 1. Submit a Risk Management Plan, per Mitigation Measure 4.10-1. 2. Conduct site visits to monitor compliance with Mitigation Measure 4.10-1(b). 	<p>Prior to issuance of grading permit.</p> <ol style="list-style-type: none"> 1. Prior to issuance of grading permit 2. Periodically during grading and construction. 	<p>City of Chico, Public Works Department</p> <ol style="list-style-type: none"> 1. Project Developer 2. City of Chico, Public Works Department 	<p>City of Chico, Public Works Dept.</p> <ol style="list-style-type: none"> 1. City of Chico, Public Works Dept. 2. City of Chico, Public Works Dept.
<p>4.10-1(c) Near-term or interim infrastructure development activities (e.g., the westerly temporary access road) shall only be allowed when it can be demonstrated that construction and use of such features that would cross any property listed in the Cleanup and Abatement Order #R5-2003-0707 would not result in an increased risk of adverse effects on human health and the environment. (43-Acre Portion of the Subdivision and Conceptual Master Plan)</p> <p>4.10-3(a) Project developers and their contractors shall coordinate with the City, RWQCB, DTSC, and other involved agencies, as appropriate, to assure that project construction shall not interfere with any adjacent and/or on-site remediation activities or unduly delay either project development or site remediation. (43-Acre Portion of the Subdivision and Conceptual Master Plan)</p> <p>4.10-3(b) The Project developers shall comply with all applicable site controls established for HRBD site remediation activities and shall ensure that project construction does not prevent such compliance. (43-Acre Portion of the Subdivision and Conceptual Master Plan)</p>	<p>Demonstrate that areas to be developed are remediated to protective levels.</p> <p>Conduct site inspections to verify compliance with Mitigation Measure 4.10-3.</p>	<p>Prior to issuance of grading permit</p> <p>Periodically during grading and construction</p>	<p>Project Developer</p> <p>City of Chico, Public Works Department</p>	<p>City of Chico, Public Works Department</p>

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
Mitigation Measures in the Initial Study				
<p><u>Mitigation Measure 1</u></p> <p>(a) Prior to final map approval, the project applicant shall consult with the Chico Fire Department and prepare a wildland fire safety plan that includes standards for development, including use of fire-resistant building and roofing materials, fire resistant buffers around all structures, and fire-resistant landscaping.</p> <p>(b) Prior to recordation of a final map/final discretionary permit approval, a twenty-foot fire break/non-combustible landscape easement shall be incorporated into the project design in areas directly adjacent to wildland fire areas. The landscape plantings and location of the easement shall be referred to the Chico Fire Department for their recommendations and shall be subject to approval by the City Planning Director.</p>	<ol style="list-style-type: none"> 1. Submit a wildland fire safety plan, per Initial Study Mitigation Measure 1. 2. Conduct site visit to monitor compliance with Mitigation Measure 1. 	<ol style="list-style-type: none"> 1. Prior to final map approval 2. After construction 	<ol style="list-style-type: none"> 1. Project Developer 2. City of Chico, Fire Department 	<ol style="list-style-type: none"> 1. City of Chico, CDD 2. City of Chico, CDD
<p><u>Mitigation Measure 2</u></p> <p>Prior to the filing for record of any subsequent maps, the applicant shall provide verification, by a qualified archaeologist that site CPS 3, as identified in the Lensen & Associates survey dated November 29, 1994, has been dedicated as an archaeological preserve. The dedicated areas shall be contiguous with other open space portions of the site to avoid easy identification and potential vandalism of the sites.</p>	<p>Verify that site CPS 3 has been dedicated as an archaeological preserve through a site visit.</p>	<p>Prior to subsequent map approvals</p>	<p>Project Applicant</p>	<p>City of Chico, CDD</p>

OAK VALLEY
MITIGATION MONITORING PROGRAM

Mitigation Measure	Monitoring and Reporting Procedure	Mitigation Timing	Mitigation Responsibility	Monitoring Party
<p><u>Mitigation Measure 3</u></p> <p>The project applicant shall inform the contractor(s) selected for the project of the potential presence of subsurface artifacts or human remain, including artifacts or non-native stone (obsidian, fine-grained silicates, basalt), unusual amounts of bone or shell, areas that contain dark-colored sediment that do not appear to have been created through natural processes. In the event of the discovery of any buried archeological or paleontological deposits, construction activities in the vicinity of the find shall be temporarily halted. The City of Chico Community Development Department shall be immediately notified and a qualified archeologist shall be consulted to assess the resource and provide proper management recommendations. Possible management recommendations for important resources could include resource avoidance or data recovery excavations. In addition, pursuant to Section 5097.97 of the State Public Resources Code and Section 7050.5 of the State Health and Safety Code, if any bone is discovered that appears to be human, the Butte County Coroner shall be notified. In the event the bone most likely represents a Native American interment, the Native American Heritage Commission shall be notified so the most likely descendants can be identified.</p>	<ol style="list-style-type: none"> 1. Prepare information packet for distribution to construction teams working in archaeologically sensitive areas. 2. In the event that subsurface archaeological or historical artifacts are discovered on a project site, stop all work in the vicinity of the find and consult with a qualified archeologist and a representative of the Native American Heritage Commission. 	<ol style="list-style-type: none"> 1. Prior to issuance of grading permits 2. During grading and construction 	<ol style="list-style-type: none"> 1. Project Applicant 2. Project Developer 	<ol style="list-style-type: none"> 1. City of Chico, CDD 2. City of Chico, CDD
<p><u>Mitigation Measure 4</u></p> <p>The proposed project shall dedicate parkland equivalent to 3.5-acres for the 43-acre subdivision and a total of 15.5-acres for the full Conceptual Master Plan, or pay in lieu fees to the City for the parks requirement.</p>	<p>Submit and comply with design plans per Mitigation Measure 4.</p>	<p>Prior to approval of final project design</p>	<p>Project Developer</p>	<p>City of Chico, CDD</p>

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RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHICO MODIFYING THE PLANNING COMMISSION'S DECISION TO CONDITIONALLY APPROVE THE OAK VALLEY VESTING TENTATIVE SUBDIVISION MAP S 99-12, PLANNED DEVELOPMENT PERMIT PDP 02-01, AND CONCEPTUAL MASTER PLAN (FOGARTY INVESTMENTS) BY AMENDING THE CONDITIONS OF APPROVAL

WHEREAS, an application has been submitted for a vesting tentative subdivision map, planned development permit, and conceptual master plan for a 340-acre site (Oak Valley) generally bounded by Bruce Road on the west, State Highway Route 32 on the north, a PG&E 500 kV transmission line on the east, and Humboldt Road on the south, identified as Assessor's Parcel Nos. 018-500-090, 136, 138, and 139, which would divide the parcel into 141 parcels to be developed pursuant to a Conceptual Master Plan (Plan), whereby Phase I of the Plan includes 126 smaller lots to be developed on a 43-acre portion of the site, including two parcels for medium-density residential development, and development of the remaining 15 larger parcels would take place under future phases via the processing of individual subdivision maps resulting in a total of approximately 1,324 residential units, as well as 109,000 sq. ft. of commercial retail space on 10 acres, and 87.5 acres of open space (the "Project"); and

WHEREAS, the Planning Commission conducted a workshop on the Project at a noticed public hearing held on July 11, 2002, conducted duly noticed public hearings on the Project on January 20, 2005 and February 24, 2005, conducted further public meetings on the Project on March 3, 2005 and March 10, 2005, and considered the Project, staff reports, and comments received at a public meeting held on April 21, 2005; and

WHEREAS, environmental review of the Project was conducted in compliance with the California Environmental Quality Act, as more particularly set forth in Planning Commission Resolution No. 05-09; and

WHEREAS, following a public meeting and exercising its independent judgment, the Planning Commission reviewed and considered the Final Environmental Impact Report (FEIR) for the Oak Valley subdivision and certified and approved the FEIR by adoption of Resolution No. 05-09 on April 21, 2005. Further, the Planning Commission made all findings and adopted Statements of Overriding Considerations by adoption of Resolution No. 05-09 on April 21, 2005; and

1 WHEREAS, an appeal of the Planning Commission's certification of the EIR as described above
2 was filed by Francis Farley, who maintained that the EIR did not adequately address the potential
3 impacts to the setting of historic Humboldt Road, and that the setting for the historic features (wagon
4 wheel ruts, rock wall) would be destroyed by the project, and another appeal of the certification of the
5 EIR filed by Nora Todenhagen, Julie Nasr, Alan & Francine Gair, Phil Johnson, Gene Anna McMillan,
6 Philip Smith, and Ceclia Russ, cited that the EIR did not adequately address traffic mitigation measures,
7 impacts to the viewshed and natural character of the foothills, impacts to the natural open space
8 recreational qualities of upper Humboldt Road, and the effects of allowing housing construction and
9 occupancy in the area of the Humboldt Road Burn Dump (HRBD) before the HRBD is remediated; and

10 WHEREAS, following a public hearing on May 17, 2005, a supplemental public hearing on
11 September 20, 2005, and exercising its independent judgment, the City Council reviewed and considered
12 the Final Environmental Impact Report (FEIR) for the Oak Valley subdivision, which addresses the
13 approvals contemplated by this resolution, and certified and approved the FEIR and has made all
14 required findings and adopted Statements of Overriding Considerations by adoption of Resolution No.
15 _____ on September 20, 2005.

16 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
17 CHICO AS FOLLOWS:

- 18 1. The Project, as approved by the Planning Commission, included the approval of a vesting
19 tentative subdivision, planned development permit, and conceptual master plan dividing the
20 parcel into 141 parcels to be developed with approximately 1,324 residential units, as well as
21 109,000 sq. ft. of commercial retail space, as conditioned. The Council hereby denies the
22 appeal and approves the Project, with revisions to the conditions of approval in Exhibit "I"
23 attached hereto to (1) clarify that Condition #27 is to include creekside setbacks and greenways,
24 (2) revise Condition #39 to restrict the direct siting of residential buildings on remediated land
25 inside or outside of the DTSC fenced area on the Project site, (3) modify the vesting tentative
26 subdivision map, planned development permit and conceptual master plan to limit the maximum
27 number of residential units on Lot Q at the eastern end of the Project site to 80 units, with the
28 balance of up to 80 more units to be transferred to locations to the west as specified on the final

1 map, planned development permit and conceptual master plan; and (4) revise Condition #33 to
2 eliminate the requirement to construct a separated Class I bicycle path along Humboldt Road
3 and instead require that Humboldt Road be designed and improved utilizing a 30-foot wide
4 roadway section consisting of two ten-foot wide travel lanes and a five-foot wide Class II bike
5 lane along each side of the roadway.

6 2. The City Council finds as follows:

7 A. That, at an overall density of approximately 3.8 units per gross acre, the Project is
8 consistent with the site's General Plan designations and zoning classifications and that
9 through the planned development permit, the Project provides a mix of commercial and
10 residential types and densities which are appropriate for development while providing
11 permanent protection for those portions of the site which are not appropriate for
12 development. Given the site's many physical and environmental constraints,
13 development at densities at the low end of the General Plan land use designations is the
14 most appropriate for the site.

15 B. The Project is consistent with the goal of reinforcing the compact form of the city
16 because the subject property is within the City of Chico Sphere of Influence and the
17 development of the Project would not result in development of open space beyond the
18 level anticipated by the 1994 General Plan and accompanying General Plan EIR.

19 C. The Project is consistent with the General Plan, specifically goals and policies directed
20 at promoting infill development while also protecting the environment by maintaining
21 the majority of the steeper slopes, oak woodlands, and special status plant species in
22 permanent open space on the Project site. As detailed in the General Plan consistency
23 checklist prepared for this Project in each applicable section of the certified EIR, the
24 Project achieves substantial compliance with General Plan goals and policies, including
25 but not limited to the following:

26 i. Phase I of the Project, the 43-acre subdivision, is consistent with the goal of
27 creating new neighborhoods that have a human scale and are oriented to the
28 pedestrian by limiting the length of blocks, providing both passive and active

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open space areas, providing separated sidewalks throughout the development, as well as bicycle/pedestrian routes along both Dead Horse Slough and Humboldt Road.

ii. The Project has been designed to comply with resource management goals by preserving unique natural and historic features present on the site, including preserving the main “ribbons” of blue oaks in open space areas and the historic wagon wheel ruts along Humboldt Road. Open space areas containing the oak woodlands and riparian/creek are visually linked to the developed portions of the plan by providing view corridors and a natural transition from the formalized landscape along street edges and in private yards to the natural grassland.

iii. The Project is consistent with the goal of designing streets with a priority on neighborhood structure and pedestrian scale because the street configuration allows for easy connection and circulation through the development, either by autos, pedestrians or cyclists. The Project is also consistent with the goal of integrating special features as landmarks to heighten a sense of orientation within new residential neighborhoods by maintaining Dead Horse Slough as an open space area with a bike and pedestrian path on one side.

iv. The Project is designed to site development areas where topography and soil conditions are conducive to such development, which will take place in accordance with the Oak Valley Project Foothill Design Guidelines (Design Guidelines), prepared specifically for the Project, which would implement the City’s Foothill Development Standards, as well as special design criteria set forth in the Special Design Considerations Overlay zone (SD-2) and Resource Management (-RM) overlay zone. Adherence to such Design Guidelines will promote quality architecture and landscaping; provide for site and street designs that will enhance the aesthetic character of a foothill setting; protect and preserve important environmental resources and significant natural features in the foothills; and ensure that foothill development incorporates public safety

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measures relating to fire defensibility and access.

D. The City's sanitary sewer system has adequate capacity to serve the Project; domestic water will be provided by California Water Service Company from an adequate supply of groundwater; storm water facilities will be constructed in accordance with adopted City standards and the City's Best Management Practices; public utilities are adjacent to the Project site with adequate capacity to serve development of the Project; and adequate access will be provided to accommodate emergency vehicles. The Project site will be served by public roadways that will provide adequate emergency access and circulation. The Project, therefore, will not result in detrimental impacts to the public or the welfare of the City.

E. No substantial evidence has been presented that would require disapproval of the Project pursuant to Government Code Section 66474.

F. As supported by the subdivision report prepared for the Project, and the staff reports prepared for the City Council meeting on May 17, 2005, the Project and its design conform with both the requirements of Title s18 and 19 of the Chico Municipal Code and the Chico General Plan.

G. The Project will comply with all City zoning, building, and public improvement standards and, therefore, the Project would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

3. The City Council further makes the following findings for the requested modifications to the City's land use and development regulations (Title 19 of the CMC) and subdivision design criteria and improvement standards (Title 18 and Title 18R of the CMC):

A. Modification of the City's street standards to reduce street widths and parkway strip widths to provide flexibility in sidewalk design will reduce overall grading impacts for the Project and provide a project that is sensitive to the foothill environment;

B. The planned development permit authorizing varying lot sizes, clustering of units, and the transfer of allowable densities to locations across the site which are appropriate for development will result in the permanent protection of those portions of the site which

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are not appropriate for development and will result in a mix of residential types and densities and a project that is sensitive to the foothill environment and consistent with General Plan policies.

4. Based on the above findings, the City Council hereby approves vesting tentative subdivision map S 99-12, planned development permit PDP 02-01, and the conceptual master plan for Oak Valley (Fogarty Investments), subject to compliance with the conditions set forth in Exhibits “I” and “II” hereto.

5. Except to the extent modified herein, all findings and conditions adopted by the Planning Commission in Resolution 05-09 are hereby affirmed.

6. The City Council hereby specifies that the materials and documents which constitute the record of proceedings upon which its decision is based are located at and under the custody of the City of Chico Planning Division.

THE FOREGOING RESOLUTION WAS ADOPTED at a meeting of the City Council of the City of Chico held on September 20, 2005, by the following vote:

AYES:

NOES:

DISQUALIFIED:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED AS TO FORM:

DEBORAH R. PRESSON
City Clerk

LORI J. BARKER
Assistant City Attorney

EXHIBIT "I" - CONDITIONS
Oak Valley Vesting Tentative Subdivision Map, Planned Development Permit
and Conceptual Master Plan S 99-12 & PDP 02-01; Fogarty Investments
(as approved by the City Council on 9/20/05)

1. The applicant is authorized to subdivide a 340-acre site into 138 parcels to be developed pursuant to a Conceptual Master Plan (Plan), whereby Phase I of the Plan includes 126 smaller lots to be developed on a 43-acre portion of the site, including two parcels for medium-density residential development. Development of the remaining 12 larger parcels would take place under future phases via the processing of individual subdivision maps resulting in a total of approximately 1,324 residential units, as well as 109,000 sq. ft. of commercial retail space on 10 acres. The subdivision shall be in substantial accord with the Oak Valley Vesting Tentative Subdivision Map, Planned Development Permit and Conceptual Master Plan (S 99-12/PDP 02-01) date-stamped April 11, 2005 by the Planning Division, except as modified by the Planning Commission or City Council.
2. The approved development plans for the project include the following:
 - Vesting Tentative Subdivision Map (Sheets 1-6) date-stamped April 11, 2005 by the City of Chico Planning Division (which includes the 43-acre subdivision and the Conceptual Master Plan). The Final Map shall combine Parcels H and G, Parcels I and J, and Parcels M and J, with no additional access points onto Humboldt Road. Lot Q shall have no more than 80 dwelling units, with the balance of up to 80 more units transferred to unspecified locations to the west;
 - Oak Valley Project Foothill Design Guidelines dated May 5, 2005;
 - Resource Management, Monitoring, and Reporting Information Plan date-stamped December 30, 2004 by the Planning Division;
 - Conceptual Landscape Plan date-stamped January 5, 2005 by the Planning Division;
 - Conceptual Grading Plans plan date-stamped December 30, 2004 by the Planning Division.
3. Future development under all phases of the project shall adhere to the mitigation measures identified in the certified *Final EIR for the Programmatic EIR for the Oak Valley Conceptual Master Plan and Project Specific EIR for the 43-Acre Portion of the Subdivision (SCH#1998032048)*, a consolidated summary of which is provided in the adopted *Mitigation Monitoring Program* for the project as part of the certification of the Environmental Impact Report for the project, with the exception of Mitigation Measures 4.3-1(a) and 4.3-1(b), which have been determined to be infeasible. A note shall be placed on the Final Map which states that further subdivision and development of the properties shall be in compliance with those mitigation measures set forth in the Oak Valley EIR and approved development standards and guidelines for the project.
4. The applicant shall comply with all other State and local Code provisions, including those of the Building Division, Fire Department, and the Department of Public Works. The applicant is responsible for contacting these offices to verify the need for permits.
5. The vesting tentative subdivision map, planned development permit, and conceptual master plan includes the following requirements:

- a. Lot A (zoned CC Community Commercial) shall be developed with a maximum of 99,000 s.f. of commercial retail space. A pedestrian/bike connection shall be included in the project design to the adjacent R3 property.
 - b. Lot D shall be developed with a maximum of 10,000 s.f. of CN Neighborhood Commercial retail space, with ability to construct residential units above the first floor retail at a density up to 22 units per acre.
 - c. Lot E (zoned R2) shall be developed at a minimum density of 10 dwelling units per acre. In order to achieve higher densities for the project, single-family residences shall be precluded.
 - d. Lots F & G (zoned R2) shall be developed with multi-family units at a minimum density of 8 du/acre. In order to achieve higher densities for the project, single-family residences shall be precluded.
6. As required by the planned development permit regulations (Section 19.28.040 of the Chico Municipal Code), a conceptual grading plan shall be submitted and approved prior to the issuance of a grading permit for all future subdivisions which identifies proposed grading for roadways, house pads, drainage facilities, and other public improvements.
 7. Future subdivisions shall be required to submit individual Resource Management, Monitoring, and Reporting Plans (RMMRP), as required by the -RM Resource Management overlay district regulations, as set forth in Section 19.52.060 of the Chico Municipal Code.
 8. Future subdivisions shall be required to submit individual photo-simulations, as required by the City's Foothill Development standards set forth in Section 19.66.030 (B) of the Chico Municipal Code.
 9. As each of the lettered lots within the bounds of the Oak Valley vesting tentative subdivision map develops, public streets shall be dedicated across each of the lots to serve as access to the lot and to the lots beyond. The street circulation shall be in general conformance with the conceptual master plan as approved by the Public Works Director.
 10. Road designs for future subdivisions shall include appropriate traffic-calming measures to reduce vehicle speeds and promote a pedestrian-friendly street environment.
 11. Roadway dedication and improvements, including bicycle paths where appropriate, shall be required as each phase develops.
 12. The applicant shall acquire or bear the cost of acquisition of any road right-of-way outside the limits of the subdivision as necessitated by roadway and bicycle path improvements external to the subdivision, consistent with the General Plan and as set forth in the project EIR.
 13. To minimize the visibility of project lighting from off-site, street lighting shall only be

- placed at roadway intersections and shall be low-level and baffled downward and directed only toward areas requiring illumination and shall meet IES full-cutoff standards for lighting. Low-level light poles and/or bollards shall be allowed on private lots at driveway entrances. Lights mounted at driveway entrances shall be approved in conjunction with building permits for individual single-family residences.
14. All structures in all phases of the development (including the 43-acre subdivision), shall require review and approval by the Planning Commission and shall implement the design criteria set forth in the approved Oak Valley Project Foothill Design Guidelines dated 5/05/05.
 15. Single-family and duplex units shall not exceed a height of 25 feet as measured from the highest point of the building footprint at natural grade (a second story may be allowed on downhill slopes) and shall include earth tone colors, unless visual simulations or other graphic representations can verify that greater building height will not negatively impact the viewshed. A note shall be placed on the Final Map which details this requirement.
 16. Where feasible, each roof should provide at least one southerly orientation to allow for eventual solar electrical production.
 17. Final building permit plans for all residential units shall be reviewed and approved by the Planning Division for substantial conformance with the approved development plans.
 18. Building permit plans for each lot shall clearly identify all existing trees exceeding six inches in diameter, including trees on adjacent lots that may be impacted by site grading. No trees shall be removed from the project site without prior approval by the Planning Division and as authorized on approved development plans and building permit plans. Tree removal for the establishment of future building pads and driveways shall be minimized. For those trees to be retained on the site, the final grading plans shall demonstrate that grading will not adversely impact the health of the trees by avoiding both grading within the drip lines of such trees and creating finished lots which result in extreme differences in grade with the existing trees.
 19. The applicant shall include on any building permits a notation that the project is within the Oak Valley Planned Development and subject to review and approval by the Planning Director.
 20. Prior to the issuance of any occupancy permits for each subdivision, a fire prevention management plan shall be prepared for the individual lots and open space lots which shall be reviewed and approved by the Planning Division and Fire Marshal. Such plan may include the removal or thinning of some understory brush and/or the limbing up of trees within open space areas, (as approved by a certified arborist) to reduce the threat of ground fire. Such plan shall also be consistent with the management/preservation concepts set forth in the project EIR and RMMRP.

21. A landscape and irrigation plan shall be submitted by the applicant to the Planning Division for review and approval as part of the final improvement plans for each subdivision. Said plan shall include the planting of drought-tolerant trees, shrubs and/or groundcover.
22. Should a water storage tank be required to serve the eastern portion of the site as analyzed in the project EIR, the final size and location of the tank shall be determined by the California Water Service Company and the applicant, subject to review and approval (via a use permit) by the City. The tank shall be located, designed, colored, and screened to avoid or minimize visibility from within and beyond the project site.
23. A note shall be placed on all grading and construction plans which informs the construction contractor that if any bones, pottery fragments or other potential cultural resources are encountered during construction, all work shall cease within the area of the find pending an examination of the site and materials by a professional archaeologist. This person will assess the significance of the find and prepare appropriate mitigation measures for review by the Planning Director. All mitigation measures determined by the Planning Director to be appropriate for this project shall be implemented pursuant to the terms of the archaeologist's report.
24. Roadway improvement plans for Humboldt Road shall include provision of fencing or other barrier acceptable to the Planning Division to prevent construction vehicles from impacting the historic wagon wheel ruts located just south of the roadway. Such fencing or barrier shall be in place prior to the issuance of a grading permit.
25. No grading permit shall be issued for the project site until such time that the appropriate State agencies have indicated in writing to the City that any impacted soils have been adequately remediated in accordance with adopted State standards.
26. Prior to issuance of a grading permit, the applicant shall obtain and submit to the Development Engineering Division, all applicable permits and/or clearances from the Regional Water Quality Control Board.
27. The applicant shall provide the City with clearances from appropriate State agencies indicating that impacted soils have been adequately remediated in accordance with State standards prior to the City accepting the offers to dedicate any open space lands, including creekside setbacks and greenways, on the project site.
28. Prior to any ground-disturbing activities, including clearing, grubbing, scraping and grading of the subject site, the applicant shall conduct a pre-construction (pre-ground disturbance) site meeting with Planning staff and the supervising contractor. The purpose of the pre-construction site visit shall be verification by Planning staff that all pre-construction mitigation measures and conditions have been implemented and that all necessary permits have been obtained from all public agencies.

29. All construction activities, including parking of vehicles, stockpiling of supplies, and use of construction-related equipment shall be excluded from the areas planned to serve as permanent open space or otherwise set aside for the protection of plants, except as necessary for the construction of roads and other infrastructure, including firebreaks.
30. Prior to recordation of the final map, the applicant shall obtain approval from the Planning Division for street names.
31. The number of access points onto Humboldt Road east of the Potter Road extension shall be the minimum number required for prudent access and for fire safety.
32. Future subdivision maps for property adjacent to Humboldt Road shall include a linear landscaped buffer zone along the north side of Humboldt Road which maintains the rural atmosphere of the road by retaining the row of existing oak trees along the Humboldt Road corridor to the maximum extent practicable, using site topography to the extent practicable to site homes in areas with a lower grade than the roadway to minimize view of homes, requiring larger rear yard setbacks and "no development zones" for residential lots in areas with no intervening vegetation or where site grades are similar to roadway grades, and requiring planting of native trees and/or shrubs along the Humboldt Road corridor as a condition of each future subdivision map to assist in the screening of homes from the roadway.
33. Humboldt Road shall be designed and improved utilizing a 30-foot wide roadway section consisting of two ten-foot wide travel lanes and a five-foot wide Class II bike lane along both sides of the roadway.
34. No individual residential driveways shall be allowed to access directly onto Humboldt Road, a collector roadway.
35. Humboldt Road improvements shall be constructed as part of each phase with the applicant being reimbursed as provided for in the City's Nexus Study. To accomplish this, the applicant shall be required to obtain right-of-way from the adjacent landowner at fair market cost, if necessary.
36. Street sections for Potter Road and Street "A" shall provide for five-foot wide sidewalks. Five-foot wide sidewalks may be considered for future phases.
37. A landscaped traffic circle shall be installed at the Yosemite-Potter Road Extension/Street A intersection.
38. The applicant shall provide safe access for school children to the nearby schools as part of the 43-acre Phase I subdivision by (1) providing bike and pedestrian access from the 43-acre Phase I subdivision site to the Bruce Road/Humboldt Road intersection and (2) installing a traffic signal at the Humboldt/Bruce Road intersection to be eligible for reimbursement by the City as provided for in the City's Nexus Study and the Chico

Municipal Code.

39. No residential buildings, either single-family or multi-family, may be sited directly on remediated land that is inside or outside of the DTSC fenced area, as depicted on the vesting tentative subdivision map dated-stamped April 11, 2005 by the Planning Division. However, all residential uses other than the buildings themselves, including access streets, driveways, parking, and ornamental landscape areas (non-play areas), and all non-residential buildings consistent with the approved planned development permit, may be sited on the remediated land. Residential exemption: commercial buildings sited on remediated land may include residential uses above the first floor.
40. The applicant shall require a memorandum on the title to the property referring potential buyers to the remedial action plans and the abatement orders, the exact language for which will be approved by the City Attorney.
41. Open span crossings over Dead Horse Slough shall be utilized to allow for unimpeded wildlife movement.
42. The name Dead Horse Slough shall be retained due to its historical importance.
43. Where feasible, design and parking shall be integrated between adjacent commercial and multi-family structures, with reduced shared parking requirements.
44. To the extent possible, consistent with the goal of minimizing grading and preserving the oak woodland, houses shall be clustered in lower, less visible open areas, screened from the valley floor and Highway 32 by the terrain and trees.
45. Open-style fencing (e.g., wrought iron, split-rail, but not chain-link) shall be utilized within Parcels G through Q along Highway 32 and Humboldt Road to allow views through the parcels. Solid fencing should only be used to enclose the immediate private outdoor space around the house and should not be used to delineate property lines where it would significantly interrupt natural open areas and views from Humboldt Road. Where fencing is needed to delineate private property from public or common areas, open or unobtrusive fencing shall be installed.
46. Impacts to school facilities within the Chico Unified School District shall be fully mitigated by payment of school impact fees to the extent permitted by State Law.
47. The applicant shall complete preparation of the segregation of assessments against the map prior to recording of the final map; record the final map; and have the engineer of record complete recording of the segregation of assessments against the property.
48. Prior to recording the final map, the applicant shall pay any delinquent taxes and/or assessments against the property.

49. In the event that all fees have not been paid prior to recordation of the final map, the following notation shall be included on the final map:

“In accordance with the provisions of the Chico Municipal Code, a transportation facility fee, park facility fee, and building and equipment fee may be assessed and levied upon the owner of any lot or parcel within this subdivision at the time a new building or structure is constructed on such lot or parcel, at the time an alteration or addition is made to an existing building or structure constructed on such lot or parcel which results in the expansion of building or structure, or at the time of a change in use of an existing building or structure constructed on the lot or parcel. In addition, a storm drainage facility fee may be assessed and levied upon the owner of any lot or parcel within this subdivision at the time such lot or parcel is first used for any residential or nonresidential purpose, at the time the area of the lot or parcel devoted to such residential or nonresidential use is expanded, or at the time of a change in the use of the lot or parcel.

Such transportation facility fee, park facility fee, building and equipment fee and storm drainage facility fee will be calculated from the schedule of such fees adopted by resolution of the City Council and in effect on the date of approval of such final map or parcel map, together with any adjustments to such schedules of fees made in accordance with the provisions of the Chico Municipal Code subsequent to the date of approval of the final map or parcel map to account for any changes in the type or extent of transportation facilities, park facilities, buildings and equipment and/or storm drainage facilities which will be required as a result of the development and/or use of real property during the period upon which such fees are based, any change in the estimated cost of the transportation facilities, park facilities, buildings and equipment and/or storm drainage facilities upon which such fees are based, or any change in that portion of the estimated cost of such transportation facilities, park facilities, buildings and equipment and/or storm drainage facilities which cannot be funded from revenue sources available to the City other than such fees.



EXHIBIT "II"

CITY OF CHICO MEMORANDUM

(as approved by the City Council on 9/20/05)

TO: CITY PLANNING COMMISSION **DATE:** 6 APRIL 2005
FROM: SENIOR DEVELOPMENT ENGINEER **FILE:** INTER DEPT/SUBD
RE: VESTING TENTATIVE MAP OF: S 99-12 OAK VALLEY SUBDIVISION

SUBDIVISION REPORT

This office has reviewed the vesting Tentative Subdivision Map S 99-12 Oak Valley Subdivision and herewith submits the following findings and recommendations for same.

A. MODIFICATIONS TO TITLE 19 - LAND USE REGULATIONS, AND TITLE 18R - DESIGN CRITERIA AND IMPROVEMENT STANDARDS OF THE CHICO MUNICIPAL CODE

The Subdivider has requested certain modifications to Titles 18R and 19 of the Chico Municipal Code (CMC). These requests have been listed on the Tentative Map application, described by the Subdivider and/or their engineer, or appear on the Tentative Map. The requests and staff recommendations are as follows:

1. **Request:** Allow non-standard street typical sections.

Recommendation: Acceptable.

2. **Request:** Allow non-standard cul-de-sacs.

Recommendation: Acceptable.

3. **Request:** Allow less than standard horizontal alignment design elements.

Recommendation: Acceptable.

THE CONDITIONS CONTAINED IN THE REMAINDER OF THIS REPORT REFLECT, WHERE APPLICABLE, THE RECOMMENDATIONS ABOVE.

B. PROJECT DESCRIPTION

1. OAK VALLEY CONCEPTUAL MASTER PLAN: LOTS A THRU Q

Currently the vesting tentative subdivision map is before the Planning Commission for conditional approval to specifically create a total of 15 lots designated as Lots A thru Q along with a conceptual supporting network of proposed road rights-of-way. In addition, a

creekside setback/open space and a State Highway 32 setback/buffer area will be offered for dedication to the City of Chico.

Subsequently, either resubdivisions and/or development proposals for Lots A thru Q will come forward for processing, public hearings, and approvals.

2. 43-ACRE PORTION OF THE SUBDIVISION: LOTS 1 - 126

Currently the vesting tentative subdivision map is before the Planning Commission for conditional approval to specifically create a total of 126 lots designated as Lots 1 thru 126 along with a network of supporting roadways and all other appurtenant features normally associated with approved of a tentative subdivision map. In addition, a State Highway 32 setback/buffer area, a creekside setback/open space and park areas will be offered for dedication to the City of Chico.

C. FOOTHILL DESIGN CRITERIA

In general, the subdivision design is intended to conform to Chico Municipal Code Chapter 19R.66 entitled FOOTHILL DESIGN CRITERIA.

D. FINAL ENVIRONMENTAL IMPACT REPORT MITIGATIONS

The Final Environmental Impact Report (EIR) contains a number of both offsite and onsite roadway mitigation measures. The EIR is intended to be used as the basis for determining both the nature and timing of the required offsite and onsite roadway mitigation measures.

E. PUBLIC FACILITY CONSTRUCTION

1. CALTRANS ROADWAYS

a) The Subdivider shall construct Caltrans standard streets and appurtenant facilities at locations as required by the Final Environmental Impact Report (EIR). The EIR is intended to be used as the basis for determining both the nature and timing of the required offsite and onsite roadway mitigation measures for:

- 1) Adjacent to subdivision.
- 2) Exterior to subdivision.

b) Installation of improvements within the Caltrans right-of-way will require an encroachment permit.

2. CITY STREETS

a) The Subdivider shall construct City standard streets and appurtenant facilities at the following locations in conformance with the typical sections attached hereto as Exhibit A:

- 1) Interior to subdivision - Full urban improvements.
 - 2) Adjacent to subdivision - Full urban improvements as required.
 - 3) Exterior to subdivision - Full urban improvements as required.
- b) All corner lots shall be subject to intersection sight distance criteria as established by the Director of Public Works. Appropriate easements shall be dedicated as needed on the Final Map.
- c) Notice is hereby given to future owners of lots within this subdivision that the City of Chico will require the construction of additional traffic circulation improvements under the circumstances described below. An appropriate note shall be placed on the Final Map.
- d) Street names shall be approved prior to recordation of the Final Map.

3. STORM DRAINAGE

a) Facility Construction

The Subdivider shall design and install the following City standard storm drain facilities:

- 1) Interior to Subdivision - Curb, gutter and an underground storm drain system with all appurtenances.
- 2) Adjacent to Subdivision - Curb, gutter and an underground storm drain system with all appurtenances along the subdivision frontage.

b) Storm Water Quality Treatment

Storm water quality treatment facilities shall intercept and treat the first 1/2-inch of runoff in a manner acceptable to the Director of Public Works.

c) Storm Water Quantity Treatment

Storm water quantity treatment facilities shall be provided to attain a no net increase in peak flow in Dead Horse Slough in a manner acceptable to the Director of Public Works.

d) Storm Drainage Master Plan

In conjunction with the first submittal of improvement plans, the Subdivider shall submit a Storm Drainage Master Plan to the Department of Public Works for review and approval. Said Master Plan shall cover the entirety of the natural storm drain tributary area affected by the proposed subdivision.

The Storm Drainage Master Plan shall address the following elements:

1) Storm Water Runoff Management

The runoff management plan shall establish specific measures to accomplish the following:

- No net increase in peak flow in Dead Horse Slough.
- Erosion control.
- Pollutant runoff control, including first flush mitigation, (the first 1/2-inch of runoff shall be intercepted and treated).
- Restricted area protection.
- Incorporate Best Management Practices (BMPs) per City of Chico's Best Practices Manual dated September 1998.

The plan shall stipulate the measures to be implemented and the means of implementation by the Subdivider during construction and after construction but prior to lot development.

The plan shall establish any design constraints to be placed upon both public and private facility construction.

2) Storm Drainage Analysis

The storm drain analysis shall establish tributary area, size, grade, depth, and location for all the following storm drain facilities:

- Underground pipes.
- Open, natural swales.
- Improved channels.
- Storm water runoff management facilities.
- Outfall facilities discharging to natural channels.
- Both ultimate and interim facilities serving streets exterior to the subdivision that are required to be constructed herein.

e) Statement of Effective Storm Water Disposal

The storm drainage system for this project shall meet the following standards:

- 1) No net increase in the peak flow of Dead Horse Slough.
- 2) Intercept and treat the first flush runoff (defined as the first 1/2-inch of runoff).

These standards are to be met through the preparation and implementation of a site specific storm drainage master plan which shall incorporate one or more Best Management Practices (BMPs) as set forth in the City of Chico's Best Practices Manual. A review of this project, including the project location, has been made. Based on this review, it has been concluded that the use of one or more such BMPs will provide an adequate mechanism to meet the standards set forth herein and, therefore, provide the required mitigation of storm drainage effects resulting from the project.

- g) The subdivider shall pay a storm drain fee in accordance with the requirements of the Chico Municipal Code.

4. SANITARY SEWER

a) Facility Construction

The Subdivider shall design and install the following City standard sanitary sewer facilities:

- 1) Interior to Subdivision - An underground sanitary sewer system, with all appurtenances, serving all lots.
- 2) Adjacent to Subdivision - An underground sanitary sewer system, with all appurtenances, along the subdivision frontage.
- 3) Exterior to Subdivision - An underground sanitary sewer extension, with all appurtenances, connecting to the existing City of Chico sanitary sewer system in compliance with the Application for Sewer Connection.

b) Sanitary Sewer Analysis

In conjunction with the first submittal of improvement plans, the Subdivider shall submit a sanitary sewer analysis to the Department of Public Works for review and approval. Said analysis shall cover the entirety of the tributary area served by the sewer system required herein and shall include analysis and design of the following sewer system elements:

- 1) Size, grade, depth and location of gravity sewer lines.
- 2) Approved pumping plants, including service to an interim tributary area, if applicable.
- 3) Preliminary system design for future upstream tributary areas, if applicable.
- 4) Downstream sanitary sewer system capacity.

c) Sanitary Sewer Fees

The Subdivider shall complete an Application for Sewer Connection.

The Subdivider shall pay a sanitary sewer main fee to the City of Chico prior to filing the Final Map, plus applicable trunk line and water pollution control plant capacity fees in conjunction with building permits. These fees are subject to the terms and conditions of Application for Sewer Connection.

5. STREET SIGNS AND STRIPING

The Subdivider shall install City standard street signs, regulatory signs, pavement striping and pavement markings on all streets, and bicycle facilities that they are required herein to construct.

6. STREET LIGHTS

The Subdivider shall install City standard street lights on steel poles with concrete bases on all streets that they are required herein to construct in conformance with the approved Oak Valley Project Foothill Design Guidelines.

7. BICYCLE FACILITIES

The Subdivider shall construct the following bicycle facilities:

- a) Class I bicycle paths in conformance with City standards as required by the Final Environmental Impact Report.
- b) Signing and striping for Class II bicycle lanes as required by the Final Environmental Impact Report.
- c) Signing for bicycle Class III routes as required by the Final Environmental Impact Report.
- d) Notice is hereby given to future owners of lots within this subdivision that the City of Chico will require the construction of additional bicycle circulation improvements under the circumstances described below. An appropriate note shall be placed on the Final Map.

8. TRANSPORTATION FACILITIES

The Subdivider shall construct bus turnouts and benches and shelters at locations as determined by the Director of Public Works.

9. STREET TREES

Street trees shall be planted in accordance with the recommendations of the Park Department.

10. LANDSCAPING

The Subdivider shall install landscaping and an irrigation system at the following locations:

- a) The "60-foot Creekside Setback and Open Space" adjacent to State Highway 32.
- b) The Dead Horse Slough creekside setback entitled "200-foot Setback and Buffer Area."
- c) Any storm water quality and quantity facility which utilizes surface detention as a means to achieve the required quality and quantity mitigation in a manner acceptable to the Director of Public Works.
- d) The future centerline median islands within Bruce Road.

F. MAINTENANCE

Prior to filing the Final Map, the Subdivider shall be required to make provisions to fund the maintenance of certain public improvements. The improvements to be covered shall be:

- 1) The "60-foot Creekside Setback and Open Space" adjacent to State Highway 32.
- 2) The "Pocket Park" as depicted on the landscape submittal
- 3) The Dead Horse Slough creekside setback entitled "200-foot Setback and Buffer Area."
- 4) Any surface storm water detention facility.
- 5) Future participation in any assessment district formed for the planned installation of landscaped medians islands along Bruce Road.

The Subdivider shall prepare the necessary documents and provide the required supporting documents. Formation of a maintenance district requires action by the City Council. The district or alternate funding mechanism shall be complete and formed prior to recordation of the Final Map.

G. SUBDIVISION GRADING

1. SOILS REPORT

The Subdivider shall submit a Geological and/or Soils Report, prepared by a registered engineer, that includes, but is not limited to, the following:

- a) An investigation of the nature, distribution and strength of existing soils.
- b) A description of site geology.
- c) Conclusions and recommendations covering the adequacy of the site for the proposed development, storm drainage disposal, grading procedures and corrective measures.
- d) Verification that the site is suited to proposed BMPs.

2. GRADING STANDARDS

All subdivision grading shall be in conformance with Chapter 16R.22, Grading Standards, 19R.66 Foothill Design Criteria, the approved Oak Valley Project Foothill Design Guidelines, and other applicable sections of the Chico Municipal Code.

3. GRADING PLAN

The Subdivider's engineer shall submit a subdivision grading plan that includes, but is not limited to, the following:

- a) The subdivision limits, contours and details of existing terrain and drainage.
- b) Existing structures or other topographic features that are to remain undisturbed.
- c) The proposed subdivision lots and streets, together with a schematic layout of the proposed storm drain system.
- d) Existing ground elevations at all corners of proposed lots.
- e) Proposed finished lot corner grades and finished pad grades.
- f) Proposed lot grades indicating lot drainage.
- g) Pertinent recommendations from the above required Geological and/or Soils Report.
- h) Pertinent construction details to assure compliance with City of Chico Grading Standards.

4. FINAL GRADING REPORT

Upon completion of the subdivision grading and prior to final inspection by the City, the Subdivider's engineer shall submit a Final Grading Report that certifies the following:

- a) That final grading complies with the approved grading plan or any approved revisions.
- b) That the subdivision grading complies with the recommendations included in the Geological and/or Soils Report. Any changes made during grading that affected these recommendations shall be assessed.
- c) That the subdivision soils are adequately compacted for their intended use, in conformance with City of Chico Grading Standards. The results of all field density tests and all other substantiating data shall be included in the Final Grading Report.

The subdivision grading plan shall be submitted to the Director of Public Works for review and approval prior to the start of any work and shall be considered as part of the construction plans.

H. TREE PRESERVATION MEASURES

All trees within and adjacent to the subdivision, whether public or private, shall be shown on the improvement plans, with tree preservation measures depicted and noted thereon. No public tree shall be removed without a tree removal permit. No private tree shall be removed unless authorized by approval of this Tentative Map and shown on the approved improvement plans.

I. PROPERTY CONVEYANCES

1. DEDICATIONS

In conjunction with recordation of the Final Map for this subdivision, the Subdivider shall:

- a) Dedicate additional Bruce Road right-of-way as needed to construct all required roadway improvements.
- b) Dedicate additional Humboldt Road right-of-way as needed to construct all required roadway improvements.
- c) Dedicate a 60-foot public right-of-way to the City as depicted on the tentative map as: Potter Road and Street "A."
- d) Dedicate a 46-foot public right-of-way to the City as depicted on the tentative map as: Streets "B", "C", "D", "E", and "F."
- e) Convey to the City all abutter's rights of access from the abutting lots of the subdivision to the following streets: State Highway 32 and Humboldt Road as depicted on the tentative map.
- f) Dedicate a 10-foot-wide public service easement adjacent to public rights-of-way.
- g) Dedicate a 3-foot-wide public utility easement adjacent to all side lot lines.

2. ABANDONMENT

The abandonment of the existing "60-foot wide Roadway and Public Utility Easement" identified as RSN 86-06884 and depicted on the Tentative Map is approved. Said abandonment, in accordance with the provisions of the Subdivision Map Act, shall become effective upon Final Map recordation.

3. OTHER CONVEYANCES

In conjunction with recordation of the Final Map for this subdivision, the Subdivider shall:

- a) The Subdivider shall convey a "60-foot Creekside Setback and Open Space" adjacent to State Highway 32 as depicted on the tentative map to the City of Chico in fee simple.
- b) The Subdivider shall convey a Dead Horse Slough creekside setback entitled "200-foot Setback and Buffer Area" as depicted on the tentative map to the City of Chico in fee simple.
- c) The Subdivider shall convey a "Pocket Park" as depicted on the landscape submittal to the City of Chico in fee simple.
- d) The Subdivider shall convey proposed surface detention facilities as depicted on the tentative map to the City of Chico in fee simple.

J. OTHER PUBLIC SERVICES

1. PUBLIC UTILITIES

a) Underground Requirements

The Subdivider shall install the following utilities underground:

- 1) All new utilities serving this subdivision.
- 2) All existing utilities in public rights-of-way that are within or adjacent to this subdivision.
- 3) The following existing utilities in easements that are within or adjacent to this subdivision: as required by public utilities.

b) Easement Obstructions

All public utility and/or public service easements shall be kept free and clear of any and all obstructions, including but not limited to, structures, longitudinal fencing and/or soundwalls, which may impede the construction, operation and maintenance of public utility facilities within such easements.

c) Utility Company Comments

- 1) SBC, as of the date of this report did not respond to a request for comments.
- 2) Pacific Gas and Electric Company, as of the date of this report did not respond to a request for comments.

- 3) California Water Service Company, as of the date of this report did not respond to a request for comments.

2. FIRE PROTECTION

The Subdivider shall pay for the installation of fire hydrants within the subdivision in conformance with the recommendations of the Fire Department, City of Chico. The recommendation for the installation of fire hydrants is shown on a copy of the Tentative Map on file in the Community Development Department and the Office of the Chief, Fire Department.

3. UNITED STATES POSTAL SERVICE

The Subdivider shall install concrete pads for NDCBU delivery to the lots of this subdivision. The pads shall be depicted on the subdivision improvement plans and are subject to approval by both the local office of the United States Postal Service and the Community Development Department.

4. MOSQUITO ABATEMENT

The Butte County Mosquito and Vector Control District comments and recommendations shall be included as conditions of approval of this subdivision.

5. CALIFORNIA DEPARTMENT OF TRANSPORTATION

All State of California, Department of Transportation comments and recommendations shall be included as conditions of approval of this subdivision.

6. CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

All State of California, Regional Water Quality Control Board, Central Valley Region comments and recommendations shall be included as conditions of approval of this subdivision.

K. PERMITS FROM OUTSIDE AGENCIES

The Subdivider shall obtain all required permits from outside agencies having pertinent jurisdiction prior to recordation of the Final Map for this subdivision.

L. DESIGN CRITERIA AND IMPROVEMENT STANDARDS

All public and joint-use private improvements shall be designed in accordance with Chapter 18R.08, Design Criteria, of the Chico Municipal Code, except as modified by the conditions of approval for this subdivision.

The Subdivider shall submit improvement plans, profiles, typical sections, details and specifications to the Department of Public Works for review and approval prior to the start of any construction of public improvements.

All public improvements shall be constructed in conformance with Chapter 18R.12, Improvement Standards, of the Chico Municipal Code and in conformance with the details shown on the approved improvement plans.

M. ENVIRONMENTAL MITIGATIONS

The improvement plans, Final Map, and any appurtenant documents shall adhere to the requirements of the Final Environmental Impact Report for the Oak Valley Conceptual Master Plan and for the 43-acre Portion of the Subdivision as approved by the Planning Commission, a copy is on file in the Community Development Department of the City of Chico.

N. ENVIRONMENTAL CLEARANCE

The Subdivider shall complete an environmental assessment for all property dedications to the City of Chico to determine the presence of contamination. If contamination is found, the Subdivider shall mitigate the contamination prior to acceptance of the property by the City.

O. ADMINISTRATIVE REQUIREMENTS

1. REVISED TENTATIVE MAP

The Subdivider shall prepare a revised tentative map, consisting of a copy of the Tentative Map modified to depict all requirements of this subdivision report or the resolution of approval that alter the street layout, the lot configuration, or any other substantive item depicted on the Tentative Map as originally submitted.

The revised tentative map shall be submitted, reviewed, and approved by the Planning Director and the Senior Development Engineer prior to initial submittal of the improvement plans or Final Map for this subdivision.

2. FINAL ENVIRONMENTAL IMPACT REPORT MITIGATION LIST

The Final Environmental Impact Report (EIR) contains a number of both offsite and onsite Transportation and Circulation mitigation measures. The Subdivider shall prepare a detailed list of required Transportation and Circulation mitigation measures describing both the nature and timing of the required offsite and onsite mitigation measures. The list shall be summarized in text, tables, figures, along with any appropriate drawings for staff review and will be used to ensure that both current/future required mitigation measures will be constructed and operational at the appropriate time.

The Final Environmental Impact Report Mitigation List shall be submitted, reviewed, and approved by the Planning Director and the Senior Development Engineer prior to initial submittal of the improvement plans or Final Map for this subdivision.

3. SUBDIVISION IMPROVEMENT AGREEMENT

If the public improvements required herein are not satisfactorily completed prior to recordation of the Final Map, the Subdivider shall enter into a subdivision improvement agreement in conformance with Chapter 18.36, Subdivision Improvement Requirements, of the Chico Municipal Code.

4. SUBDIVISION FEES

a) Plan Checking Fee

The Subdivider shall pay to the City of Chico a subdivision plan checking fee upon filing the Final Map and/or improvement plans and specifications for checking in the following amount:

An initial deposit of 1½% of the estimated cost of all public and/or joint use private improvements exclusive of private utility facilities (\$750 minimum). A final fee equal to actual City costs.

b) Inspection Fee

The Subdivider shall pay to the City of Chico an inspection fee prior to commencing construction in the following amount:

An initial deposit of 2% of estimated cost of all public and/or joint use private improvements exclusive of private utility facilities. A final fee equal to actual City costs.

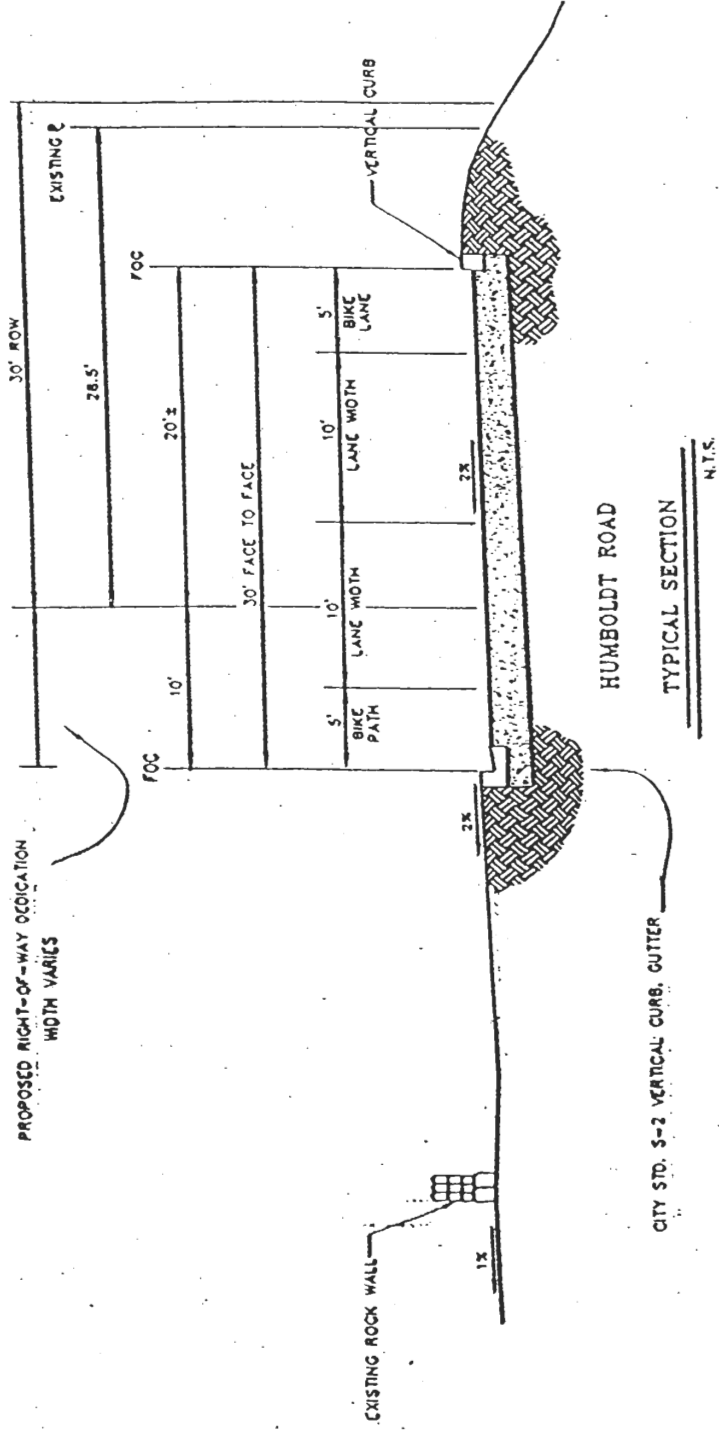
Recommendations and comments of all parties to whom the Tentative Map was circulated for review are on file with the respective parties and in the Community Development Department.



Matt Thompson
For Matt Johnson, Senior Development Engineer

Attachments: Exhibit A

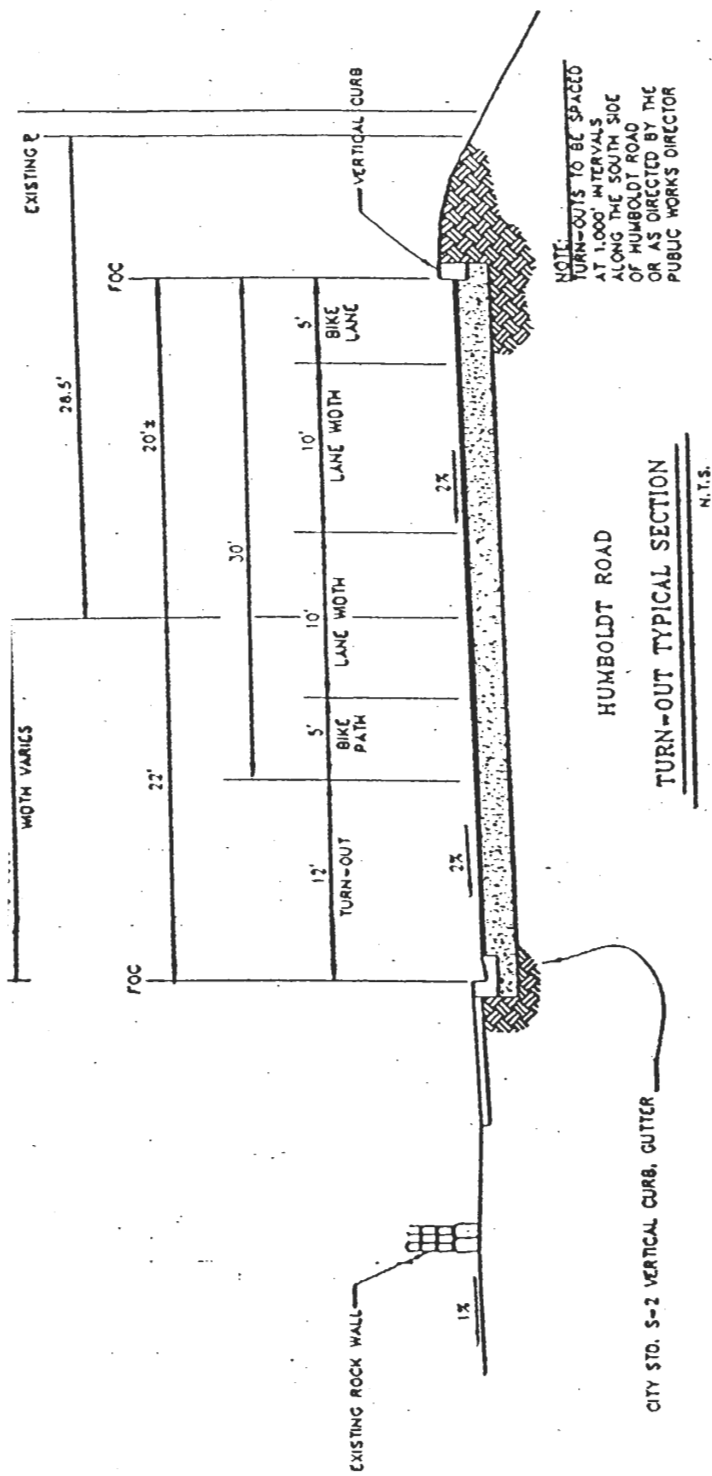
Distribution: Original - Planning Division



Street		Structural Section			
Name	Location Relative to Subdivision	A.C.	A.B.	T.I.	Notes
Humboldt Road	Adjacent				1, 2

NOTES:

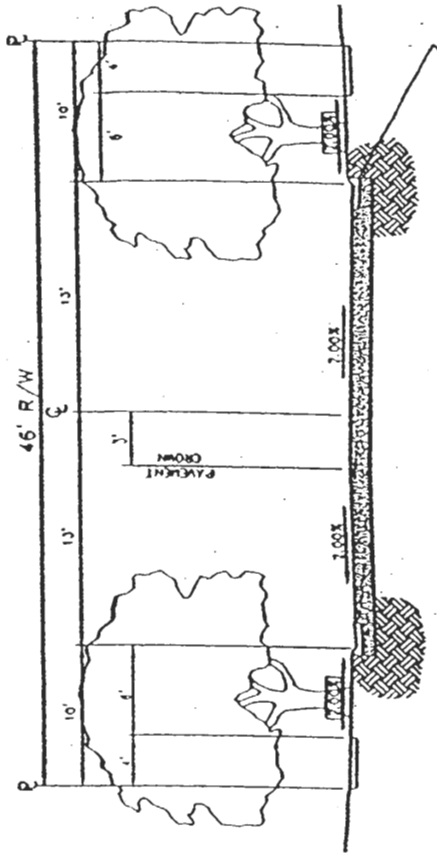
1. The street typical section shall be designed and constructed in conformance with the details shown hereon, Chico Municipal Code Title 18R (Design Criteria and Improvement Standards) and the approved construction plans.
2. The structural section shall be established by utilizing in place "R" values as determined by the subdividers engineer and the indicated Traffic Index (T.I.). The final structural section is subject to approval by the Director of Public Works, but in no case shall the structural material thickness be less than the indicated minimum.
3. The structural section has been previously established. Construct to the indicated structural material thickness.



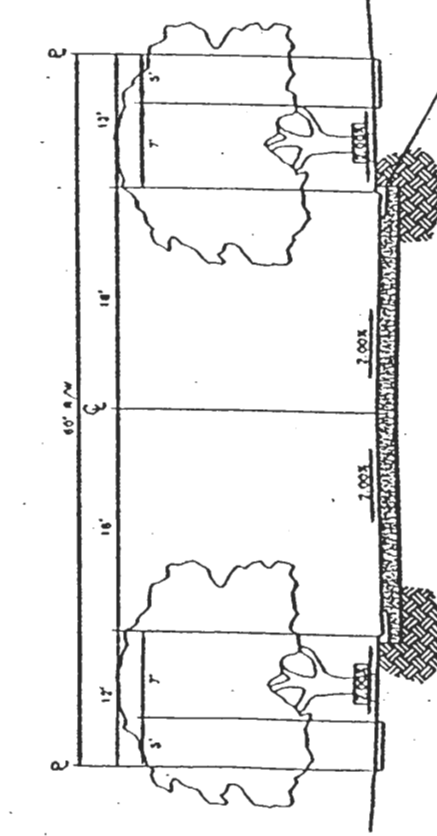
Street		Structural Section		
Name	Location Relative to Subdivision	A.C.	A.B.	T.I. Notes
Humboldt Road	Adjacent			1, 2

NOTES:

1. The street typical section shall be designed and constructed in conformance with the details shown hereon, Chico Municipal Code Title 18R (Design Criteria and Improvement Standards) and the approved construction plans.
2. The structural section shall be established by utilizing in place "R" values as determined by the subdividers engineer and the indicated Traffic Index (T.I.). The final structural section is subject to approval by the Director of Public Works, but in no case shall the structural material thickness be less than the indicated minimum.
3. The structural section has been previously established. Construct to the indicated structural material thickness.



PUBLIC 46' R/W
 (PARKING ON ONE SIDE OF STREET)
TYPICAL SECTION "B"
 N.T.S.



PUBLIC 60' R/W
TYPICAL SECTION "A"
 N.T.S.

NOTE:
 PARKING ON POTTER ROAD SHALL BE PROHIBITED AND REPLACED WITH A CLASS II BIKE PATH ON BOTH SIDES OF THE ROAD.

Street		Structural Section	
Name	Location Relative to Subdivision	A.C. A.B.	T.I. Notes
	Interior		1, 2

NOTES:

1. The street typical section shall be designed and constructed in conformance with the details shown hereon, Chico Municipal Code Title 18R (Design Criteria and Improvement Standards) and the approved construction plans.
2. The structural section shall be established by utilizing in place "R" values as determined by the subdividers engineer and the indicated Traffic Index (T.I.). The final structural section is subject to approval by the Director of Public Works, but in no case shall the structural material thickness be less than the indicated minimum.
3. The structural section has been previously established. Construct to the indicated structural material thickness.

1 WHEREAS, an appeal of the Planning Commission’s certification of the EIR as described above
2 was filed by Francis Farley, who maintained that the EIR did not adequately address the potential
3 impacts to the setting of historic Humboldt Road, and that the setting for the historic features (wagon
4 wheel ruts, rock wall) would be destroyed by the project, and another appeal of the certification of the
5 EIR filed by Nora Todenhagen, Julie Nasr, Alan & Francine Gair, Phil Johnson, Gene Anna McMillan,
6 Philip Smith, and Ceclia Russ, cited that the EIR did not adequately address traffic mitigation measures,
7 impacts to the viewshed and natural character of the foothills, impacts to the natural open space
8 recreational qualities of upper Humboldt Road, and the effects of allowing housing construction and
9 occupancy in the area of the Humboldt Road Burn Dump (HRBD) before the HRBD is remediated; and

10 WHEREAS, following a public hearing on May 17, 2005, a supplemental public hearing on
11 September 20, 2005, and exercising its independent judgment, the City Council reviewed and considered
12 the Final Environmental Impact Report (FEIR) for the Oak Valley subdivision, which addresses the
13 approvals contemplated by this resolution, and certified and approved the FEIR and has made all
14 required findings and adopted Statements of Overriding Considerations by adoption of Resolution No.
15 _____ on September 20, 2005.

16 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
17 CHICO AS FOLLOWS:

- 18 1. The Project, as approved by the Planning Commission, included the approval of a vesting
19 tentative subdivision, planned development permit, and conceptual master plan dividing the
20 parcel into 141 parcels to be developed with approximately 1,324 residential units, as well as
21 109,000 sq. ft. of commercial retail space, as conditioned. The Council hereby denies the
22 appeal and approves the Project, with revisions to the conditions of approval in Exhibit “I”
23 attached hereto to (1) clarify that Condition #27 is to include creekside setbacks and greenways,
24 (2) revise Condition #39 to restrict the direct siting of residential buildings on remediated land
25 inside or outside of the DTSC fenced area on the Project site, (3) modify the vesting tentative
26 subdivision map, planned development permit and conceptual master plan to require the merging
27 of Lot Q at the eastern end of the Project site with Lot P and the recording of a “no development
28 zone” on the easternmost 80 acres of this merged lot. The 160 units on Lot Q may be transferred

1 to locations to the west as specified on the final map, planned development permit and
2 conceptual master plan; and (4) revise Condition #33 to eliminate the requirement to construct
3 a separated Class I bicycle path along Humboldt Road and instead require that Humboldt Road
4 be designed and improved utilizing a 30-foot wide roadway section consisting of two ten-foot
5 wide travel lanes and a five-foot wide Class II bike lane along each side of the roadway.

6 2. The City Council finds as follows:

7 A. That, at an overall density of approximately 3.8 units per gross acre, the Project is
8 consistent with the site's General Plan designations and zoning classifications and that
9 through the planned development permit, the Project provides a mix of commercial and
10 residential types and densities which are appropriate for development while providing
11 permanent protection for those portions of the site which are not appropriate for
12 development. Given the site's many physical and environmental constraints,
13 development at densities at the low end of the General Plan land use designations is the
14 most appropriate for the site.

15 B. The Project is consistent with the goal of reinforcing the compact form of the city
16 because the subject property is within the City of Chico Sphere of Influence and the
17 development of the Project would not result in development of open space beyond the
18 level anticipated by the 1994 General Plan and accompanying General Plan EIR.

19 C. The Project is consistent with the General Plan, specifically goals and policies directed
20 at promoting infill development while also protecting the environment by maintaining
21 the majority of the steeper slopes, oak woodlands, and special status plant species in
22 permanent open space on the Project site. As detailed in the General Plan consistency
23 checklist prepared for this Project in each applicable section of the certified EIR, the
24 Project achieves substantial compliance with General Plan goals and policies, including
25 but not limited to the following:

26 i. Phase I of the Project, the 43-acre subdivision, is consistent with the goal of
27 creating new neighborhoods that have a human scale and are oriented to the
28 pedestrian by limiting the length of blocks, providing both passive and active

EXHIBIT “I” - CONDITIONS
Oak Valley Vesting Tentative Subdivision Map, Planned Development Permit
and Conceptual Master Plan S 99-12 & PDP 02-01; Fogarty Investments
(as approved by the City Council on 9/20/05)

1. The applicant is authorized to subdivide a 340-acre site into 138 parcels to be developed pursuant to a Conceptual Master Plan (Plan), whereby Phase I of the Plan includes 126 smaller lots to be developed on a 43-acre portion of the site, including two parcels for medium-density residential development. Development of the remaining 12 larger parcels would take place under future phases via the processing of individual subdivision maps resulting in a total of approximately 1,324 residential units, as well as 109,000 sq. ft. of commercial retail space on 10 acres. The subdivision shall be in substantial accord with the Oak Valley Vesting Tentative Subdivision Map, Planned Development Permit and Conceptual Master Plan (S 99-12/PDP 02-01) date-stamped April 11, 2005 by the Planning Division, except as modified by the Planning Commission or City Council.
2. The approved development plans for the project include the following:
 - Vesting Tentative Subdivision Map (Sheets 1-6) date-stamped April 11, 2005 by the City of Chico Planning Division (which includes the 43-acre subdivision and the Conceptual Master Plan). The Final Map shall combine Parcels H and G, Parcels I and J, and Parcels M and J, with no additional access points onto Humboldt Road. Lot Q shall be merged with Lot P with a “no development zone” being recorded across the easternmost 80 acres of this merged lot. The 160 dwelling units on Lot Q may be transferred to unspecified locations to the west;
 - Oak Valley Project Foothill Design Guidelines dated May 5, 2005;
 - Resource Management, Monitoring, and Reporting Information Plan date-stamped December 30, 2004 by the Planning Division;
 - Conceptual Landscape Plan date-stamped January 5, 2005 by the Planning Division;
 - Conceptual Grading Plans plan date-stamped December 30, 2004 by the Planning Division.
3. Future development under all phases of the project shall adhere to the mitigation measures identified in the certified *Final EIR for the Programmatic EIR for the Oak Valley Conceptual Master Plan and Project Specific EIR for the 43-Acre Portion of the Subdivision (SCH#1998032048)*, a consolidated summary of which is provided in the adopted *Mitigation Monitoring Program* for the project as part of the certification of the Environmental Impact Report for the project, with the exception of Mitigation Measures 4.3-1(a) and 4.3-1(b), which have been determined to be infeasible. A note shall be placed on the Final Map which states that further subdivision and development of the properties shall be in compliance with those mitigation measures set forth in the Oak Valley EIR and approved development standards and guidelines for the project.
4. The applicant shall comply with all other State and local Code provisions, including those of the Building Division, Fire Department, and the Department of Public Works. The applicant is responsible for contacting these offices to verify the need for permits.
5. The vesting tentative subdivision map, planned development permit, and conceptual master plan includes the following requirements:

- a. Lot A (zoned CC Community Commercial) shall be developed with a maximum of 99,000 s.f. of commercial retail space. A pedestrian/bike connection shall be included in the project design to the adjacent R3 property.
 - b. Lot D shall be developed with a maximum of 10,000 s.f. of CN Neighborhood Commercial retail space, with ability to construct residential units above the first floor retail at a density up to 22 units per acre.
 - c. Lot E (zoned R2) shall be developed at a minimum density of 10 dwelling units per acre. In order to achieve higher densities for the project, single-family residences shall be precluded.
 - d. Lots F & G (zoned R2) shall be developed with multi-family units at a minimum density of 8 du/acre. In order to achieve higher densities for the project, single-family residences shall be precluded.
6. As required by the planned development permit regulations (Section 19.28.040 of the Chico Municipal Code), a conceptual grading plan shall be submitted and approved prior to the issuance of a grading permit for all future subdivisions which identifies proposed grading for roadways, house pads, drainage facilities, and other public improvements.
 7. Future subdivisions shall be required to submit individual Resource Management, Monitoring, and Reporting Plans (RMMRP), as required by the -RM Resource Management overlay district regulations, as set forth in Section 19.52.060 of the Chico Municipal Code.
 8. Future subdivisions shall be required to submit individual photo-simulations, as required by the City's Foothill Development standards set forth in Section 19.66.030 (B) of the Chico Municipal Code.
 9. As each of the lettered lots within the bounds of the Oak Valley vesting tentative subdivision map develops, public streets shall be dedicated across each of the lots to serve as access to the lot and to the lots beyond. The street circulation shall be in general conformance with the conceptual master plan as approved by the Public Works Director.
 10. Road designs for future subdivisions shall include appropriate traffic-calming measures to reduce vehicle speeds and promote a pedestrian-friendly street environment.
 11. Roadway dedication and improvements, including bicycle paths where appropriate, shall be required as each phase develops.
 12. The applicant shall acquire or bear the cost of acquisition of any road right-of-way outside the limits of the subdivision as necessitated by roadway and bicycle path improvements external to the subdivision, consistent with the General Plan and as set forth in the project EIR.
 13. To minimize the visibility of project lighting from off-site, street lighting shall only be

- placed at roadway intersections and shall be low-level and baffled downward and directed only toward areas requiring illumination and shall meet IES full-cutoff standards for lighting. Low-level light poles and/or bollards shall be allowed on private lots at driveway entrances. Lights mounted at driveway entrances shall be approved in conjunction with building permits for individual single-family residences.
14. All structures in all phases of the development (including the 43-acre subdivision), shall require review and approval by the Planning Commission and shall implement the design criteria set forth in the approved Oak Valley Project Foothill Design Guidelines dated 5/05/05.
 15. Single-family and duplex units shall not exceed a height of 25 feet as measured from the highest point of the building footprint at natural grade (a second story may be allowed on downhill slopes) and shall include earth tone colors, unless visual simulations or other graphic representations can verify that greater building height will not negatively impact the viewshed. A note shall be placed on the Final Map which details this requirement.
 16. Where feasible, each roof should provide at least one southerly orientation to allow for eventual solar electrical production.
 17. Final building permit plans for all residential units shall be reviewed and approved by the Planning Division for substantial conformance with the approved development plans.
 18. Building permit plans for each lot shall clearly identify all existing trees exceeding six inches in diameter, including trees on adjacent lots that may be impacted by site grading. No trees shall be removed from the project site without prior approval by the Planning Division and as authorized on approved development plans and building permit plans. Tree removal for the establishment of future building pads and driveways shall be minimized. For those trees to be retained on the site, the final grading plans shall demonstrate that grading will not adversely impact the health of the trees by avoiding both grading within the drip lines of such trees and creating finished lots which result in extreme differences in grade with the existing trees.
 19. The applicant shall include on any building permits a notation that the project is within the Oak Valley Planned Development and subject to review and approval by the Planning Director.
 20. Prior to the issuance of any occupancy permits for each subdivision, a fire prevention management plan shall be prepared for the individual lots and open space lots which shall be reviewed and approved by the Planning Division and Fire Marshal. Such plan may include the removal or thinning of some understory brush and/or the limbing up of trees within open space areas, (as approved by a certified arborist) to reduce the threat of ground fire. Such plan shall also be consistent with the management/preservation concepts set forth in the project EIR and RMMRP.
 21. A landscape and irrigation plan shall be submitted by the applicant to the Planning

- Division for review and approval as part of the final improvement plans for each subdivision. Said plan shall include the planting of drought-tolerant trees, shrubs and/or groundcover.
22. Should a water storage tank be required to serve the eastern portion of the site as analyzed in the project EIR, the final size and location of the tank shall be determined by the California Water Service Company and the applicant, subject to review and approval (via a use permit) by the City. The tank shall be located, designed, colored, and screened to avoid or minimize visibility from within and beyond the project site.
 23. A note shall be placed on all grading and construction plans which informs the construction contractor that if any bones, pottery fragments or other potential cultural resources are encountered during construction, all work shall cease within the area of the find pending an examination of the site and materials by a professional archaeologist. This person will assess the significance of the find and prepare appropriate mitigation measures for review by the Planning Director. All mitigation measures determined by the Planning Director to be appropriate for this project shall be implemented pursuant to the terms of the archaeologist's report.
 24. Roadway improvement plans for Humboldt Road shall include provision of fencing or other barrier acceptable to the Planning Division to prevent construction vehicles from impacting the historic wagon wheel ruts located just south of the roadway. Such fencing or barrier shall be in place prior to the issuance of a grading permit.
 25. No grading permit shall be issued for the project site until such time that the appropriate State agencies have indicated in writing to the City that any impacted soils have been adequately remediated in accordance with adopted State standards.
 26. Prior to issuance of a grading permit, the applicant shall obtain and submit to the Development Engineering Division, all applicable permits and/or clearances from the Regional Water Quality Control Board.
 27. The applicant shall provide the City with clearances from appropriate State agencies indicating that impacted soils have been adequately remediated in accordance with State standards prior to the City accepting the offers to dedicate any open space lands, including creekside setbacks and greenways, on the project site.
 28. Prior to any ground-disturbing activities, including clearing, grubbing, scraping and grading of the subject site, the applicant shall conduct a pre-construction (pre-ground disturbance) site meeting with Planning staff and the supervising contractor. The purpose of the pre-construction site visit shall be verification by Planning staff that all pre-construction mitigation measures and conditions have been implemented and that all necessary permits have been obtained from all public agencies.
 29. All construction activities, including parking of vehicles, stockpiling of supplies, and use of construction-related equipment shall be excluded from the areas planned to serve as

- permanent open space or otherwise set aside for the protection of plants, except as necessary for the construction of roads and other infrastructure, including firebreaks.
30. Prior to recordation of the final map, the applicant shall obtain approval from the Planning Division for street names.
 31. The number of access points onto Humboldt Road east of the Potter Road extension shall be the minimum number required for prudent access and for fire safety.
 32. Future subdivision maps for property adjacent to Humboldt Road shall include a linear landscaped buffer zone along the north side of Humboldt Road which maintains the rural atmosphere of the road by retaining the row of existing oak trees along the Humboldt Road corridor to the maximum extent practicable, using site topography to the extent practicable to site homes in areas with a lower grade than the roadway to minimize view of homes, requiring larger rear yard setbacks and "no development zones" for residential lots in areas with no intervening vegetation or where site grades are similar to roadway grades, and requiring planting of native trees and/or shrubs along the Humboldt Road corridor as a condition of each future subdivision map to assist in the screening of homes from the roadway.
 33. Humboldt Road shall be designed and improved utilizing a 30-foot wide roadway section consisting of two ten-foot wide travel lanes and a five-foot wide Class II bike lane along both sides of the roadway.
 34. No individual residential driveways shall be allowed to access directly onto Humboldt Road, a collector roadway.
 35. Humboldt Road improvements shall be constructed as part of each phase with the applicant being reimbursed as provided for in the City's Nexus Study. To accomplish this, the applicant shall be required to obtain right-of-way from the adjacent landowner at fair market cost, if necessary.
 36. Street sections for Potter Road and Street "A" shall provide for five-foot wide sidewalks. Five-foot wide sidewalks may be considered for future phases.
 37. A landscaped traffic circle shall be installed at the Yosemite-Potter Road Extension/Street A intersection.
 38. The applicant shall provide safe access for school children to the nearby schools as part of the 43-acre Phase I subdivision by (1) providing bike and pedestrian access from the 43-acre Phase I subdivision site to the Bruce Road/Humboldt Road intersection and (2) installing a traffic signal at the Humboldt/Bruce Road intersection to be eligible for reimbursement by the City as provided for in the City's Nexus Study and the Chico Municipal Code.
 39. No residential buildings, either single-family or multi-family, may be sited directly on

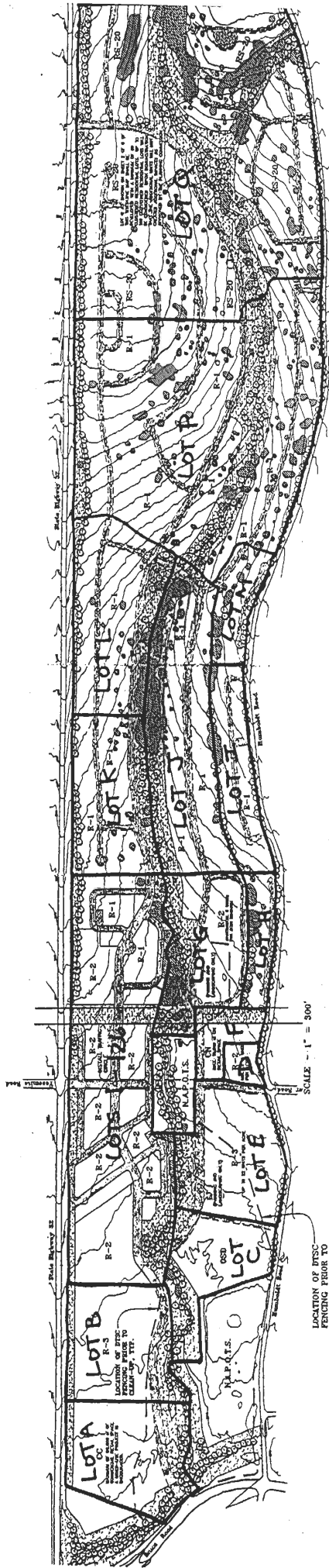
remediated land that is inside or outside of the DTSC fenced area, as depicted on the vesting tentative subdivision map dated-stamped April 11, 2005 by the Planning Division. However, all residential uses other than the buildings themselves, including access streets, driveways, parking, and ornamental landscape areas (non-play areas), and all non-residential buildings consistent with the approved planned development permit, may be sited on the remediated land. Residential exemption: commercial buildings sited on remediated land may include residential uses above the first floor.

40. The applicant shall require a memorandum on the title to the property referring potential buyers to the remedial action plans and the abatement orders, the exact language for which will be approved by the City Attorney.
41. Open span crossings over Dead Horse Slough shall be utilized to allow for unimpeded wildlife movement.
42. The name Dead Horse Slough shall be retained due to its historical importance.
43. Where feasible, design and parking shall be integrated between adjacent commercial and multi-family structures, with reduced shared parking requirements.
44. To the extent possible, consistent with the goal of minimizing grading and preserving the oak woodland, houses shall be clustered in lower, less visible open areas, screened from the valley floor and Highway 32 by the terrain and trees.
45. Open-style fencing (e.g., wrought iron, split-rail, but not chain-link) shall be utilized within Parcels G through Q along Highway 32 and Humboldt Road to allow views through the parcels. Solid fencing should only be used to enclose the immediate private outdoor space around the house and should not be used to delineate property lines where it would significantly interrupt natural open areas and views from Humboldt Road. Where fencing is needed to delineate private property from public or common areas, open or unobtrusive fencing shall be installed.
46. Impacts to school facilities within the Chico Unified School District shall be fully mitigated by payment of school impact fees to the extent permitted by State Law.
47. The applicant shall complete preparation of the segregation of assessments against the map prior to recording of the final map; record the final map; and have the engineer of record complete recording of the segregation of assessments against the property.
48. Prior to recording the final map, the applicant shall pay any delinquent taxes and/or assessments against the property.
49. In the event that all fees have not been paid prior to recordation of the final map, the following notation shall be included on the final map:

“In accordance with the provisions of the Chico Municipal Code, a transportation facility

fee, park facility fee, and building and equipment fee may be assessed and levied upon the owner of any lot or parcel within this subdivision at the time a new building or structure is constructed on such lot or parcel, at the time an alteration or addition is made to an existing building or structure constructed on such lot or parcel which results in the expansion of building or structure, or at the time of a change in use of an existing building or structure constructed on the lot or parcel. In addition, a storm drainage facility fee may be assessed and levied upon the owner of any lot or parcel within this subdivision at the time such lot or parcel is first used for any residential or nonresidential purpose, at the time the area of the lot or parcel devoted to such residential or nonresidential use is expanded, or at the time of a change in the use of the lot or parcel.

Such transportation facility fee, park facility fee, building and equipment fee and storm drainage facility fee will be calculated from the schedule of such fees adopted by resolution of the City Council and in effect on the date of approval of such final map or parcel map, together with any adjustments to such schedules of fees made in accordance with the provisions of the Chico Municipal Code subsequent to the date of approval of the final map or parcel map to account for any changes in the type or extent of transportation facilities, park facilities, buildings and equipment and/or storm drainage facilities which will be required as a result of the development and/or use of real property during the period upon which such fees are based, any change in the estimated cost of the transportation facilities, park facilities, buildings and equipment and/or storm drainage facilities upon which such fees are based, or any change in that portion of the estimated cost of such transportation facilities, park facilities, buildings and equipment and/or storm drainage facilities which cannot be funded from revenue sources available to the City other than such fees.



Oak Valley Project Site Scale 2 Acres

Description	Lot Size	Gross Ac.	Net Ac.	# of Units	du/ac (gross)	du/ac (net)
Suburban Residential	8,500 - 20,000 (1)	79.7	62.2	80/160	10/20	1.3/2.6
Single Family Residential	6,000 - 12,000 (2)	148.4	121.5	400	2.7	3.3
Med. Density Residential	3,500 - 6,000 (3)	50.7	40.1	406	8.0	10.1
High-Density Residential (Multi-Family)	---	30.1	25.8	425	14.1	16.5
Community Commercial	---	14.8	10.7	90,000 s.f.	---	(25 FAR)
Neighborhood Commercial	---	5.2	2.9	10,000 s.f.	---	(30 FAR)
Open Space	---	10.8	66.0	---	---	---
Open Space/Buffer	---	---	10.5	---	---	---
Major Road	---	339.7	339.7	1,311/1391 du	---	---
				109,000 s.f.		

Lot size in RS-20 is 20,000 s.f. and 100' wide, but does not consider dithering

Comparison of Densities of Built Residential Subdivisions in the Project area
 Lake Vista, Phase I: 165 R1 units on 55.7 net acres = 3.0 du/ac.
 (this project utilized standard R1 lots sizes ranging from 6,000 sq. ft. to 16,589 sq. ft.)

6

Yosemite Terrace: 48 R1 units on 8.8 net acres = 5.5 du/ac.
 (this project utilized small residential lots ranging in size from 3,000 to 3,450 sq. ft. with reduced setbacks for units and common open space)

11

Retreat at Canyon Oaks: 22 R1 units on 2.04 net acres = 10.8 du/ac.
 (this project utilized zero-lot line units on lots ranging in size from 2,557 sq. ft. to 5,007 sq. ft. with common open space)

22

Comparison of Densities of Built Multi-Family Apartment Projects in Project Area

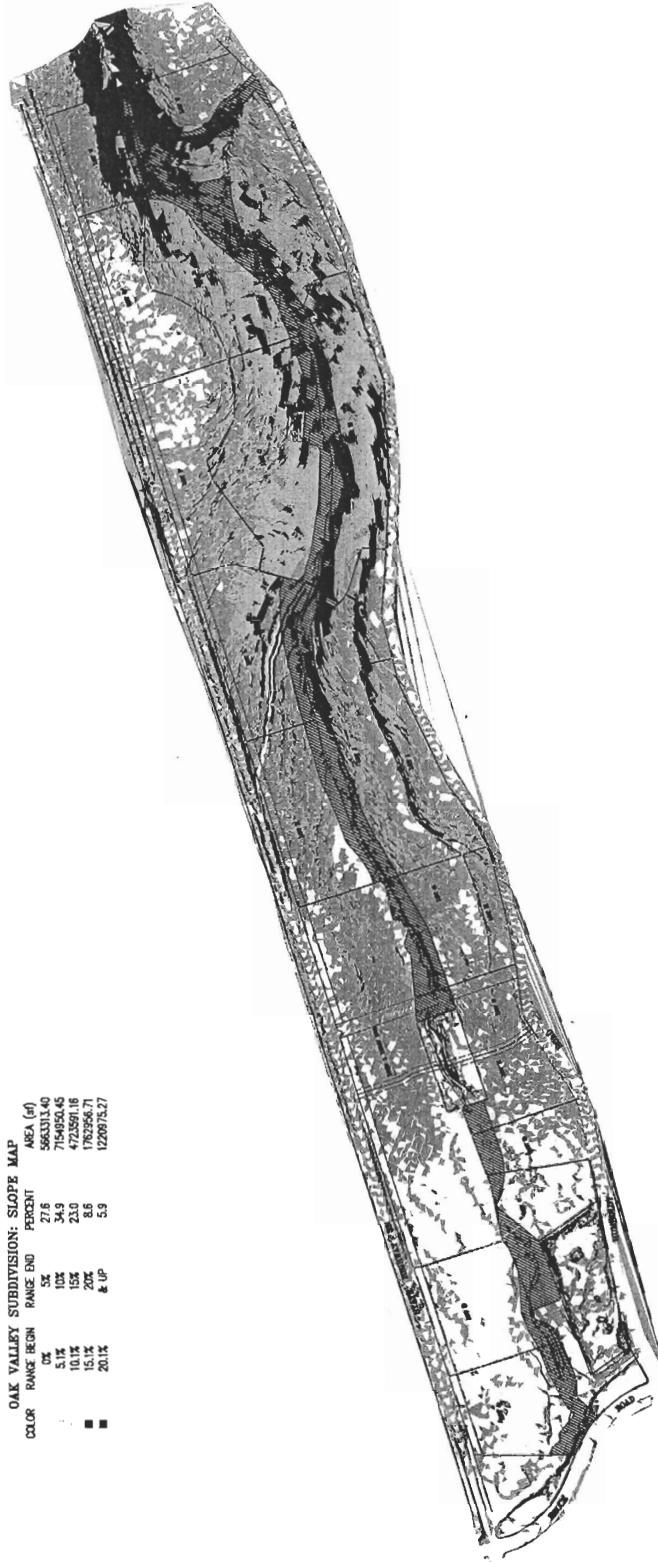
Yosemite Terrace Apartments: 90 R-3 apartment units on 4.52 acres = 20 units per acre.
 Apartments are located in 11 two-story structures approximately 23 feet high.
 168 parking spaces are provided.

40

Sierra Sunrise Apartments (California Park): 72 R-3 apartment units on 3.7 acres = 20 units per acre. Apartments are located in 3 three-story structures approximately 35 feet high.

40

SCALE: 1" = 400'



OAK VALLEY SUBDIVISION - SLOPE MAP

COLOR	RANGE PERCENT	RANGE END PERCENT	AREA (SQ FT)
(Lightest)	5%	10%	565,313.40
(Light)	10%	15%	715,450.45
(Medium)	15%	20%	472,550.18
(Dark)	20% <td>& UP</td> <td>176,256.71</td>	& UP	176,256.71
(Darkest)	20%	& UP	12,069.527

OAK VALLEY SUBDIVISION
SLOPE MAP

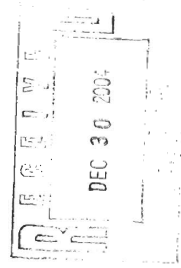
BEING A DIVISION OF PARCELS 1, 2, 3, AND 4 OF UNDER LAND DIVISION NO. 133 AND A PORTION OF SECTIONS 19, 20, 21, 29 AND 30, T. 22 N., R. 2 E., M. D. B. & M., CITY OF CHICO, COUNTY OF BUTTE, STATE OF CALIFORNIA

PREPARED BY:
ALBERT ENGINEERING
1011 101
CHICO, CALIFORNIA 95923
(530) 899-8603

ATTACHMENT E

DECEMBER 27, 2004

SHEET 1 OF 1



PROJECT INFORMATION

OWNER & SUBMITTER:
 ALLEGRA PROPERTIES
 10000 N. 100th Street
 Suite 100
 Overland Park, KS 66212

LAND PLANNING:
 ALLEGRA PROPERTIES
 10000 N. 100th Street
 Suite 100
 Overland Park, KS 66212

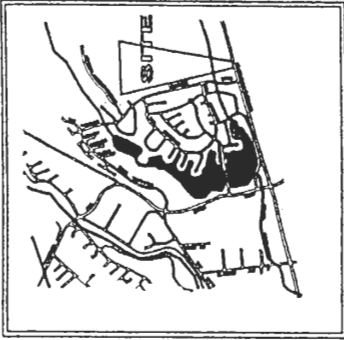
LAND SURVEYOR:
 JOHN W. HARRIS, L.S.
 10000 N. 100th Street
 Suite 100
 Overland Park, KS 66212

LAND USE:
 APN 11-03-107
 165 R1 UNITS

APPLICANT:
 ALLEGRA PROPERTIES

DATE:
 MARCH 2001

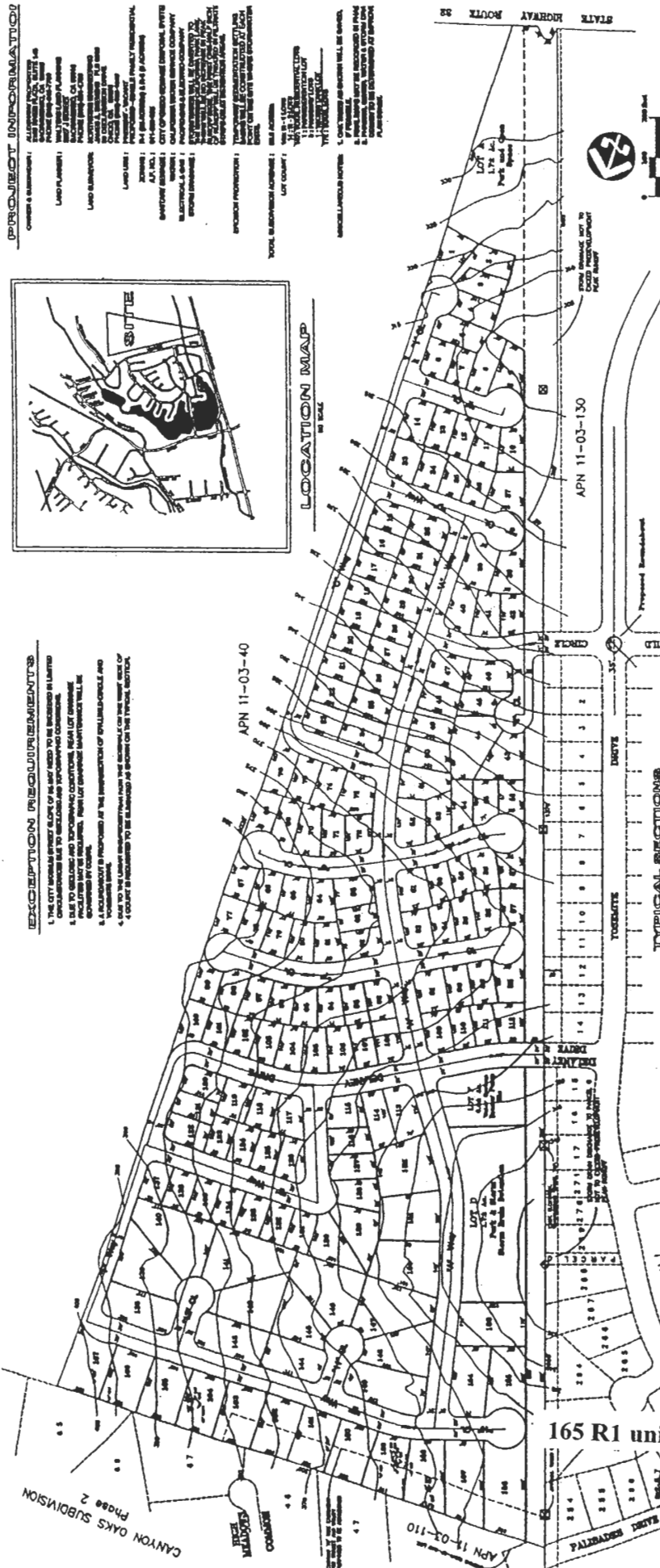
SCALE:
 1" = 100'



LOCATION MAP

EXCEPTION REQUIREMENTS:

- THE CITY ENGINEER SHALL BE NOTIFIED BY THE SUBMITTER IN LIMITED CASES TO OBTAIN AND EXEMPT FROM THE CITY ENGINEER'S REVIEW AND APPROVAL OF THE PROJECT.
- THE CITY ENGINEER SHALL BE NOTIFIED BY THE SUBMITTER IN LIMITED CASES TO OBTAIN AND EXEMPT FROM THE CITY ENGINEER'S REVIEW AND APPROVAL OF THE PROJECT.
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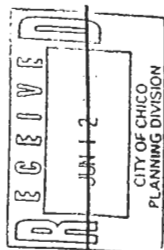
FINAL REVISED VESTING TENTATIVE MAP
LAKE VISTA

ALLEGRA PROPERTIES, Inc.
 SCALE 1"=100'
 MARCH 2001

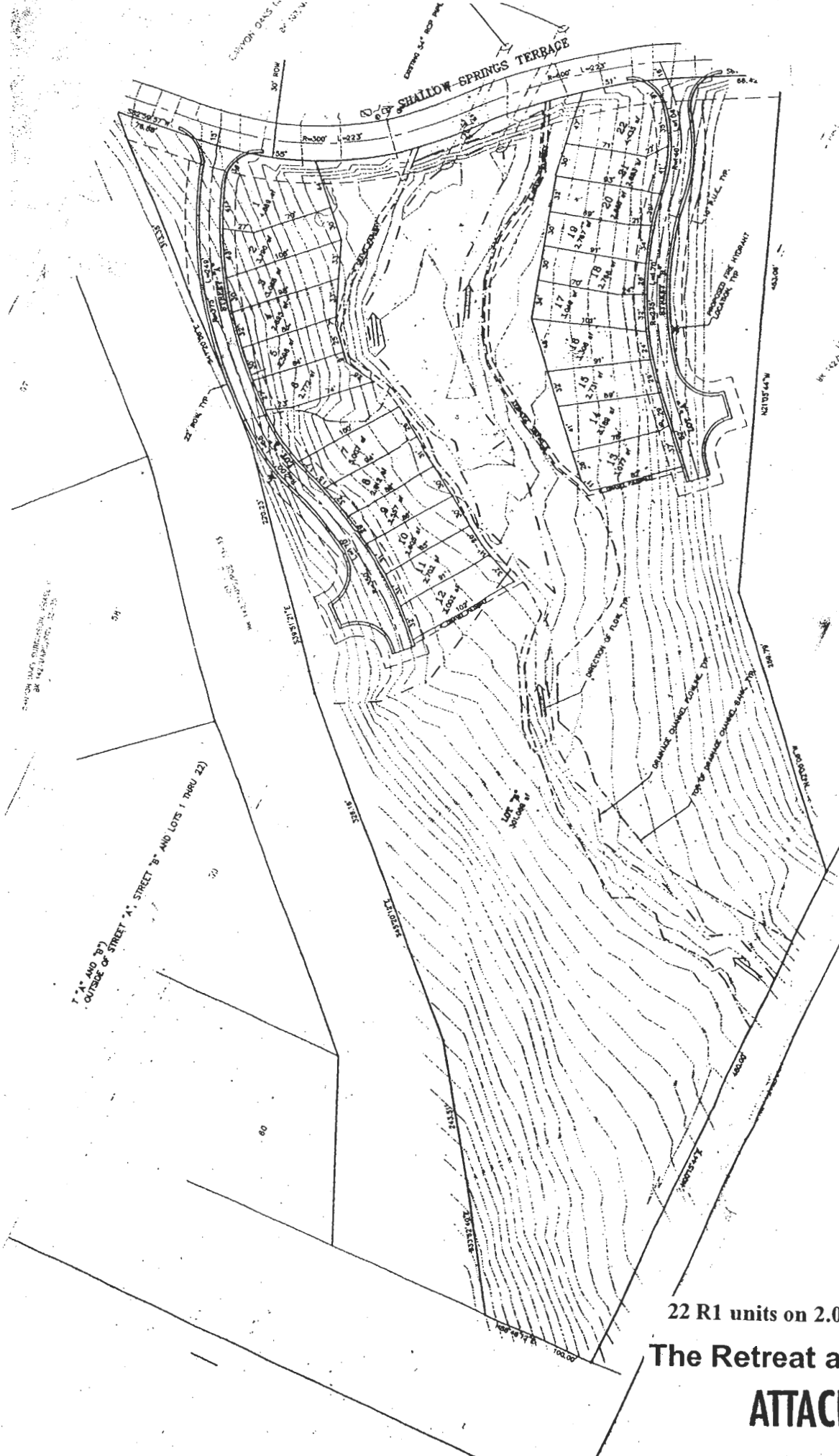


Lake Vista, Phase I
 165 R1 units on 55.7 net acres = 3.0 du/ac.

ATTACHMENT F.I.



111



to Accompany Planned Development Permit No. 00-1 (Canyon Oaks LLC)
 Final Development Plan for The Retreat at Canyon Oaks Subdivision

22 R1 units on 2.04 net acres = 10.8 du/ac.

The Retreat at Canyon Oaks

ATTACHMENT F.3.

RECEIVED
 OCT 31 2002
 CITY OF CHICO
 PLANNING DIVISION

SITE CALCULATIONS

DESCRIPTION	AREA	SPACE
TOTAL SITE AREA	149,815 SF	100%
TOTAL BUILDING FOOTPRINT	44,317 SF	29.5%
PARKING LOT PAVING	64,500 SF	43.0%
SITE LANDSCAPE (TOTAL)	40,998 SF	27.5%

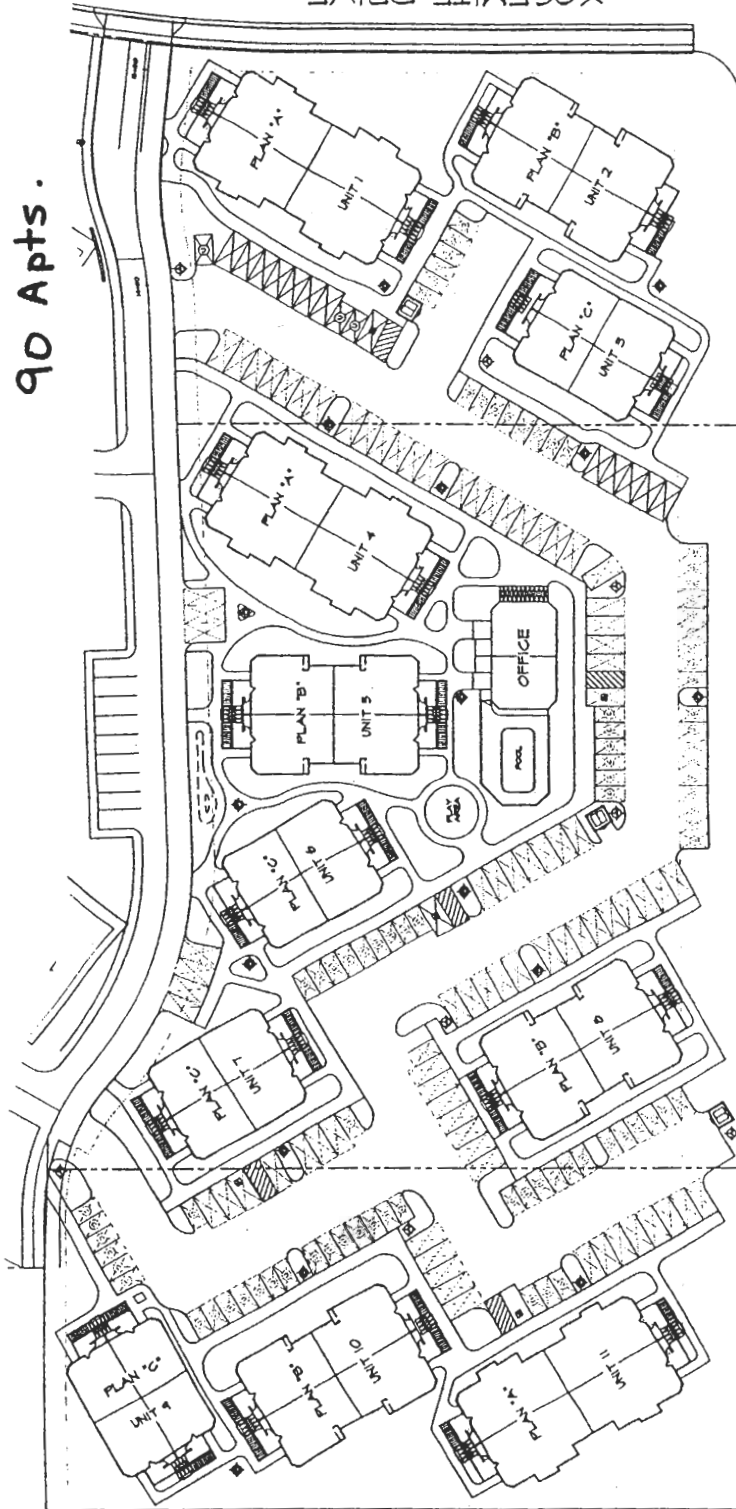
PARKING LOT REQUIREMENTS

PLAN	BEDROOMS	PARKING PER APT.	# OF UNITS	SPACES PER UNIT
PLAN A	3	3.0	24	40
PLAN B	2	3.0	52	64
PLAN C	1	3.0	22	44
PLAN D	1	3.0	22	44
TOTAL NUMBER OF TENANT PARKING SPACES REQUIRED			100	
TOTAL NUMBER OF VISITOR PARKING SPACES REQUIRED			25	
TOTAL NUMBER OF PARKING SPACES PROVIDED			125	
TOTAL NUMBER OF COMPACT PARKING SPACES ALLOWABLE PROVIDED			107	
TOTAL NUMBER OF BICYCLE PARKING SPACES REQUIRED PROVIDED			50	
TOTAL NUMBER OF ACCESSIBLE VAN PARKING SPACES REQUIRED PROVIDED			5	
TOTAL NUMBER OF ACCESSIBLE VAN PARKING SPACES REQUIRED PROVIDED			5	
GROSS TRAVEL AREA				124,835 SF / 4.3 ACRES

PLAN LEGEND

- ◆ 12' HIGH ACCORN WITH DEFLECTOR
- ◆ 6' HIGH ACCORN WITH DEFLECTOR
- ◆ COMPACT PARKING STALL
- ◆ STANDARD PARKING STALL
- ◆ BICYCLE PARKING SPACES

90 Apts.



◆ YOSEMITE APARTMENTS ◆
 HIGHWAY 32
SITE PLAN

LAND IMAGE · LANDSCAPE ARCHITECTS · 627 BROADWAY · CHICO, CA 95926 · (530) 899-1913

Prepared by
LAND IMAGE
 LANDSCAPE ARCHITECTS
 627 BROADWAY, CHICO, CALIFORNIA 95926
 PHONE: (530) 899-1913 FAX: (530) 899-1919

Scale: 1" = 20'-0"
 NORTH

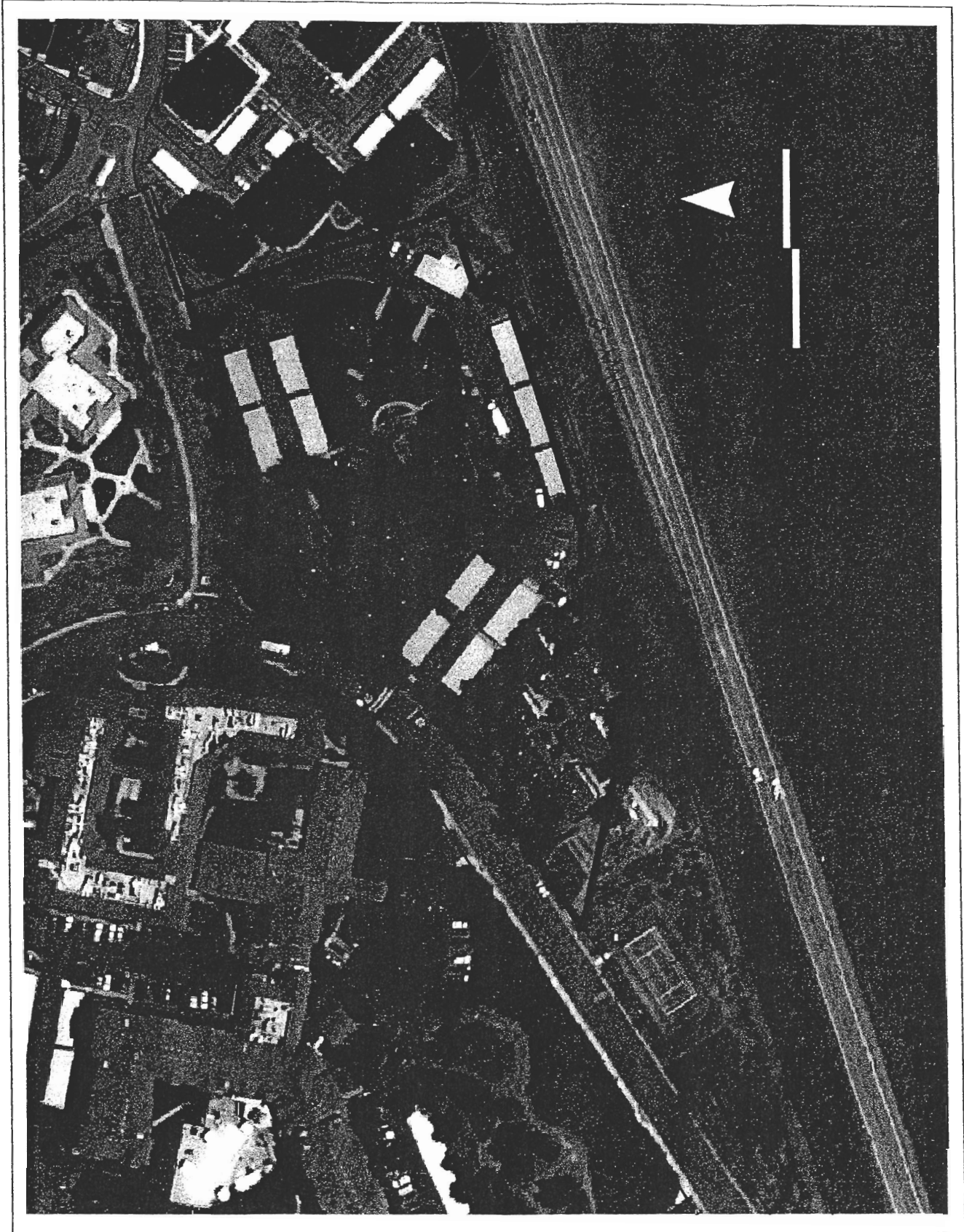
PROJECT NUMBER: 02-666
 DATE: OCTOBER 30, 2002

SOLAR INFLUENCE

Yosemite Terrace Apartments

90 R-3 apartment units on 4.52 acres = 20 units per acre

ATTACHMENT F.4



Sierra Sunrise Apartments (72 apartments on 3.7 acres = 20 units per acre)



DATE: AUGUST 31, 2005

File : S 99-11/PDP 02-01

TO: CITY COUNCIL

FROM: ^{pm} PATRICK MURPHY, SENIOR PLANNER (879-6803)
PLANNING DIVISION

KIM SEIDLER, PLANNING DIRECTOR (879-6801)
PLANNING DIVISION

RE: RESOLUTIONS FOR VESTING TENTATIVE SUBDIVISION MAP S 99-12,
PLANNED DEVELOPMENT PERMIT 02-01, AND CONCEPTUAL MASTER
PLAN FOR OAK VALLEY (FOGARTY INVESTMENTS)

RECOMMENDATION

The Planning Director recommends that the City Council adopt the attached resolutions (1) certifying the Final EIR and adopting statements of overriding considerations and the mitigation monitoring program for the Project (**Attachment A**); and (2) approving Vesting Tentative Subdivision Map S 99-12, Planned Development Permit 02-01, and the Conceptual Master Plan for Oak Valley, as conditioned (**Attachment B**).

Proposed Motion:

I move that the City Council adopt the attached resolutions (1) certifying the Final EIR and adopting statements of overriding considerations and the mitigation monitoring program for the Project, and (2) and approving Vesting Tentative Subdivision Map S 99-12, Planned Development Permit 02-01, and the Conceptual Master Plan for Oak Valley, as conditioned.

BACKGROUND

Implementation of Motion of Intent

Following the close of the public hearing on May 17, 2005, the City Council approved a motion of intent to deny the appeals on the Project and uphold the decision of the Planning Commission to certify the final environmental impact report and approve the vesting tentative subdivision map, planned development permit, and conceptual master plan for the Oak Valley development, with the following changes:

1. Lot Q will have no more than 80 dwelling units, with the balance of up to 80 more units transferred to unspecified locations to the west (added within condition #2 pertaining to the approved development plans for the Project). Under the current General Plan and zoning designations, Lot Q could accommodate up to 160 dwelling units. This condition now reduces the maximum number of units on Lot Q to 80 units.
2. Condition #27, which provides that the City will not accept any offers to dedicate any open space lands until clearances from appropriate State agencies are received indicating that impacted soils have been adequately remediated, is clarified to state that

ATTACHMENT G

creekside setbacks and greenways are to be included within the definition of open space lands.

3. Condition #39, which restricts the direct siting of residential buildings on lands with remediated soils, is revised to state that the restriction applies to those remediated lands inside or outside of the DTSC fenced area.

The conditions of approval for the Project (**Exhibit "I" to Attachment B**) have been revised to reflect the Council's action.

DISCUSSION

Response to Letter from Shute, Mihaly and Weinberger, LLP,

Included as **Attachment C** is a letter from Shute, Mihaly & Weinberger, LLP, dated June 3, 2005 which was submitted on behalf of the Friends of the Foothills after the May 17, 2005 Council meeting. This letter raises a number of claims, most notably that the Project contradicts certain General Plan policies regarding protection of the eastern portion of the Project site and that the City's findings are inadequate under the California Environmental Quality Act.

Staff has carefully reviewed the various issues raised in the letter and has provided the Council with a point-by-point response (see **Attachment D**). It should be noted that the public hearing on this matter has been closed and a motion of intent adopted. It is not staff's intent to augment the record with any new evidence. The responses prepared by staff to the letter from Shute, Mihaly & Weinberger are made in reference to materials and information already in the record.

Response to Letters from the State Office of Historic Preservation and Members of the Public

Background

Since the May 17, 2005 meeting, staff also received two letters from the State Office of Historic Preservation (OHP), as well as additional letters from members of the public. Although the OHP was included in the distribution of the original Draft EIR in 2001 (via the State Clearinghouse), the City received no comments on the Project from that office during the 45-day public review period. Pursuant to section 15207 of the CEQA Guidelines, the City need not respond to late comments; however, the City may choose to respond to them. These letters are not part of the Project record since they were received after the public hearing on the project. Still, the City takes all comments on the Project seriously and staff is providing the Council with responses to the comments received from the OHP, which also address the various comments raised by Mr. Francis Farley and other members of the public concerning Humboldt Road. Staff's responses consist of or clarify information already in the record.

The first letter from the OHP dated July 26, 2005 (**Attachment E**) was prepared at the urging of a member of the public who had provided the OHP with a copy of only the Recirculated Draft EIR. Therefore, the OHP did not have a copy of the City's Final EIR (which includes response to comments and changes to text to the Draft EIR), nor did they have a copy of the supplemental letter prepared by the City's consultant (JRP Historical Consultants) dated May

10, 2005, which was distributed to the Council prior to the May 17, 2005 meeting (see **Attachment F**). Staff, therefore, provided the OHP with a copy of these documents. Since that time, the OHP has submitted a second letter, dated August 25, 2005 (**Attachment G**), responding to the additional information provided by City staff.

In their August 25, 2005 letter, OHP recommends that a third "independent" historic resource assessment be conducted and that further information be provided (e.g., aerial photographs) to clearly assess the historical resources in the broader geographical context. With this information, OHP staff believe the effects of the project can also be more clearly determined and "appropriate mitigation measures developed".

Discussion

First, it should be noted that JRP already conducted an independent historic resource assessment, because that firm was hired directly by the City, not the Project applicant. Second, JRP staff have visited the project site and are familiar with the Project setting. OHP staff have not visited the site and, therefore,

have no specific knowledge of the Project setting. JRP has prepared an additional letter (**Attachment H**) which further clarifies their analysis and conclusions in response to the OHP letters. JRP concludes that the Project setting does not constitute a "rural historic landscape" as noted in OHP's letter due to the improvements that have already affected the setting in the area and that their previous findings that the Project will not result in a significant impact on the setting are still appropriate.

With respect to the OHP's recommendation that "appropriate mitigation measures be developed," staff believes that the OHP are still not fully informed as to the details of the Project. OHP appears to have assumed that because the EIR does not include any mitigation measures, there have been no measures taken to protect the historic resources and minimize impacts to the setting of the resources. The Project has been designed to provide buffer zone along Humboldt Road, prohibit driveways and homes from fronting on Humboldt Road, minimize the width of Humboldt Road, minimize lighting, and cluster development to provide large stretches of open space along the roadway corridor. These measures will ensure that the resources are not directly impacted and the impacts to the setting of the resources are minimized. Because of these protective design measures, no mitigation measures are needed or identified in the EIR.

Furthermore, Condition #32 has been developed to set forth some of the key design principles associated with the CMP:

"Future subdivision maps for property adjacent to Humboldt Road shall include a linear landscaped buffer zone along the north side of Humboldt Road which maintains the rural atmosphere of the road by retaining the row of existing oak trees along the Humboldt Road corridor to the maximum extent practicable, using site topography to the extent practicable to site homes in areas with a lower grade than the roadway to minimize view of homes, requiring larger rear yard setbacks and "no development zones" for homes in areas with no intervening vegetation or where site grades are similar to roadway grades, and requiring planting of native trees and/or shrubs along the Humboldt Road corridor as a condition of each future subdivision map to assist in the screening of homes from the roadway."

Staff concludes that substantial and adequate assessments of historical resources has been completed and fully considered in the approval process.

Proposed Revision to Condition No. 33 Regarding Humboldt Road Improvement Standards

Staff is recommending that the Council eliminate the requirement to construct a separated Class I bicycle path south of the existing paved surface for Humboldt Road and instead modify the improvement standards for Humboldt Road to include five-foot wide Class II bicycle lanes alongside both of the 10-foot wide travel lanes of the roadway. Condition #33 currently provides for Class II bicycle lanes along Humboldt Road west of Potter Road, and a single Class II bicycle lane on the north side of the roadway, east of Potter Road. The reasons for the proposed elimination of the separate Class I bicycle path are as follows:

1. Providing a Class I bicycle path along the south side of Humboldt Road is not a requirement of the General Plan Transportation Element, nor is it required as a mitigation measure for the project¹. It was attached to the Project as an additional amenity for the public.
2. The Project would continue to provide a Class I bicycle path on the north side of Dead Horse Slough across the entire length of the property, as proposed by the applicant.
3. The proposed Class II bicycle lanes along Humboldt Road would provide a safe route for bicyclists.
4. Eliminating the separated Class I bicycle path along the south side of Humboldt Road would help to address some of the concerns raised by the State Office of Historic Preservation and members of the public about potential impacts to the historic resources south of the roadway.
5. The separated Class I bicycle path would be located entirely outside the Project boundaries and would require the acquisition of right-of-way from the property owner to the south. Eliminating the path from the Project would not preclude construction of a bike path as part of a future development proposal on the property to the south. If a future amendment of the General Plan Transportation Element calls for a Class I bicycle path along Humboldt Road, any future development proposal on the property to the south could include such a bicycle path. Environmental review for that project would include an historic resource assessment.

¹ Figure 4-1 of the General Plan Transportation Element (Bicycle System map) does not identify a Class I bicycle path along Humboldt Road. The City's three-year Bicycle Plan, which was adopted in November 2002 in order to allow the City to be eligible for Bicycle Transportation Account funding, does include a Class I bicycle path along the south side of Humboldt Road. The General Plan Transportation Element has not been amended to incorporate the 2002 Bicycle Plan.

Based upon the discussion above, Condition #33 for the Project would be revised as follows:

33. Humboldt Road shall be designed and improved ~~in accordance with the following direction:~~
- a. ~~West of Potter Road, Humboldt Road shall utilize~~ utilizing a 30-foot wide roadway section consisting of two ten-foot wide travel lanes and a five-foot wide Class II bike lane along both sides of the roadway.
 - b. ~~East of Potter Road, Humboldt Road shall utilize a 25-foot wide roadway section consisting of two ten-foot wide travel lanes and a five-foot wide Class II bike lane on the north (descending) side of the roadway. A separate Class I bike/pedestrian path shall be provided between the roadway and the rock wall to the south (avoiding the wagon wheel ruts). As each phase of the development occurs, the vehicle and bicycle traffic along Humboldt Road will be re-evaluated for potential conflicts. If it is determined that a five-foot wide Class II bike path is warranted on the south (uphill) side of the roadway, the roadway section shall be modified from 25 feet to 30 feet to accommodate the additional Class II bike path.~~

The conditions of approval for the project (**Exhibit "I" to Attachment B**) have been revised to reflect this proposed revision.

DISTRIBUTION

City Council/Clerk (18)

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ATTACHMENTS

- A. City Council Resolution certifying the FEIR, adopting statements of overriding considerations, and adopting a mitigation monitoring program.
 - ~Exhibit "I"- Mitigation Monitoring Program
- B. City Council Resolution Approving Vesting Tentative Subdivision Map S 99-12, Planned Development Permit PDP 02-01, and Conceptual Master Plan for Oak Valley
 - ~Exhibit "I"- Conditions of Approval
 - ~Exhibit "II" - Public Works Department Subdivision Report dated April 6, 2005
- C. Letter from Shute, Mihaly, & Weinberger, LLP. dated June 3, 2005
- D. Staff Response to Shute, Mihaly & Weinberger letter
- E. Letter from the State Office of Historic Preservation dated July 26, 2005
- F. Letter from JRP Historical Consulting dated May 10, 2005
- G. Letter from the State Office of Historic Preservation dated August 25, 2005
- H. Letter from JRP Historical Consulting
- I. Additional public correspondence

The Resolution certifying the FEIR, adopting statements of overriding considerations, and adopting a mitigation monitoring program has been removed from this staff report and included as Attachment A to the 9/20/05 City Council staff report

The Resolution for approval of the Project has been removed from this staff report and included as Attachment B to the 9/20/05 City Council staff report

ATTACHMENT B

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RECEIVED

JUN 03 2005

CITY CLERK
CITY OF CHICO
hand delivered

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June 3, 2005

Via E-Mail and Hand Delivery
Mayor Gruendl and
Members of the Chico City Council
c/o Office of the City Clerk
PO Box 3420
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DATE 6/3/05 AGENDA 4/7/05 Add'l Info COUNCIL 7
CLK CM DESK ACM CA RM
AM ISD PER.D FIN.D DPW FC
CDD PLD PK.D COP FC
OTHER _____

Re: City Council Action on Appeals of the Planning Commission
Approval of the Oak Valley Project, Vesting Tentative Subdivision
Map S 99-12, Planned Development Permit PDP 02-01, Conceptual
Master Plan, and EIR Certification

Dear Mayor Gruendl and Members of the Chico City Council:

This letter is submitted on behalf of Friends of the Foothills ("Friends"), an unincorporated association comprised of individuals who are concerned about development in the foothills of the City of Chico ("City"). Among other individuals, Friends includes Philip Smith and Nora Todenhagen, both of whom have appealed the Planning Commission's approval of the Oak Valley Vesting Tentative Subdivision Map S 99-12, Planned Development Permit PDP 02-01, and Conceptual Master Plan ("Project"), as well as the Planning Commission's certification of the environmental impact report ("EIR") for the Project.

We have reviewed the City Council's ("Council's") proposed Resolution Certifying the Final EIR and Adopting a Statement of Overriding Considerations ("EIR Resol.") and its Resolution approving the Project ("Project Resolution"), Attachments A and B, respectively, to the May 31, 2005 City of Chico Memorandum on the Project (collectively "Findings"). We submit this letter to set forth our position that the Findings are inadequate under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.*; the CEQA Guidelines, California Code of

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Regulations, title 14, Section 15000 *et seq.* ("CEQA Guidelines"); the State Planning and Zoning Law, Gov't Code § 65300 *et seq.*; and the Subdivision Map Act, Gov't Code § 66410 *et seq.* The Findings are (1) not supported by substantial evidence, and/or (2) do not supply the logical step between the findings and the facts in the record, as required by state law.

The Findings were first made available for public review in the late afternoon on June 2, 2005, weeks after the close of the May 17, 2005 public hearing on the Project. We are therefore submitting these comments in the most timely manner possible under the circumstances. It is our understanding that upon receipt of this letter at the Office of the City Clerk, copies of this letter will immediately be placed in the Council Members' mailboxes and will be provided to each Council Member at the June 7, 2005 Council meeting. In addition, we are delivering a copy of this letter to each of the City Council members at their respective homes or places of business on June 3, 2005 in order to ensure that the City Council members have an adequate opportunity to consider these comments on the Project Findings.

SUMMARY

The most egregious of the Findings' numerous deficiencies, as set forth in detail in the remainder of this letter, are:

- (1) Rejecting the Partial Master Plan Alternative (*see* EIR Resol. at pp. 10-11), which the Council's Findings state is the environmentally superior alternative, although it meets all of the Project objectives, including providing a wide variety of housing types consistent with the Housing and Land Use Elements of the General Plan;
- (2) Basing findings on a severely outdated Initial Study;
- (3) Basing findings on updated information, such as new traffic data, without circulating this significant new information to the public for comment;
- (4) Failing to make any findings on impacts identified by the public as potentially significant, such as impacts to historical resources; and

- (5) Finding that the Project is consistent with the Chico General Plan, where the Project clearly contradicts numerous General Plan Policies regarding protection of the eastern portion of the Project site.

For these reasons and the reasons set forth in detail below, Friends urges the Council to grant the present appeals and overturn the Planning Commission's approval of the Project and its certification of the Project EIR. In the alternative, Friends asks the Council to prohibit any development on the Project site to the east of the power lines by adopting the Partial Master Plan Alternative (*see* EIR Resol. at pp. 10-11). In conjunction with adopting the Partial Master Plan Alternative, we request that the Council approve Conditions 27 and 39 and all other conditions, as set forth in Exhibit I to the Project Resolution, that are consistent with this alternative.

I. THE FINDINGS DO NOT COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

CEQA and the CEQA Guidelines require the Council to make specific findings regarding the Project's significant environmental effects before it may approve the Project. *See* Pub. Resources Code § 21081; CEQA Guidelines § 15091. One reason for CEQA's findings requirements is to "enable parties to the agency hearing to determine whether and on what basis they should seek review." *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 516. The agency's findings must be supported by substantial evidence in the record. *See* Pub. Resources Code § 21081.5; CEQA Guidelines § 15091(b). Additionally, the findings must contain an explanation to supply the logical step between the ultimate finding and the facts in the record. *See Topanga*, 11 Cal.3d at 515. Findings cannot simply put forth bare conclusions; they must contain the basis for the agency's conclusion. *See Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 440. For the reasons set forth below, the Findings for the Project do not comply with these requirements.

A. The Record Does Not Support the Council's Findings Regarding the EIR Because the Project Description Is Incomplete and Inaccurate.

The Findings state that the EIR for the Project has been "completed in compliance with the requirements of the California Environmental Quality Act and fully and adequately discloses and addresses all environmental issues associated with the Project." EIR Resol. at 7. The Findings further state that, except for various impacts

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which the Council has found to be significant and unavoidable, "[t]he potential environmental impacts identified in detail in the EIR as resulting from the Project . . . are fully mitigated or mitigated to a level of 'less than significant.'" EIR Resol. at 13. However, these findings are not supported by substantial evidence in the record because, as indicated by several commenters (*see, e.g.*, letter from Butte County Air Quality Management District, May 31, 2000; letter from Christy Strauch, June 2, 2000), the EIR contains an incomplete and inadequate Project description.

CEQA's most fundamental requirement is that an EIR contain an accurate, complete project description. *See County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185 (1977); *see also* CEQA Guidelines § 15124. Without a complete project description, an agency and the public cannot be assured that all of a project's environmental impacts have been revealed and mitigated, and therefore the Council cannot make adequate findings pursuant to CEQA. The Council's Findings are flawed from the outset because they rest on an inaccurate and incomplete description of the Project in the EIR.

The Project description is incomplete and inaccurate because it does not include or accurately describe all of the components of the Project and omits information about the Project that is critical to an adequate analysis of project-related and cumulative impacts. First, the EIR states that the Project includes a "Conceptual Master Plan," but fails to delineate what legal approvals actually comprise the "Conceptual Master Plan." For example, the Project description does not specify whether the Conceptual Master Plan includes any documents containing standards or guidelines in textual form, such as the Oak Valley Project Foothill Design Guidelines. If the Oak Valley Project Foothill Design Guidelines or other documents containing text regarding the subdivision or Conceptual Master Plan are a part of the Project, the EIR should state this fact and include the text in the EIR so that the public will have a chance to comment on the substance of these documents.

Second, the Project description states that the Project involves the approval of a Planned Development Permit ("PDP"), but fails to attach a copy of that document. This document is essential to a complete Project description for both the 43-acre subdivision and the Conceptual Master Plan. For example, the May 10, 2005 Staff Report for the Project states that the proposed densities for the 43-acre parcel exceeds those allowed by R2 zoning and that the PDP will allow a density "swap" from other portions of the site. Staff Report at 6, fn. 1. The Project description currently fails to include any information regarding this density swap. It is important for the public to

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know the areas of the Project site integral to the "swap" so that the public can (1) assess the relative environmental impacts of the areas at issue and (2) ensure that when future development proposals are put forth pursuant to the Conceptual Master Plan, the City applies the proper densities resulting from the swap.

Third, the Project description states the Project will ultimately include 109,000 square feet of commercial development, but remarkably fails to identify the type of commercial uses that the Project will entail. The type of commercial uses are critical to an adequate assessment of the Project's impacts because various types of uses may or may not attract day-users to the Project site, thereby increasing traffic in the Project area, increasing demand for public services, and potentially increasing impacts such as air and water quality impacts and cumulative impacts.

Fourth, the Project description lacks any description of the construction activities associated with build-out of Oak Valley, including Project phasing or timing of phasing for both the 43-acre subdivision and the Conceptual Master Plan. Given the fact that the Project provides for the construction of 1,324 dwelling units and 109,000 square feet of commercial development in an area that is currently undeveloped, a high level of ongoing construction could be a fact of life in the area for years to come. The impacts of construction on residents and on the environment in the area must be described and analyzed.

Finally, the EIR fails to describe adequately the infrastructure improvements needed to support the development allowed under the Conceptual Master Plan. CEQA requires an agency to analyze the environmental impacts of the complete project, defined as the "whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA Guidelines § 15378(a). An agency may not narrow the project description in such a way that minimizes the project's impacts and prevents full disclosure and public review. Courts have routinely found inadequate EIRs that narrow the project description or analyze a smaller project than the one actually proposed. See, e.g., *Rural Land Owners Ass'n v. City Council of Lodi* (1983) 143 Cal.App.3d 1013 (finding inadequate an EIR for a general plan amendment that failed to describe or analyze the full amount of development that would follow annexation of land to the City).

Here, although the EIR indicates that the Project will entail the construction of roads, new sewer laterals, and new water facilities, the EIR does not adequately

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describe these components as part of the Project, or adequately analyze their environmental impacts. For example, the impacts of roadway expansions include growth inducement, fragmentation of habitat, disruption of wildlife corridors, and construction impacts (e.g., additional traffic generated by construction vehicles and temporary road closures and diversions to accommodate construction), among others. These impacts are not analyzed in the EIR. Further, the public is left completely in the dark as to where or how the new water facilities will be built. This information could reveal significant environmental impacts that are not currently addressed in the EIR. While the Findings state that "specific plans for water supply infrastructure for the Conceptual Master Plan and the 43-acre Portion of the Subdivision are not available" (EIR Resol. at 27), this approach is not countenanced by CEQA. Instead, CEQA requires the lead agency to "use its best effort to find out and disclose all that it reasonably can." *Citizens to Preserve the Ojai v. Ventura* (1986) 176 Cal.App.3d 421, 431. Because the EIR has failed to disclose these important components of the Project, the EIR has improperly narrowed the scope of the Project:

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The Council cannot adopt findings stating that the EIR for the Project complies with CEQA when that document does not contain a complete description of the Project and the public has not had an opportunity to review and comment on each component of the Project.

B. The Record Does Not Support the Council's Findings Regarding the EIR Because the EIR's Environmental Baseline and the Description of the Project Setting Is Outdated and Inadequate.

The record also does not support the Council's Findings that the analysis and mitigation of the Project's environmental impacts is adequate because the EIR fails to provide an adequate description of the setting for the Project. CEQA requires a description of the physical environment in the vicinity of a proposed project because such a description is necessary to provide the baseline against which to measure a project's environmental impacts. See CEQA Guidelines § 15125(a). An EIR's description of the project setting must include a large enough geographic area such that the full environmental context of a project is considered. See CEQA Guidelines § 15125(c). The description of project setting must include both the local and regional setting. See CEQA Guidelines § 15125(a). With respect to the regional setting, special emphasis must be given to environmental resources that are rare or unique to the region and would be affected by the project. See CEQA Guideline § 15125(c). Despite this clear mandate, the

EIR fails to describe important aspects of the project setting, including existing local and regional biological resources and wildlife corridors; levels of public services and resources; square footage of commercial development; existing number of day-use trips associated with recreational and other facilities; and the amount (i.e., shortfall) of affordable housing.

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Even more critically, the EIR bases its environmental setting information, and hence the environmental baseline upon which the Project's environmental impacts are measured, on outdated environmental documentation. For many environmental impact areas, the EIR relies on Project setting information set forth in the March 27, 1998 initial study for the Project, a document which is over seven years old. For other environmental impact areas, the Project setting information has not been updated since the 2000 Draft EIR. As a state agency reviewing the environmental documents for the Project pointed out to the City, many components of the Project setting, such as the amount of traffic in the Project vicinity, have significantly changed in the intervening seven years and therefore the baseline data is plainly outdated. See letter from California Department of Transportation ("CalTrans"), June 7, 2004 at p. 2 ("The City of Chico has experienced significant growth in the project vicinity.") California courts have repeatedly held that agencies may not rely on clearly erroneous or outdated data in calculating a project's environmental impacts. *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1989) 47 Cal.3d 376, 409 n.12; *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1367 ("By using scientifically outdated information derived from the 1991 profile, . . . the EIR was not a reasoned and good faith effort to inform decision makers and the public about the increase in [toxic] emissions that will occur as a consequence [of the project]").

B.6.

While the time of publication of the NOP is generally the proper time for establishing the baseline (Guidelines § 15125(a)), agencies may not blindly adhere to this guideline to avoid disclosing significant impacts. As the Court recently explained in *Save Our Peninsula Comm. v. Monterey County* ("SOPC"):

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[T]he date for establishing baseline cannot be a rigid one. . . . In some cases, conditions closer to the date the project is approved are more relevant to a determination whether the project's impacts will be significant. [] For instance, where the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in traffic over time. Since the environmental review

process can take a number of years, *traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline* against which to measure the impact of the project. *See, e.g., Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238 (maximum estimated traffic was appropriate baseline).

(2001) 87 Cal.App.4th 99, 125-26 (emphasis added).

Thus, it is common practice for agencies to update baseline conditions where doing so could affect the EIR's conclusions regarding significant impacts. *See, e.g., Cadiz Land Co. v. Rail Cycle, LP* (2000) 83 Cal.App.4th 74, 108-09 (approving county decision to review baseline conditions and make "revisions [] to several areas where updated information is available that makes a significant change in the estimated project emissions"); *Berkeley Jets*, 91 Cal.App.4th at 1351 n.2 (agency "reviewed regularly changes in baseline information that could affect the discussion of significant impacts").

Given the outdated nature of the environmental baseline, the Council's Findings regarding the EIR's environmental analysis are not supported by substantial evidence. This problem pervades the Council's Findings and is addressed below in the discussion of specific sections of the Findings.

C. The Record Does Not Support the City's Findings Regarding Project Alternatives.

CEQA gives an agency authority to adopt a project alternative other than the proposed project, particularly if the agency finds that the alternative will be less environmentally damaging than the one proposed. Pub. Resources Code §§ 21002-21002.1, 21004; CEQA Guidelines § 15002(a). Further, where, as here, the Project will result in environmental impacts that will not be avoided or substantially lessened by mitigation measures, CEQA requires the Council, before it approves the Project, to make findings that the alternatives identified in the EIR that would reduce the Project's impacts are infeasible. Pub. Resources Code § 21081(a)(3); CEQA Guidelines § 15091(a)(3); *see also Citizens for Quality Growth v. Cit of Mt. Shasta* (1988) 198 Cal.App.3d 433.

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(cont)

The EIR for the Project has identified Alternative 3 (the "Partial Master Plan Alternative") as the environmentally superior alternative, and also identified Alternative 4 (the "Reduced Density Alternative") as lessening some of the Project's environmental impacts. Alternative 3 assumes construction of the identical residential and commercial densities as the Conceptual Master Plan, but it concentrates the development in the western, flatter portion of the Project site. Alternative 4 would develop the same area as the Project site, but at lower densities.

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However, the Council's Findings regarding these alternatives are both factually inaccurate and wholly inadequate under CEQA. First, the Findings are inconsistent. The Findings state that the Partial Master Plan Alternative is the "environmentally superior alternative." EIR Resol. at 11. Nonetheless, the Findings assert that "[t]he Project, with the proposed mitigation measures, is equal to all other project alternatives except the 'No Project/No Development Alternative' in terms of significant adverse environmental impacts." EIR Resol. at 8. CEQA requires that an alternatives analysis "focus on alternatives to the project that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines § 15126.6(b). Further, CEQA requires an agency to identify an environmentally superior alternative, other than the "No Project Alternative." CEQA Guidelines § 15126.6(e)(2). The Findings cannot have it both ways. Either the Partial Master Plan Alternative lessens the environmental impacts of the Project, or it does not. If it does not, the EIR must put forth another environmentally superior alternative (besides the No Project alternative). If it does, then the Council must make appropriate Findings regarding the infeasibility of the Partial Master Plan Alternative.

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Here, the Council's Findings rejecting the Partial Master Plan Alternative are erroneous and not supported by substantial evidence. The only evidence cited to support the City's rejection of this alternative, besides claiming that it is not actually environmentally superior to the Project, is the following statement: "This alternative is rejected because it would not fulfill Project objectives of providing a wide variety of housing types consistent with the Housing and Land Use Elements of the General Plan." EIR Resol. at 11. This does not constitute substantial evidence. Indeed, this statement cannot be true because the Partial Master Plan Alternative involves the *exact same types* of housing as the Project, only the housing is shifted to the western portion of the Project site.

Further, shifting Project densities to the western portion of the site is consistent with both the Chico General Plan and the Project objectives themselves. As stated in the EIR, one of the Project objectives is: "To provide housing and commercial development at appropriate densities and intensities that are compatible with the natural character of the area. *This will be accomplished by providing increased densities and intensities on the westerly portions of the site and clustering and open space areas on the easterly portions of the Project site.*" (Emphasis added.) Recirculated EIR at 3-3. Moreover, the Chico General Plan encourages concentrating development on the western portion of the site. See LU-I-68 ("Encourage residential development in Humboldt Road-Foothills area to be clustered on the western portion of the site, and allow transfer of development rights from the eastern portion of the site to protect the foothills viewshed and sensitive biological habitat.") Thus, the Findings identify no valid reason why Alternative 3, which allows the Project applicant to develop the Project site at the identical densities as those currently set forth in the Conceptual Master Plan, is infeasible. Therefore, the Findings are inadequate and thus do not satisfy CEQA's requirements.

The Council's Findings regarding the infeasibility of the Reduced Density Alternative are identical to its findings regarding the Partial Master Plan Alternative. Thus, these Findings are inadequate for the same reasons identified above. The Findings must adequately explain why the proposed alternative is infeasible.

D. The Council's Findings Regarding Land Use Impacts Are Not Supported By Substantial Evidence in the Record.

The Council's Findings state that the imposition of Mitigation Measure 4.2-2, which requires that the building design for the Project be oriented to the street, will reduce the Project's significant land use impacts to "a less-than-significant level." However, this Finding is not supported by substantial evidence in the record. The EIR fails to analyze adequately the consistency of the Project with existing land use policies in the Chico General Plan and therefore cannot serve as a basis for the Project's Findings. Most fundamentally, even where the EIR does discuss land use impacts, the discussion is based on a review of the prior 1994 Chico General Plan, rather than the current 1999 version. A proper coordination of planning efforts requires a careful analysis of the consistency of the proposed project with current land use plans and zoning designations. The perfunctory and outdated analysis in the EIR undermines efforts at coordinated planning and informed decision-making and is not adequate under CEQA.

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Indeed, as pointed out by several commenters (*see, e.g.*, Phil Johnson, City Council public hearing testimony, May 17, 2005; Jeananna McMillian, City Council public hearing testimony, May 17, 2005; Jon Luvaas, City Council public hearing testimony (May 17, 2005), the Project is inconsistent with numerous policies in the Chico General Plan and in the local Zoning Ordinance aimed at protecting the resources of the foothills. These policies include, but are not limited to, LU-I-63, LU-I-64, LU-I-67, and LU-I-68. *See Part II, infra*, for further discussion regarding the Project's inconsistencies with these policies. Although the EIR recognizes that the Project site is designated as a "Special Development Area" in the General Plan and is considered a "Resource Management Area" because it contains resources that require special protections, the EIR fails to analyze the Project's consistency with the above General Plan policies for this area. The EIR's mere assertion that the Project is consistent with the Chico County General Plan (*see* EIR at 4.2-6) is erroneous and cannot serve as a basis for the Council's Findings.

E. The Council's Findings Regarding Project Traffic And Air Quality Impacts Are Not Supported By Substantial Evidence in the Record.

The Project Findings include several findings regarding traffic and cumulative traffic impacts generated by the Project, two of which require the Council to adopt override findings. However, merely naming an impact significant and unavoidable and adopting override findings cannot serve as a substitute for the proper analysis in the EIR required to justify the Council's Findings. The EIR's analysis of traffic and circulation impacts is inadequate because it fails to provide an adequate description of existing traffic conditions and fails to support its conclusions regarding the Project's traffic impacts with adequate analysis.

The 2004 recirculated EIR utilizes traffic baseline conditions from 1997-1999. As CalTrans pointed out to the City (*see* letter dated June 7, 2004), the traffic conditions have significantly worsened in the area since that time. The use of this outdated traffic baseline improperly skews the analysis of traffic related impacts from the Project. *See* discussion, *supra*, re the importance of baseline conditions. Although the final EIR includes updated traffic data for some areas based on comments from CalTrans that the traffic data in the EIR was outdated, this new data cannot serve as the basis for the Council's Findings because: (1) it does not include updated figures for all traffic areas, and (2) this information has never been circulated to the public for comment, as required by CEQA. *See Save Our Peninsula Committee v. Monterey County Bd. of*

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Supervisors (2001) 87 Cal.App.4th 99, 130-31 (“The revised environmental document must be subjected to the same ‘critical evaluation that occurs in the draft stage’ . . .”).

The traffic analysis in the recirculated EIR is further inadequate because it utilizes outdated figures for the number of residential units. Although the EIR claims that the difference in units does not impact the traffic analysis, there is no evidence in the record to support this claim. The traffic analysis is also deficient because it fails to adequately describe and analyze the traffic generated by the Project’s commercial development; the EIR fails to include *any* discussion of the 109,000 sq. ft. of commercial retail space to be developed as part of this Project. Finally, the traffic analysis utilizes several flawed assumptions. For example, instead of utilizing actual a.m. peak flows to estimate future a.m. conditions, the EIR bases this estimate on the difference between existing p.m. peak hour traffic and future p.m. peak hour traffic volumes, without explaining why this would be an adequate surrogate for an a.m. analysis.

Additionally, the Council’s findings regarding air quality impacts are not supported by substantial evidence in the record. As demonstrated by the Butte County Air Quality Management District (“AQMD”) in its comments on the draft (letters dated May 25 and 30, 2000) and recirculated (letter dated June 14, 2004) EIRs, the analysis of air quality impacts in the EIR is inadequate. AQMD’s letters indicate that the EIR should have used the AQMD’s Indirect Source Review Guidelines and updated Urbemis 2002 model to calculate emissions. Although the City did conduct some updated air quality calculations that were provided in the final EIR, this information was never circulated to the public for comment, as required by CEQA. Further, the EIR failed to provide any quantitative data for emissions under the full build-out of the Conceptual Master Plan (other than the 43-acre parcel). Nor may the agency simply claim that such information is hard to calculate. As stated by the California Supreme Court in *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 399: “We find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be difficult.” Finally, the Council’s findings that there are three significant air quality impacts generated by the Project that are unavoidable is not supported by the record. Indeed, the AQMD identified a list of standard mitigation measures that could be adopted to lessen air quality impacts, as well as suggesting additional mitigation measures to the City. See AQMD letter, May 25, 2000 at 4. The EIR has failed to demonstrate that these mitigation measures are infeasible.

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F. The Council's Findings Regarding Biological Impacts Are Not Supported By Substantial Evidence in the Record.

The Council's Findings regarding biological impacts are also not supported by substantial evidence in the record. For example, the Council finds that, with mitigation, the loss of seasonal wetlands and/or realignment of creek channels "can be reduced to less than significant." EIR Resol. at 32. However, the EIR analysis regarding wetlands is clearly inadequate. The draft EIR identified potentially significant impacts to portions of Dead Horse Slough located on the Project site. The final EIR, which has not been circulated for public comment, for the first time revealed that an additional 2.4 acres of Dead Horse Slough that were not identified in the draft EIR may be significantly impacted by the Project. See Final EIR at 3-7. This new information regarding the Project's potentially significant impacts to wetlands clearly merits further analysis and a recirculation of the EIR. When a public agency receives such significant new information on biological resources following the close of the comment period, it must recirculate the environmental document. See *Mira Monte Homeowners Assn. v. County of San Buenaventura* (1985) 165 Cal.App.3d 357, 363-65. While the final EIR and Findings claim that this impact will be mitigated to a less than significant level, and therefore need not be analyzed, this is in direct contravention of CEQA's requirements that an EIR must actually analyze the impacts to a project and the efficacy of the mitigation. See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130. For example, in *Mira Monte*, the court held that the agency, despite its adoption of mitigation measures, should have prepared a supplemental EIR in response to the discovery of an additional quarter acre of wetlands on the project site after preparation of the EIR. 165 Cal.App.3d at 363-65.

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G. The Council's Findings Regarding the Aesthetic Impacts of the Project Are Not Supported by Substantial Evidence in the Record.

The Council's Findings conclude that the "alteration of views from surrounding areas is considered a significant and unavoidable impact." EIR Resol. at 38. However, as explained in detail above in Part I.C, the Council has not made adequate findings regarding the infeasibility of Alternative 3, the Partial Master Plan Alternative. This Alternative would lessen the viewshed impacts to a less than significant level by shifting the development to the western portion of the site. Imposition of Alternative 4 would also lessen the Project's visual impacts. Thus, until the Council makes adequate

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Findings regarding the infeasibility of these alternatives, the Council's findings regarding the significant and unavoidable impacts to the views from surrounding areas cannot be sustained.

H. The Council's Findings Regarding Human Health Hazards Are Not Supported by Substantial Evidence in the Record.

The Council's Findings state that human health hazards associated with contaminated soils on the Project site will be mitigated to "less than significant" with imposition of mitigation measures requiring compliance with RWQCB Cleanup and Abatement Order #R5-2003-0707. EIR Resol. at 41. However, this Order is currently being appealed due to its inability to protect human health and therefore cannot serve as a basis for the City's Findings. Nor does the EIR adequately analyze the efficacy of this mitigation. Further, the EIR and Findings fail to adequately address the human health impacts associated with the hazardous wastes that are present in the sewage system on the Project site and that have been released onto land by previous sewer breakages, as demonstrated by several commenters. *See, e.g.*, letter from Christy Strauch, June 2, 2000; letter from Romana Weil, June 2, 2000.

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I. The Council Has Failed To Make Appropriate Findings Regarding Several Potentially Significant Environmental Impacts, Including Impacts to Historical/Cultural Resources, Water Quality Impacts, Impacts to Geology and Soils, Affordable and Employee Housing Impacts, Growth Inducing Impacts, and Impacts to Public Services.

In addition to making findings that are not supported by substantial evidence in the record, the Council has also failed to make findings that are required by CEQA. These include findings regarding the potentially significant impacts caused by the Project on historical/cultural resources, water quality, geology and soils, affordable and employee housing, growth inducement, and public services. For example, the Findings do not address the Project's potentially significant impacts on historical/cultural resources in the Project vicinity. Although the recirculated EIR contains some discussion of these impacts, its conclusion that the Project's impacts to cultural/historical resources as well as cumulative impacts to these resources will be less than significant is wholly unsupported by the record. As stated in comment letters by the Northeast Center of the California Historical Resources Information System (*see* letters dated March 14, 2002 and May 24, 2004) and others, the EIR fails to adequately evaluate the Project's direct and

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indirect effects on historical resources which are considered significant under CEQA, including effects on Old Humbolt Road, wagon ruts, the rock wall, and portions of SR 47 that have been listed as historical resources. Although the final EIR does add some analysis regarding indirect impacts, this analysis is also deficient and was in any event never circulated to the public for comment.

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Further, the Council has not included findings regarding the Project's potentially significant water quality impacts. Nor is there any analysis in the EIR regarding water quality impacts to support such a finding, despite comments submitted on the draft EIR indicating that the Project could substantially impact water bodies in the vicinity of the Project that are already impaired from heavy metals and other contaminants. See, e.g., letter from Barbara Vlamis, Butte Environmental Council, dated June 1, 2000. The EIR simply relies on the Initial Study for the Project to conclude that the Project will not generate any significant water quality impacts. This approach is flawed for several reasons. First, the Initial Study was prepared in March of 1998, over seven years ago. There is evidence that water quality in the Project vicinity could have changed in this time period. As discussed at length above, agencies may not rely on outdated data to justify their conclusions.

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Second, even if the Initial Study were up to date, it relies on the Project applicant's implementation of conditions enforced by the State and regional water boards in connection with permits required for the Project to mitigate the Project's impacts on water quality to a less than significant level. The City may not rely on this statement of mitigation in the Initial Study as CEQA requires that an EIR actually analyze the efficacy of mitigation. *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130. Third, the City may not simply rely on mitigation measures that will be enforced by other agencies when it has concurrent jurisdiction to impose mitigation measures, such as requiring mitigation measures during construction of the Project that would lessen impacts to water quality. For example, in *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.3d 433, the city did not adopt any mitigation measures for the project's impacts on wetlands, finding that the necessary mitigation measures would be imposed by the U.S. Army Corps of Engineers in conjunction with a permit issued under the Clean Water Act. The court held that the City violated CEQA.

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The EIR should be recirculated with an appropriate analysis of the Project's impacts on water quality and feasible mitigation measures that can be imposed by the City to lessen those impacts so that the Council can make appropriate findings regarding this impact area. An adequate analysis of water quality should include adequate project setting information, including a description of the entire watershed in the area; complete water quality information for the study area, including historical and current data; a description of the total acres of impervious cover, total acres of graded cover, and total acres of land alteration due to grading and tree removal for the Project. The EIR should also include an analysis of the pollutant loads resulting from the construction or buildout of the Project. In the absence of some comparative or absolute calculation of the Project's discharges to watercourses, the EIR's analysis would be incomplete. Finally, the EIR must adequately describe the Project's cumulative impacts on water quality, and compare the water impacts generated by the Project with the water quality impacts of a reasonable range of alternatives to the Project, in order to satisfy CEQA's requirements.

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The Council's Findings also fail to address the Project's potential impacts to geology and soils, affordable and employee housing, growth-inducement, and public services. Again, the Council appears to rely on statements in the outdated 1998 Initial Study to conclude that the Project will not generate significant environmental impacts for these issue areas. As discussed above, the Council may not rely on such outdated information. Moreover, the Project could potentially create significant environmental impacts in these issue areas. First, the Project could clearly have potentially significant impacts on geology and soils given the high elevations and steep slopes that characterize the Project site. CEQA requires much more analysis than the cursory discussion provided in the Initial Study, even assuming that analysis was up to date.

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Second, while the EIR admits that the Project will generate employees, both during Project construction and as a result of the commercial development allowed by the Conceptual Master Plan, it fails to analyze the environmental impacts associated with this employee generation. In *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 369, the court established the minimum level of analysis required under CEQA for review of affordable housing impacts, explaining: "[I]n order to fulfill its purpose as an informational document, the [EIR] should, at a minimum," (1) "identify the number and type of housing units that persons working within the Project area can be anticipated to require," (2) "identify the probable location of those units," and (3) "consider whether the identified communities have sufficient housing units and sufficient services to accommodate the anticipated increase in

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population.” 91 Cal.App.4th at 370. These minimum requirements apply whether the impacts will occur within or outside the Project boundaries. *Id.* at 369. However, in the event the housing effects occur within the Project area, CEQA requires a more detailed analysis. *Id.* at 370.

Finally, the Council lacks adequate findings on the Project’s potential growth-inducing impacts and impacts to public services, such as emergency, fire services, and recreational services. The EIR is similarly lacking an adequate analysis of these Project impacts. While the EIR does contain a perfunctory analysis of growth-inducing impacts, it is not sufficient to justify a finding that there will be no significant growth-inducing impacts generated by the Project’s construction of significant new infrastructure, including new roads and new sewer and water supply facilities. For example, the CalTrans has commented that new accesses to SR32 associated with the Project will create a significant value enhancement to properties in the vicinity of the Project. *See* CalTrans letter, June 7, 2004 at p.2. The EIR must address such growth-inducing impacts.

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II. THE FINDINGS DO NOT COMPLY WITH THE SUBDIVISION MAP ACT AND THE PLANNING AND ZONING LAW.

State planning and zoning law requires consistency between the applicable general plan – the constitution for all future development in a jurisdiction – and all other subordinate approvals, including individual development projects. *See Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531 (1990). Moreover, the Subdivision Map Act requires that the City Council find that the tentative map approvals are consistent with any applicable general or specific plans before executing such approvals. *See* Gov’t Code §§ 66473.5, 66474; *Woodland Hills Residents Ass’n, Inc. v. City Council* (1975) 44 Cal.App.3d 825.

The Project is not consistent with several general plan policies including, but not limited to, the following:

- LU-I-63: “Ensure that development in the foothills is not intrusive and is in keeping with the natural character of the areas.”
- LU-I-64: “Maintain a predominate sense of open land on the east by allowing development in the foothills to be clustered and ensuring that foothill views

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are protected.”

LU-I-67: “Explore the feasibility of designating viewshed corridors and viewshed protection standards to protect views of the foothills from the valley floor.”

LU-I-68: “Encourage residential development in Humbolt Road-Foothills area to be clustered on the western portion of the site, and allow transfer of development rights from the eastern portion of the site to protect the foothills viewshed and sensitive biological habitat.”

Not only does the Project not protect the sensitive biological habitat and views in the eastern portion of the property, in accordance with these policies, but it actually plans for intensive development of this area. While the Project condition limiting development in Lot Q to 80 units partially addresses this issue, it does not go far enough to adequately protect this area. Additionally, the Findings have rejected as infeasible the one alternative to the Project that clusters development in the western portion of the site and that would be consistent with these General Plan policies.

Thus, the Council cannot make the findings required by state law unless and until the Project is modified to be consistent with these policies.

CONCLUSION

For all of the above-mentioned reasons, we respectfully request that the Council overturn the Planning Commission’s approval of the Project and take no further action to approve the Project until there is an EIR that complies with CEQA, the Project complies with state and local laws, and the Council is presented with Project Findings that are supported by substantial evidence and that contain an explanation supplying the logical step between the Council’s Findings and the facts in the record. In the alternative, Friends asks the Council to prohibit any development on the Project site to the east of the power lines by adopting the Partial Master Plan Alternative (see EIR Resol. at pp. 10-11). In conjunction with adopting the Partial Master Plan Alternative, we request that the Council approve Conditions 27 and 39 and all other conditions, as set forth in Exhibit I to the Project Resolution, that are consistent with this alternative.

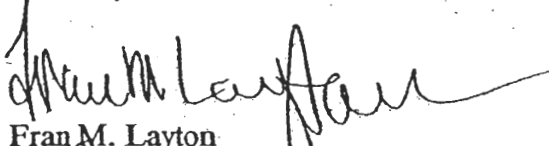
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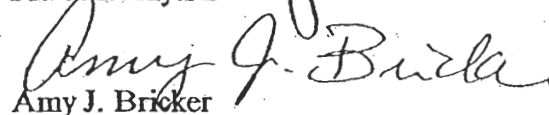
Please do not hesitate to contact either of the undersigned counsel if you wish to discuss these comments.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Fran M. Layton



Amy J. Bricker

cc: Tom Lando, City Manager
David R. Frank, City Attorney
Kim Seidler, Planning Director

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RESPONSE TO SHUTE, MIHALY & WEINBERGER, LLP LETTER DATED 6/03/05

A summary of the key issues raised in the letter from Shute, Mihaly & Weinberger, LLP, dated 6/03/05 is provided below in bold, followed by a response from staff on each point.

A. Project Description is legally inadequate.

A.1. The “Conceptual Master Plan” is uncertain; the legal approvals actually comprising the CMP are not identified.

Page 1-1 of the DEIR (Introduction) acknowledges that the Conceptual Master Plan (CMP) is being reviewed at a programmatic level, as allowed under CEQA, while the 43-acre subdivision (Phase I) is being reviewed at a project-specific level. Specifically, the DEIR states the following:

“The EIR impact analyses evaluate buildout of the Conceptual Master Plan at a programmatic level of detail (per CEQA Guidelines Section 15168 regarding Program EIRs). In addition, a 43-acre portion of the subdivision map and Conceptual Master Plan, is evaluated at a project-specific level (per Section 15161 of the CEQA Guidelines).”

Item 13 on Page 3-4 of the DEIR (Project Description) also describes a phased implementation approach for the project, as well as the intent of the CMP. Specifically, the DEIR states that one of the project objectives is as follows:

“to present a Conceptual Master Plan for the comprehensive planning and environmental assessment for the 340-acre project site and a project-specific phase for a 43-acre subdivision comprised of mixed-density residential uses including multi-family, attached housing and single family units.”

Page 3-5 of the DEIR (Elements of the Project) also describes the CMP. Specifically, it states the following:

“The Conceptual Master Plan for the full project site includes approximately 230 acres of single- and multi-family units, 87.5 acres designated as open space for resource protection and passive recreation use, and 10 acres of commercial uses (see Figures 3-4 through 3-6). The Master Plan includes a total of approximately 593 low-density single-family homes, 471 medium-density residences, and 260 multi-family units. The Conceptual Master Plan also provides for 109,000 square feet of community commercial uses on 10 acres. The Conceptual Master Plan is evaluated at a programmatic level because development is not proposed at this time. Therefore, the details of site design and plan implementation have not been determined.”

Page 5 of 5-17-05 staff report to City Council also provides the following discussion with respect to the CMP for the project:

"The Conceptual Master Plan (Plan) establishes the broad scale "master planning and mapping" to create large parcels by setting forth the general land use patterns and primary circulation system for the project. Two separate documents comprise the Plan: (1) Sheets 1 and 2 of the vesting tentative subdivision map (Attachment G) and (2) the Conceptual Land Use Plan (Sheet 6 of Attachment G). Together, these maps depict large parcels for subsequent planning and development, major roadways to provide access between those larger parcels, open space areas, and linear bicycle and pedestrian pathways. Approval of the second tier of the project, the individual subdivision maps, will create the individual residential lots within the project area. The Plan includes approximately 230 acres of single- and multi-family units, 87.5 acres designated as open space for resource protection and passive recreation use, and 10 acres for commercial use. At full buildout, the Plan would accommodate approximately 1,324 residential units (572 low-density single-family homes, 471 duplex units, and 260 medium-density residential units), and 109,000 sq. ft. of commercial retail space (10,000 s.f. of which would be CN Neighborhood Commercial). The maximum density allowed under the General Plan is 2,365 units (7.0 units per acre), while the minimum density allowed under the General Plan is 797 units (2.3 units per acre). Under the proposed Plan, density for the 340-acre site is 3.8 dwelling units per acre, or on the lower end of the allowable density range.

Over the past few years, the applicant submitted several subdivision designs for the site in response to suggestions by Planning Staff and recommendations from the design team. The current map configuration reflects several positive design changes to implement a project which is a major component of the City's General Plan Housing Element. It has also been designed to comply with Community Design Element and Resource Management General Plan policies. Key design components of the Plan include the following:

- The conceptual design of an internal roadway system which provides for circulation for vehicles, pedestrians, bicycles and connects to existing City streets and SHR-32. The street pattern is based on the topography of the land to minimize grading and to provide links for subsequent future development to ensure circulation continuity within the entire project site. A single-loaded street is provided along Dead Horse Slough.*
- The designation of a continuous greenway (averaging 100 feet from top of bank) adjacent to the north and south banks of Dead Horse Slough which preserves riparian habitat along the slough and provides (outside of the riparian habitat area) a continuous recreational walking/biking path which will be linked to the City Urban Area Bicycle Plan.*
- Development designed to fit the natural topography of the site to minimize the loss of trees, and preserve other unique natural and historic features present on the site, including the preservation of the "ribbons" of blue oaks in open space areas rather than backyards. The design also provides angled streets to provide*

views into Dead Horse Slough and other open space areas from the SHR-32 corridor.

- *A planned development permit (PDP) which would provide a mix of residential types and densities, varying lot sizes, clustering of units, and allow the transfer of allowable densities to locations across the site which are appropriate for development and provide permanent protection for those portions of the site which are not appropriate for development (see Attachment H for a copy of a slope map for the property).*
- *Development proposed in accordance with the Oak Valley Project Foothill Design Guidelines prepared specifically for the project which would implement the City's Foothill Development Standards, as well as special design criteria set forth in the Special Design Considerations Overlay (SD-2) and Resource Management (-RM) Area policies which apply to the site.*

A.2. It is uncertain whether the CMP includes any documents containing textual standards or guidelines, like the Oak Valley Project Foothill Guidelines; if the Design Guidelines and other text are part of the Project, they should be contained in the EIR so that the public may comment on them.

As discussed above, the CMP establishes the broad scale "master planning and mapping," general land use patterns, and primary circulation system for the project. Future development under the CMP will be subject to Foothill Design Standards and the Special Development Area policies for the area set forth in the General Plan. It is also subject to the SD-2 Special Design Considerations Overlay zone and the Planned Development Permit process. The CMP objectives state that the project is designed to implement these standards. Page 4.9-15 of the DEIR (Aesthetics) provides a discussion of the City's Foothill Design Criteria, as set forth in the Chico Municipal Code- Title 19R. Conformance with these design criteria is required as a mitigation measure, as set forth on Page 4.9-19 of the DEIR (Mitigation Measure for Aesthetics and Resources). Mitigation Measure 4.9-1 requires the following:

- 4.9-1 Development of both the Conceptual Master Plan and the 43-acre portion of the Subdivision shall be consistent with the City's adopted development standards and the Foothill Design Criteria for project areas which are at the 250-foot and above elevation line. Development of both the Conceptual Master Plan and the 43-acre portion of the subdivision shall also be consistent with City of Chico lighting standards and the City's architectural review process for commercial development. (Conceptual Master Plan and 43-Acre portion of the subdivision)."*

Since the DEIR was prepared in 2000, the applicant chose to prepare project-specific design guidelines (Oak Valley Project Foothill Design Guidelines) to implement the requirements set forth in mitigation measure 4.9-1. Page 6 of the 5-17-05 staff report to City Council states the following:

“Development proposed in accordance with the Oak Valley Project Foothill Design Guidelines prepared specifically for the project which would implement the City’s Foothill Development Standards, as well as special design criteria set forth in the Special Design Considerations Overlay (SD-2) and Resource Management (-RM) Area policies which apply to the site.

Recommended conditions placed on the project, coupled with the Oak Valley Project Foothill Design Guidelines and EIR mitigations (discussed more fully below), would provide a mechanism for the City to logically evaluate and condition subsequent development proposals with required on- and off-site improvements and ensure that adequate public facilities are available commensurate with development. This process will provide the City the ability to maintain ultimate control over subsequent map applications, while providing the landowner (or landowners) necessary flexibility in phasing and design of individual projects...”

As stated in the 5-17-05 City Council staff report, the project is also subject to the -SD2, -RM, and -PD requirements and the project design guidelines that have been prepared to implement these development requirements.

Page 8 of the 5-17-05 City Council staff report also states the following with respect to the project design guidelines:

“Recognizing the sensitivity of the site and utilizing guidance provided by the City’s Foothill Development standards and the -PD, SD-2, and -RM overlay zones, the applicant has prepared the Oak Valley Project Foothill Design Guidelines (Design Guidelines) and Resource Management, Monitoring, and Reporting Plan to guide future grading and development of the site (see Attachments K and L). The primary objectives of the Design Guidelines are to implement policies and strategies found in the Chico General Plan pertaining to foothill development; promote quality architecture and landscaping; provide for site and street designs that will enhance the aesthetic character of a foothill setting; protect and preserve important environmental resources and significant natural features in the foothills; and ensure that foothill development incorporates public safety measures relating to fire defensibility and access. The Design Guidelines will be attached and incorporated by reference in the conditions for all development of the site. A key requirement is that grading be designed to conserve natural topographic features and appearances by minimizing the amount of cut and fill and by means of landform grading to blend slopes and benches with the natural topography.”

The conditions of approval for the project (Exhibit I to Attachment E of the 5-17-05 City Council staff report) acknowledge the Design Guidelines as being part of the project by stating the following (see bold type):

“The approved development plans for the project include the following:

- *Vesting Tentative Subdivision Map (Sheets 1-6) date-stamped April 11, 2005 by the City of Chico Planning Division (which includes the 43-acre subdivision and the Conceptual Master Plan). The Final Map shall combine Parcels H and G, Parcels I and J, and Parcels M and J, with no additional access points onto Humboldt Road;*
- **Oak Valley Project Foothill Design Guidelines dated May 5, 2005;**
- *Resource Management, Monitoring, and Reporting Information Plan date-stamped December 30, 2004 by the Planning Division;*
- *Conceptual Landscape Plan date-stamped January 5, 2005 by the Planning Division;*
- *Conceptual Grading Plans plan date-stamped December 30, 2004 by the Planning Division.”*

The applicant’s Oak Valley Project Foothill Design Guidelines were included as an attachment to the staff reports to both the Planning Commission (Attachment K) and the City Council (Attachment K). The proposed Oak Valley Project Foothill Design Guidelines were discussed extensively at the various Planning Commission meetings and underwent significant revisions by the Planning Commission before being presented to the Council.

A.3. The Planned Development Permit (“PDP”) is not attached to the EIR document. This document is essential to a complete Project description for both the 43-acre subdivision and the Conceptual Master Plan. The Project description fails to include any information regarding a density “swap” from other portions of the site.

The City of Chico does not finalize the actual Planned Development Permit form until a project is approved, similar to a use permit. The various components of the Planned Development Permit are included in the DEIR (Page 3-11), RDEIR (Page 3-11), and the 5-17-05 City Council staff report (Pages 7, 19, and 21). Specific findings for the approval of the PDP are included on Page 31 of the 5-17-05 City Council staff report and Page 4 of 5 of the City Council Resolution approving the Project (Attachment E).

Page 5 of the 5-17-05 City Council staff report states the following:

“A planned development permit (PDP) which would provide a mix of residential types and densities, varying lot sizes, clustering of units, and allow the transfer of allowable densities to locations across the site which are appropriate for development and provide permanent protection for those portions of the site which are not appropriate for development.”

Page 6 of the 5-17-05 City Council staff report (footnote) states the following:

“The proposed density of 17.8 du/acre on Lot 1 and 15 du/acre on Lot 2 of the 43-acre subdivision exceeds the 14 unit/acre maximum for the R2 zoning. Through the PDP for

the project, the applicant is proposing, and staff is supporting, the transfer of allowable densities from other areas of the site to this relatively flat portion of the site.”

Page 21 of the 5-17-05 City Council staff report states the following:

“The Plan is subject to myriad development policies to protect foothill environs and resources, and is also subject to the Planned Development Permit (PDP) process. Pursuant to CMC section 19.52.050, the purpose of the PDP overlay zoning districts is to provide for flexibility in site planning and design...where site characteristics and environmental resources, adjacent land uses, or other community conditions may be benefitted by site-specific planning or the design of structures that would not otherwise be allowed in the primary zoning district. Planned developments are encouraged to produce projects of equal or greater quality than would normally result from more conventional development.

The PDP process is also being utilized to cluster and transfer densities to appropriate locations on site. Areas in between clusters would remain in a natural state, with the exception of connecting roadways.”

Specific findings for approval of the PDP are provided on Page 31 of the 5-17-05 City Council staff report, which are as follows:

“Planned Development Permit (CMC Section 19.28.060) - Following a public hearing, the Council may approve or conditionally approve a planned development permit only after first making all of the following findings:

1. *The proposed development is allowed within the zoning district and generally complies with all of the applicable provisions of the City of Chico Title 19 regulations with modifications as specifically approved, and applicable project design guidelines.*
2. *The proposed development would be harmonious and compatible with existing and future developments within the zoning district and general area, as well as with the land uses presently on the subject property.*
3. *The proposed entitlement is consistent with the General Plan.*
4. *The site is physically suitable for the type and density and/or intensity of use being proposed.*
5. *There are adequate provisions for public and emergency vehicle access, sanitation, water, and public utilities and services to ensure that the proposed development would not be detrimental to public health and safety.*
6. *The design, location, size and operating characteristics of the proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.*

*At an overall density of approximately 3.8 units per gross acre, the Plan is consistent with the site's zoning designations. The planned development permit would provide a mix of residential types and densities, varying lot sizes, clustering of units, **and allow the transfer of allowable densities to locations across the site** which are appropriate for development and provide permanent protection for those portions of the site which are not appropriate for development. The project complies with all applicable provisions of Title 19, as allowed through the planned development permit process.*

The project site is adjacent to similar residential development. As conditioned, the site can be developed at the proposed density, while still complying with development policies for the property as required by the -RM, -PD, and SD-2 overlay districts.

The City's sanitary sewer system has adequate capacity to serve the project; domestic water will be provided by California Water Service Company; storm water facilities will be constructed in accordance with adopted City standards and the City's Best Management Practices; public utilities are adjacent to the site with adequate capacity to serve development of the project; and adequate access will be provided to accommodate emergency vehicles. The project site would be served by public roadways that would provide adequate emergency access and circulation. The project, therefore, will not result in detrimental impacts to the public or the welfare of the City."

The DEIR, RDEIR, FEIR, and staff reports for the project all describe the "density swap" for the project (see bold type below). Page 2-1 of the Final EIR includes the following description for the Conceptual Master Plan:

"The Conceptual Master Plan provides the following design and environmental resource protection components:

- 1. The designation and mapping of a continuous creekside greenway (averaging 100 feet from top of bank) adjacent to the north and south of Dead Horse Slough. The creekside greenway preserves riparian habitat along the slough and provides (outside of the riparian habitat area) a continuous recreational walking/biking path constructed to Class I standards, or a modified version thereof, as determined by the City, on the north side of the slough which will be linked to the City Urban Area Bicycle Plan.*
- 2. The conceptual design of an internal roadway system with a continuous street pattern based on the topography of the land. The continuous roadways will link subsequent future development to ensure continuity within the entire project site, rather than the Project build-out resulting in adjacent subdivisions with separate circulation systems.*
- 3. Mapping of the zoning classifications and densities for the entire site. The Project site is within a Planned Development Overlay District (Foothill) which **will allow the transfer of allowable densities and flexibility in development standards***

while protecting the special resources of the site. The Conceptual Master Map provides a baseline analysis for development intensity and density within the context of the entire 340 acres. As noted within the Recirculated DEIR, the 43-acre subdivision is analyzed as a Project EIR, while the Conceptual Master Plan is analyzed as a Program EIR which allows individual projects in the future to be examined in the light of the Program EIR to determine whether an additional environmental document must be prepared.”

In describing the Planned Development Permit for the project, Page 3-11 of the DEIR states:

“The project site has been identified as a “Special Development Area” in the Chico General Plan. Several implementation policies are applicable to the project site, including clustering development to protect the foothills viewshed and sensitive biological habitat. The project site was zoned Planned Development (Foothill) in the City’s Comprehensive Update to Title 19 Land Use and Development Regulations. The Planned Development process will allow the project developer to cluster housing units and to transfer density in the western portion of the site by reducing parcel sizes, setbacks or other development standards.”

Page 5 of 5-17-05 staff report to City Council states that the CMP includes the following:

“A planned development permit (PDP) which would provide a mix of residential types and densities, varying lot sizes, clustering of units, and allow the transfer of allowable densities to locations across the site which are appropriate for development and provide permanent protection for those portions of the site which are not appropriate for development...”

A.4. Project Description fails to identify the types of commercial uses planned for the 109,000 sq. ft. of commercial space; environmental impacts could vary.

The planned commercial uses as part of the project is consistent with General Plan land use designations and zoning for the site. The DEIR acknowledges that the specific commercial uses are not known at this time, similar to many of the subdivisions involving commercial properties throughout the City. Pursuant to Title 19 (Land Use and Development Regulations) of the Chico Municipal Code, the CC Community Commercial zoning district is applied to areas appropriate for retail shopping, primarily in shopping centers, including a wide range of retail businesses. The CC Community Commercial zoning for the property was established to provide for retail uses to serve not only the project site, but the surrounding area as well. As such, the traffic analysis has assumed that future commercial uses will generate traffic from outside the project. The Institute of Traffic Engineers (ITE) rates used for the traffic analysis for the project did assume that the future commercial uses will attract consumers from outside the project boundaries, which is the “worst-case” analysis. Other uses within the CC zoning district allowed with a use permit would be evaluated for potential increases in traffic at the time a specific application is filed, which may require a project-specific traffic analysis and further environmental review.

Future commercial uses on the 5.1-acre area of the project site reserved for CN Neighborhood Commercial uses (Lot F) would be those retail and service uses listed in Title 19, which are intended to serve the daily needs of the project residents and reduce the number of vehicular trips generated by these residents.

A.5. Project description omits description of construction activities associated with Project phasing, duration or timing.

As stated above, the EIR and staff reports for the project acknowledge that the project consists of two main components, a Conceptual Master Plan for the entire 340 acres analyzed at a programmatic level and a 43-acre subdivision analyzed at a project-specific level.

The Conceptual Master Plan is analyzed at a programmatic level that allows individual subdivisions in the future to be examined in the light of the programmatic analysis to determine whether an additional environmental document must be prepared. The 43-acre portion of the subdivision is analyzed at a project-specific level, as allowed by Section 15161 of the CEQA Guidelines. Subsequent applications for projects under the Conceptual Master Plan will require additional CEQA review. Depending on the potential to result in significant impacts, the subsequent projects could be addressed in an Initial Study/Mitigated Negative Declaration or an EIR, tiered from the Oak Valley Conceptual Master Plan EIR.

Page 3-4 of the DEIR (Project Description) also acknowledges a phased approach for the project by stating the following:

“III. Phased Implementation

- 11. To establish economically feasible development in phases over time to provide adequate infrastructure with appropriate offsite and onsite improvements.*
- 12. To provide a conceptual plan for designated land uses with environmental guidelines and mitigations which can be assessed at each development phase over the buildout of the project site.*
- 13. To present a Conceptual Master Plan for the comprehensive planning and environmental assessment for the 340-acre project site and a project-specific phase for a 43-acre subdivision comprised of mixed-density residential uses including multi-family, attached housing and single family units.”*

Page 3-12 of the DEIR (Project Description- Project Schedule and Process) also states the following:

“Project Schedule and Process

43-Acre Portion of the Subdivision

Construction of the 43-acre portion of the Subdivision is expected to begin in the summer of 2000, and take up to 5-8 years to complete.

Conceptual Master Plan

A schedule has not been identified for the remainder of the Project. Any projects developed within the Conceptual Master Plan (subsequent to the 43-acre portion) will be considered by the City after appropriate CEQA review."

In addition, Page 2-2 of the DEIR (Summary of Impacts) states the following:

"As noted within this draft environmental impact report, the Conceptual Master Plan is analyzed as a Program EIR which allows individual projects in the future to be examined in the light of the program EIR to determine whether an additional environmental document must be prepared."

Page 3-6 of the FEIR (response to Caltrans' comments on the DEIR), also sets forth the timing of improvements for area roadways as the project develops in phases. Specifically, Page 3-6 of the FEIR states the following:

"Mitigation Measure 4.3-2(a) should be in place at the appropriate stage of development for the 43-acre portion of the Subdivision. Mitigation Measures 4.3-2(b) and (c) should be in place prior to subsequent map approvals for the Conceptual Master Plan. This would ensure adequate traffic safety by controlling movements into and out of the project site onto heavily traveled roadways (e.g., Highway 32)."

Mitigation Measures 4.3-2(a) and 4.3-2(b) require the following:

4.3-2 (a) *The project applicant shall ensure the placement of an eastbound right turn deceleration lane on Highway 32 with a minimum storage capacity of 200 feet and appropriate taper indicated by Caltrans design standards. A westbound left turn lane with 50 feet of storage and appropriate transition indicated by Caltrans design standards must also be provided by the project applicant. (43-Acre portion of the Subdivision and Conceptual Master Plan)*

4.3-2 (b) *Due to the small demand for southbound left-turns from Yosemite Drive and the incorporation of a new intersection, approximately 500 feet to the east, southbound left-turns from Yosemite Drive shall be prohibited through the use of raised median channelization. (43-acre portion of the Subdivision and Conceptual Master Plan)*

In addition, the Final EIR, in Response to Comment A-3, provides the following discussion about the timing of various roadway improvements:

"Subsequent to receipt of this letter, City staff and their consultants met with staff from Caltrans and the Butte County Association of Governments to discuss several

transportation-related issues. Following this meeting, new traffic signal warrant calculations were completed for the intersection of Highway 32 and Yosemite Drive (see Appendix O), and the calculations were provided to Caltrans. Additional information regarding the planned phasing of all the future accesses to the project site were also provided (see the discussion below). Following this meeting and subsequent communication, Caltrans has agreed to allow the fourth leg of SR 32 and Yosemite Drive as an initial access subject to conditions.

Please refer to Response to Comment A-21 for a summary of phasing of traffic signals.

Initial access to the 43-acre portion of the Subdivision is proposed to take place via a new fourth leg of the SR 32/Yosemite Drive intersection. In accordance with City health and safety policies, construction of the 51st housing unit would require a second permanent access to Bruce Road constructed to City collector street standards. Caltrans has suggested that this access to Bruce Road be constructed as a permanent two-lane access improved to City standards at the time of issuance of building permits for the 51st housing unit. At the 151st unit, a permanent street taking access from Humboldt Road will be required. Figure 4.3-8 depicts the proposed future site accesses, along with the proposed timing. Access to Phase II would take place along the north, south and west sides of the site. There would be two access points along SR 32, including primary access aligned with Yosemite Drive and a secondary access at the far eastern end of the property. The eastern access should match the post mile for an opening in access control as described in Resolution S-526 dated March 16, 1972. If not, then the City must follow the appropriate steps for approval. The one access on Bruce Road would be located halfway between SR 32 and Humboldt Road. There would be several minor access points along Humboldt Road with one of the access points consisting of the future Potter Road extension through the property. The project would construct, or contribute funds to, a truck climbing lane in the eastbound direction of SR 32.”

Caltrans staff, in their email dated 4-22-05 (Attachment T to the 5-17-05 staff report packet to City Council) have accepted the City’s response. Specifically, the email from Richard Helman with Caltrans states the following:

“The staff report, resolutions, mitigation monitoring plan, and conditions of approval were very thorough. In reviewing these documents, it appeared that all of the concerns that we have been expressed in numerous correspondences dating back to 1995 were adequately addressed.”

A description of the anticipated construction phasing for water, sewer infrastructure is provided below.

A.6. Project Description fails to describe adequately the Project’s infrastructure improvements needed to support the development allowed under the CMP. 15378(a)

Key infrastructure improvements associated with development of the project site will be the construction of roadways and the extension of water lines and sewer lines. As discussed above, the EIR clearly states that the project is analyzed at both a “programmatic level” for the Conceptual Master Plan and a “project level” for the 43-acre Phase I subdivision.

Planned roadway improvements (phasing/timing) are set forth in Mitigation Measures 4.3-2(a)-(d) in the DEIR and in the “Response to Comments” section of the FEIR. As discussed above, Caltrans staff has reviewed the response to their comments regarding the timing/phasing of traffic improvements for the project and has found the City’s response to be acceptable.

With respect to drainage infrastructure improvements, Page 4.7-8 of the DEIR provides the following discussion with respect to the 43-acre subdivision:

“The proposed project includes preliminary on-site drainage improvements including two on-site detention basins with a total storage space of 0.5 acre-feet. One 10,500 square foot by four-foot deep detention basin is proposed in the southwest corner of the site. A second 5,000 square foot by two-foot deep detention basin is proposed in the southeast portion of the site. The final size of both detention basins is proposed to be determined at the time of submittal of subdivision improvement design.”

Specific improvements are not known for the remainder of the site to be developed in future phases as part of the Conceptual Master Plan. However, at a programmatic level, MM 4.7-1 in the DEIR (Page 4.7-9) has been developed to require the following drainage standards for future development:

“4.7-1 Prior to approval of any improvement plans for the Conceptual Master Plan, applicants shall submit and obtain approval of final drainage plans from the City of Chico Public Works Director. Final drainage plans shall demonstrate that post-development surface drainage peak flows shall be reduced to pre-development conditions. The drainage plan shall be prepared by a registered civil engineer and shall be in conformance with City of Chico requirements. The drainage plan shall include at a minimum a description of existing conditions, pre- and post-development runoff, proposed on-site improvements, appropriate calculations, a watershed map, and maintenance responsibilities. (Conceptual Master Plan)”

For water service, Page 4.6-6 of the DEIR provides the following discussion for the 43-acre subdivision:

“As stated under Impact 4.6-1, buildout of the proposed initial subdivision would require an addition of approximately 200 acre-feet of water to be provided by Cal Water to 187 new connections. Distribution infrastructure could be provided to the site by extending the existing main from the well at Yosemite Drive and Idylwild across Highway 32 to loop with the existing main on Bruce Road. Elevations on the 43-acre portion of the Subdivision range from approximately 250 feet to approximately 370

feet. Most of the residential units would be built at an elevation under 350 feet. Single-family units under 350 feet can be served with an extension of the existing main in Yosemite Drive. For residential units over 350 feet (approximately 14 units), an above ground welded steel storage tank and booster pump station would be required. However, specific plans for water supply infrastructure are not yet available, so it is not certain how water infrastructure will be extended to project development.”

For the Conceptual Master Plan, MM 4.6-2(a) and (b) on Page 4.6-6 of the DEIR has been developed to ensure that water infrastructure is designed, funded and constructed for each future project under the Plan.

It is true that a project requiring a General Plan amendment, rezone, and annexation could have significant impacts on public services that were not envisioned at the time a General Plan was adopted, which was the situation in the court case cited in the letter from Shute, Mihaly & Weinberger, LLP (Rural Land Owners Association v. City Council of Lodi). However, it must be noted that the Oak Valley Project is consistent with the General Plan and zoning designations for the site and does not require a GPA, rezone, or annexation. As such, this is a completely different scenario than the subject of the cited court case. Development of the project site and the ability of public services to serve the site was considered as part of the General Plan EIR process and addressed in the Initial Study for the project (Appendix A to the DEIR).

Growth-inducement from the extension of roadways is also not relevant in this case, as the project is consistent with the General Plan. Specifically, Page 5.1-1 of the DEIR states the following with respect to growth-inducement:

“Implementation of the Project (both the proposed 43-acre portion of the Subdivision and Conceptual Master Plan) would facilitate the development of land currently used for seasonal grazing in the City of Chico. The Project is consistent with General Plan land use designations, and the project area would be developed as a Special Development Area under the General Plan Policies LU-I-62 through LU-I-68. The project would be consistent with the General Plan zoning, and no new zoning or a change in use designation is proposed which may increase development in adjacent lands.

Infrastructure, Services, and Public Uses

The Project would include provisions to extend infrastructure into the project site, including the extension of water, sewer, energy, and telecommunication services. Roadway connections to State Route 32, Humboldt Road, and Bruce Road would also be constructed. However, infrastructure development would be limited to that necessary for the Project. Water, sewer, energy, and telecommunication service would be sized to only accommodate project development. The water supply line located along Yosemite Avenue and Bruce Road would connect to existing water supply lines along the northern and western parts of the project site to the proposed 43-acre portion of the Subdivision and Conceptual Master Plan area. This normal extension of services

is anticipated in the General Plan and is not expected to increase the rate of adjacent development.”

In addition, Page 5.1-2 of the DEIR provides the following discussion with respect to economic growth and its potential for growth-inducement:

“The Project includes development and services that is anticipated in the General Plan, and the Project is not anticipated to substantially increase permanent employment opportunities. For these reasons, the Project would not induce growth beyond the levels assumed in adopted City plans and analyzed in prior environmental documents. The growth resulting from the project would be consistent with the City of Chico General Plan.”

Potential biological impacts are discussed in item B.1. below.

A.7. Description of needed infrastructure is inadequate for omitting new roads, sewerage and water facilities needed to serve Project; Project description is too narrow. Ojai v. Ventura

See above discussion under A.6.

A.8. Project Description omits crucial information about cumulative impacts.

A discussion of cumulative impacts is provided at the end of each chapter in the DEIR. In addition, an overall “Cumulative Impacts” discussion is provided in Section 5.2-1 of the DEIR.

B. The EIR misstates the Project’s Environmental Setting.

B.1. Local and regional biological resources and wildlife corridors are omitted.

A general discussion of the Project site and vicinity is provided on Page 3-1 of the DEIR. A more detailed “Environmental Setting” related to biological resources and wildlife corridors is provided for each topic analyzed in the DEIR and Recirculated DEIR. With respect to biological resources, Page 4.8-1 of the DEIR provides the following discussion, which does describe the local and regional environmental setting:

“ENVIRONMENTAL SETTING

Regional Overview

The project area is regionally situated in the northern end of the Great Central Valley, California, within Butte County on the western fringe of the Sierra Nevada foothills. The project area can be characterized as an upland portion of the American Basin and lies at an elevation of 250 to 700 feet above mean sea level. The American Basin drains about 2,100 square miles along the western slope of the Sierra Nevada range in

northern California to the confluence of the American and Sacramento Rivers. The American Basin forms a broad floodplain covering approximately 110,000 acres.¹

The project site is located within sections 20 and 21, Township 22 north and Range 2 east on the USGS 7.5-minute Chico topographic quadrangle map. The project site is bordered by highway 32 to the north, Humboldt Road to the south, Bruce Road to the west, and 500-Kv power lines to the east.

The typical climate of the project area is very distinctive between the summer and winter seasons. The winter season is characterized by overcast days, and lengthy periods of rain and drizzle in normal rainfall years. Winter temperatures range from lows in the 30's to an average high of 74°F, with occasional overnight freezing temperatures. Rain fall typically occurs from November through April. Summer temperatures range from an average low of 50°F to an average high of 93°F, with temperatures often exceeding 100°F. This high average summer temperature, combined with moderately low relative humidity, produces dry, hot summers.²

Existing conditions in the vicinity of the project area consist of non-irrigated grazing land, irrigated pastures, urban development (urban and rural residential uses, and commercial areas in the City of Chico), and natural vegetation communities. The on-site vegetation includes tree, shrub, herb, and grass species that occur mostly along the creek corridors and in open areas throughout the project site. Portions of the project site are currently used for seasonal grazing.

Project Site Habitats

Biological resources in the project site were characterized using the habitat types defined in the Wildlife Habitat Relationship System (WHR).³ Habitat types within the project site include Annual Grassland, Blue Oak Woodland/Savannah, Valley-Foothill Riparian, and Riverine. The composition, vegetative structure, and approximate extent of each habitat types within the project site are described below. Habitat, types and special-status species habitat are shown in Figure 4.8-1.

Annual Grassland Habitat

The Annual Grassland habitat occurs in the open areas throughout the project area. Annual Grassland consists of mostly non-native annual grasses and herbaceous plant species. The majority of the fields in the project area supporting Annual Grassland are regularly used for grazing. There is currently no active cultivation of these fields. Typical wildlife associated with Annual Grassland includes California vole, California ground squirrel, black-tailed jackrabbit, ring-necked pheasant, western meadowlark, western kingbird, burrowing owl, western fence lizard, western rattlesnake, common garter snake, and gopher snake. In addition, the open grasslands provide foraging areas for red-tailed hawk, golden eagle, northern harrier, prairie falcon and turkey vulture. The grassland areas also support habitat for mule deer, coyote, striped skunk, and gray fox. In addition, the transition zone, or ecotone, between the open grasslands and oak woodlands provides important habitat for species such as red-tailed hawk,

great-horned owl, western screech-owl, American kestrel, and western bluebird which prefer open areas for foraging, but also require nearby trees for nesting and roosting.

Some portions of the Annual Grassland habitat contain shallow topographic depressions underlain by an impervious hardpan/claypan. These areas support vernal pools or seasonal wetlands. Vernal pools are known to support a unique flora and invertebrate fauna (crustaceans and aquatic insects) that are adapted to completing their annual life cycle in the seasonally inundated basins. Most of these species lay dormant in the soil as seeds or eggs during the hot dry portion of the year until the next rainy season. Certain amphibians, insects, and other invertebrates breed and lay eggs only in vernal pools, while other species such as the western spadefoot and pacific tree frog opportunistically breed in some of the deeper pools. During the wet months, seasonal wetlands and vernal pools are also used by waterfowl and other migrating birds as a place to drink, feed, and rest. Vernal pools and seasonal wetlands are located in the western portion of the open fields/pasture within the project site.^{4,5}

Valley-Foothill Riparian and Riverine Habitats

Valley-Foothill Riparian and Riverine habitats exist along the intermittent South Branch of Dead Horse Slough. This intermittent stream bisects the project site. The riparian habitat is the terrestrial component to the aquatic Riverine habitat (open water of the creek) in this interdependent system. The majority of the Valley-Foothill Riparian habitat occurs as intermittent stands of trees growing along portions of the stream. The Riverine habitat designation applies to the open water or aquatic environment of the stream.

The riparian areas along the South Branch of Dead Horse Slough provide valuable roosting, foraging and nesting habitat for birds, while at the same time providing shade over the stream. The open water habitat of the stream provides important food and cover for wildlife. Species typically observed in the riparian habitat include American kestrel, red-tailed hawk, great-horned owl, western bluebird, belted kingfisher and yellow-billed magpie. Resident and migratory song birds typically use the riparian habitat for nesting in the spring and summer.

Blue Oak Woodland/Savannah

The Blue Oak Woodland/Savannah habitats are dominated by blue oak, but also include interior live oak, valley oak, black oak, California buckeye, and foothill pine along the lowlands adjacent to the South Branch of Dead Horse Slough in the middle portion of the project site. Valley oaks dominate the woodland habitat. The understory in the Blue Oak Woodland/Savannah habitats is composed of herbaceous and annual grassland species.

The complex structure, abundance of food, cover, and nesting sites provided by the Blue Oak Woodland/Savannah habitats create habitats with high value for wildlife. Numerous mammals such as mule deer, bobcat, striped skunk, raccoon, western gray

squirrel, and a variety of common small rodents can be found in the Blue Oak Woodland/Savannah habitats on the project site. Typical bird species known to use these habitats include acorn and Nuttall's woodpecker, western scrub jay, and various species of warblers and flycatchers. The abundance of insects that occur in these habitats attracts bird species such as the western bluebird, oak titmouse, white-breasted nuthatch, and Bullock's oriole. Dead or dying trees in these habitats often provide open cavities that are used as nesting sites for American kestrel, western screech-owl, tree swallow, wrens, and western bluebirds. Often times the cavities are produced by primary cavity nesters such as woodpeckers (who excavate), but are used by secondary cavity nesters (who simply use the holes). The oaks also provide suitable nesting habitat for great-horned owls, red-tailed hawks, and Cooper's hawks. See Appendix L for a list of plant and wildlife species observed during the field surveys.

Special-Status Species

For the purposes of this section, special-status species include those species that are listed as rare, threatened, or endangered by the California Department of Fish and Game (DFG) or the U.S. Fish and Wildlife Service (USFWS); species that are candidates for either state or federal listing; species designated as "fully protected" or "species of special concern" by the DFG and USFWS; and other species that are tracked by the California Natural Diversity Data Base or are on list 1B of the California Native Plant Society. Species with any of the above status designations meet the definition of "rare", "endangered" or "special status" as presented in Section 15380(d) of the CEQA Guidelines and therefore must be addressed during preparation of a CEQA document if the project may impact the species. Table 4.8-1 of this section lists the endangered, threatened, or rare wildlife species that could be potentially impacted by the Project.

The project site has the potential to support a variety of special-status plant and wildlife species. Specifically, the vernal pools on the project site have the potential to support special-status plant or vernal pool crustacean species, while the upland habitats have the potential to support special-status wildlife species including the Swainson's hawk, other raptors, and valley elderberry longhorn beetle.

Swainson hawks are known to forage as far as 18 miles from the nest. However, 50 percent of their foraging time occurs within one-half mile (63 to 202 acres) of their nest sites during peak nesting activities (high food demands of nestlings).⁶ The open grassland areas within the project site and trees that border the onsite streams could provide suitable nesting and foraging habitat for Swainson's hawk. However, Swainson's hawks typically prefer mature riparian vegetation, adjacent to open agricultural areas on the valley floor. Therefore, the project site does not represent or provide optimum nesting or foraging habitat for Swainson's hawk. In addition, Blue Oak Woodland habitat does not typically provide appropriate habitat for Swainson's hawk. Further, several field surveys did not reveal the presence of Swainson's hawks in the vicinity.⁷ The nearest recorded occurrences listed by the CNDDDB and City of

Chico General Plan's Master Environmental Assessment are located along the Sacramento River, a considerable distance from the project site.

Elderberry shrubs, host to the valley elderberry longhorn beetle, have been recorded within the Conceptual Master Plan boundaries, but were not recorded in the 43-acre Subdivision portion of the site."

B.2. Public service levels are omitted.

As stated on page 4.6-1 of the DEIR, the project's potential effects on police services, fire protection services, wastewater, electricity, natural gas, libraries, parks and recreation, and cable and telephone service were evaluated in the Initial Study (Appendix A of the DEIR). Because the project is consistent with the General Plan and zoning, the ability to provide services was considered at the time the General Plan EIR was prepared and determined to be less than significant or result in no impact, so these issues were not addressed further in the DEIR.

B.3. Area of commercial development is omitted.

Page 3-5 of the DEIR states *"the Conceptual Master Plan also provides for 109,000 square feet of community commercial uses on 10 acres. The Conceptual Master Plan is evaluated at a programmatic level because development is not proposed at this time."* Specific commercial tenants are not known at this time, which is often the case when commercial parcels are initially created. The future commercial uses on the site would be those allowed in the CC Community Commercial and CN Neighborhood Commercial zoning districts in those areas identified by the CC and CN zoning for the site. Figure 3-4 of the DEIR (Conceptual Master Plan), and Figure 3-5 of the DEIR (Vesting Tentative Subdivision Map), and Figure 4.2-1 (General Plan land use designations) identify the CC zoning on the site. The proposed CN zoning for Lot F is depicted on the sheets 1 and 6 of Attachment G of the 5-17-05 staff report packet.

B.4. Day-trip use numbers for recreational uses are omitted.

The project does not include any recreational facilities that would generate any significant amount of traffic. The project does include bicycle/pedestrian paths to encourage alternative modes of travel, as encouraged by the General Plan. Bicyclists who currently utilize Humboldt Road for recreational purposes can continue to use the reconstructed roadway (with bicycle lanes). The proposed neighborhood pocket park facilities which are part of the 43-acre Phase I development will serve the daily park needs of residences within the subdivision and will not be a "destination" park which will generate increased vehicular trips from outside the project.

B.5. Affordable housing shortfalls are omitted.

The provision of "affordable housing" is not required as part of project approval, as the City does not have an inclusionary housing ordinance. The project, however, does provide

a mix of both rental and for-sale housing types as called for by the General Plan Housing Element policy H-G-29, and as envisioned by the various residential zoning designations for the site (RS, R1, R2 and R3 zoning).

B.6. Environmental setting Baseline data is outdated, relying on the 1998 initial study and the 2000 Draft EIR.

At the time the Initial Study and DEIR were prepared for the Project, baseline information was gathered for the project site and surrounding area. No evidence has been presented contrary to the findings of the DEIR to suggest that any significant change has occurred to the baseline information or environmental setting for traffic, air quality, and hazards, which are discussed more fully below (also see item I.6 below).

The RDEIR prepared in April 2004 specifically addresses those changes in the baseline data for the project which had substantially changed since the time the DEIR was prepared in April 2000. The RDEIR and FEIR both address new traffic analysis and include new traffic data to reflect current conditions. The response to Caltrans' comments beginning on Page 5-2 of the FEIR provides a discussion of the updated analysis of the baseline traffic data and Caltrans has approved this analysis and timing of mitigation measures. Caltrans staff have reviewed the updated traffic discussion and the City's response to their comments and have found the responses to be acceptable (see correspondence from Caltrans in Attachment T of the 5/17/05 City Council staff report packet. Also see discussion under item A.5 above). As discussed under item E.4. below, further analysis of the air quality section of the DEIR was performed. The Hazards and Human Health Chapter of the DEIR was also updated to reflect the current status of the Humboldt Road Burn Dump remediation process.

B.7. Traffic baseline data as of Project approval date should be used and evidence doesn't support use of old baselines in many topic areas.

See the above discussion under item B.6.

C. Rejection of the Partial Master Plan Alternative (Alternative #4) is not supported by the Record.

C.1. Findings of infeasibility of more benign alternatives are necessary, but missing here.

The Alternatives analysis in the DEIR and the City Council Resolution set forth the reasons for dismissal of the various project alternatives. Other than the "No Project" Alternative, no significant impacts identified as resulting from the Project in the DEIR Alternatives Analysis will be reduced to a less than significant level.

The Reduced Density Alternative (Alternative #4) would result in the same significant air quality, public services and utilities, cumulative biological resources, and visual impacts as the Project. Thus, choosing this alternative would not measurably or feasibly reduce or

lessen the Project's significant environmental effects, if indeed it were economically feasible to develop it at all as defined. This alternative is rejected because this alternative would not fulfill the Project objective of providing lower-density, large-lot clustered housing opportunities in numbers and price ranges sufficient to attain relevant General Plan and Housing Element goals, and it would not substantially lessen or reduce, or avoid, significant Project effects on the environment. In addition, reducing the number of housing units under Alternative #4 would not be consistent with CEQA (Public Resources Code section 21159.26), which states that when a project includes a housing development, a public agency may not reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation

See discussion below in items C.2 and C.3. for more details.

C.2. Partial Master Plan Alternative ("PMPA, #3") is "environmentally superior"

The DEIR does identify the PMPA as the "environmental superior" alternative. The DEIR on Page 6-25 states as follows:

"For the Oak Valley Project, the Partial Master Plan Alternative would be environmentally superior to the Project and the other alternatives (with the exception of the No Project Alternative) because it would contain the greatest amount of open space, so it would have the least severe impacts on open space conversion, visual quality, and biological resources."

However, the DEIR alternatives analysis also concludes that the Partial Master Plan Alternative would still result in significant unavoidable impacts with respect to Aesthetics. Specifically, Page 6-16 of the DEIR states the following (emphasis in bold type):

*"Similar to the Project, development under Alternative 3 would convert undeveloped land for developed urban uses. **Like development under the Project, the change in the visual character of the area would be considered a significant impact, even with compliance with the City's Foothills Design Standards.** Visually, Alternative 3 would vary from the Project in two ways. First, fewer acres would be converted, so the change in the environment and the change in views would occur in a smaller area. In particular, views of the foothills would not be as affected by development because less development would occur in the eastern portion of the site. This would reduce the severity of the impact, relative to the Project. At the same time, in order to accommodate the increased density on the western portion of the site, development of the western portion would be more dense with taller structures, and less likely to maintain views of oak stands and Dead Horse Slough. So, for the western portion of the project site, Alternative 3 would be more severe than the Project. The impact associated with the creation of light under Alternative 3 would also be reduced, but would still require Mitigation Measure 4.9-3. **The cumulative impact on aesthetics and visual resources would remain significant and unavoidable.**"*

With respect to biological impacts of Alternative #3, Page 6-15 of the DEIR states the following:

“the nature of impacts under this alternative would be very similar to the Project. The loss of trees, raptor habitat, loss of wetlands and wetland habitat, and the loss of VELB habitat would all be significant impacts under this alternative. Compliance with Mitigation Measures 4.8-1 through 4.8-6 would reduce these impacts to a less-than-significant level. The loss of resources under this alternative would contribute to a significant and unavoidable cumulative impact, but would be slightly less severe than under the Project. Based on the above discussion, biological impacts under Alternative 3 would be similar to what was identified under the Project. However, the impacts would be considered slightly less severe because less area would be developed.”

Although Alternative #3 (Partial Master Plan Alternative) would result in certain impacts being less severe than the project, such impacts would still be significant and unavoidable. Given this, it would also remove 135 acres of R1 lands and require that 485 units be moved to the west, the vast majority of which could only be accommodated in lands zoned R2, R3 or CC given that only 29 acres of R1 lands would remain on site, which is already accommodating single-family homes. As a result, the density on the western portion of the site would increase very substantially, with resultant adverse effects on aesthetics, air quality, drainage, biotics, and related environmental qualities, as well as adverse planning policy results. The western portion of the property is also limited in its ability to absorb additional housing units given the required setbacks from Dead Horse Slough and State Highway Route 32 and the prohibition on placing residential housing units on lands with remediated soils (Condition of Approval #39). Although some impacts to the extreme eastern portion, relating to biological resources, hydrology and drainage, and aesthetics and visual resources, would be less severe under this alternative, the same impacts and additional traffic and air quality impacts to the western portion would be more severe.

This Alternative, therefore, would not fulfill the City’s General Plan and Housing Element assumptions for R1 development or result in a wide mix of housing types as contemplated in the General Plan (Housing Element Policy H-G-29). While the General Plan requires a graduated blend of densities (decreasing from east to west), it does not prohibit development on the eastern portion of the site. In designating lands for RS and R1 development, the General Plan and the SD-2 implementing ordinance for the site acknowledged that there could be low density residential development at the eastern portion of site. Specifically, the SD-2 ordinance states the following:

“Transfer and cluster development to lower elevations of the site and cluster development at higher elevations to the least visible areas.”

The project has been modified to transfer densities from the eastern portion of the site to the west (from 200 units as originally proposed to the current limitation of a maximum of 80 units). As noted in the staff report, each specific subdivision in the future would be

required to prepare additional photo-simulations and conceptual grading plans for review by the Planning Commission.

C.3. Reduced Density Alternative #4 is also environmentally superior.

The implementation of Alternative #4 would not reduce any of the impacts to a less than significant level or fulfill project objectives. As stated above, clustered residential development at the east end of the site is not inconsistent with the General Plan or the SD-2 overlay district. With respect to Aesthetics and Visual Resource impacts of Alternative #4, Page 6-21 of the DEIR states the following (emphasis in bold type):

“Development of Alternative 4 would also convert undeveloped land for developed urban uses. Like development under the Project, the change in the visual character of the area would be considered a significant impact, and no mitigation would be available. The impact would be considered less severe under Alternative 4, because less area would be converted to urban uses; however, the change in the environment and the change in views would remain a significant and unavoidable impact under this alternative. Views of the site from the foothills would not be as significantly affected by project development because less development would occur in the eastern portion of the site. This would reduce the severity of the impact, relative to the Project. The impact associated with the creation of light under Alternative 4 would also be less severe than the Project because of less development on the eastern portion of the site. These impacts would also be reduced with Mitigation Measure 4.9-3; however, the cumulative impact on aesthetics and visual resources would remain significant and unavoidable.”

Based on the above discussion, impacts under Alternative #4 would be less severe than those identified under the Project because views of the site from the foothills would not be as disrupted; however, the impact remains significant and unavoidable. In addition, all other impacts that are identified as being “less severe” under Alternatives #3 and #4 in the DEIR are reduced to less than significant effects under the Project.

In accordance with Section 21159.26 of the Public Resources Code (CEQA Statute), when a project includes a housing development, a public agency may not reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation. As a result, reducing the number of housing units under Alternative #4 would not be consistent with CEQA, (Public Resources Code section 21159.26).

C.4. Finding rejecting the Partial Master Plan Alternative is not supported; “wider variety of housing types” rationale is inaccurate; no rationale for rejecting the Partial Master Plan Alternative as infeasible.

The DEIR (Page 6-25) identifies Alternative #3 (the Partial Master Plan Alternative) as the “environmentally superior alternative” because it would have less severe impacts than the Project in that it would contain the greatest amount of open space, so it would have the least severe impacts on open space conversion, visual quality and biological resources.

However, as discussed in the alternatives analysis, all significant unavoidable impacts identified for the Project (aesthetics, air quality, and cumulative biological resources) would still be significant unavoidable impacts under the Partial Master Plan Alternative (PMPA). The PMPA, therefore, does not avoid or substantially lessen any of the significant effects of the project. In addition, the PMPA would result in the elimination of approximately 135 acres of R1 (Low Density Residential) lands and the shifting all densities in this area (485 units) further to the west. Under this alternative, only 29 acres of R1 zoned lands would remain for the entire development (Parcel K and portions of Parcels I and J as depicted on the vesting tentative subdivision map included as Attachment G to the 5/17/05 City Council staff report). These 29 acres are already accommodating R1 lots and given site constraints (creekside setbacks, oak trees, etc.), these 29 acres could not absorb the additional 485 R1 units being transferred from the eastern portion of the site. As a result, the units would have to be accommodated in lands now designated R2 or R3 to the west which would greatly reduce the total number of low-density residential units for the development. As discussed on Page 6-16 of the DEIR, in order to accommodate the increased density on the western portion of the site, development on the western portion would be more dense with taller structures and more severe aesthetic impacts than the Project.

The development of low-density units on the site is a key component of the City's adopted Housing Element. Therefore, the assertion in the letter from Shute, Mihaly & Weinberger, LLC, that the Partial Master Plan Alternative "involves the exact same types of housing as the Project" is not correct because 485 R1 units would have to be replaced as multi-family units (apartments). As a result, the PMPA constitutes a very different housing project than the proposed Project. The findings set forth in the City Council Resolution state that the project would better implement General Plan and Housing Element policies is correct in that project would provide much greater variety in housing types as called for by Housing Element policy H-G-29 and as reiterated by the wide variety of General Plan and zoning designations for the site.

D. Findings regarding Land Use impacts are not supported by the Record.

D.1. MM 4.2-2 reduction to insignificance is not supported by evidence.

The DEIR provides a broad analysis of the project's consistency with various Community Design Element policies. The 5-17-05 City Council staff report and resolution further demonstrate how the project has been designed to implement key land use and community design policies of the General Plan policies and how future subdivisions as part of the CMP will be reviewed for further compliance.

The DEIR (see Impact 4.2-2) finds that the Project would be generally consistent with the General Plan goals and policies but observes that General Plan consistency cannot be determined at this time for all applicable goals and policies because the Project's ultimate building designs for future phases of subdivision improvements are not yet known. General Plan consistency is legally mandated in all future further subdivision decisions. The EIR proposes various additional measures to ensure that future actions to implement the Project's Master Subdivision will be consistent with the General Plan, which includes a

review of future subdivisions for consistency with applicable Community Design policies and Land Use policies.

D.2. General Plan Consistency Analysis is with the 1994 General Plan, not the 1999 General Plan. The EIR fails to analyze General Plan consistency, or to illustrate reasons for finding.

The 1994 General Plan was the adopted Plan at the time the DEIR was being prepared. With the adoption of the updated General Plan in 1999, there were some new land use policies added. Subsequent ordinances were also adopted to implement these new policies (e.g., adoption of a Foothill Design Ordinance, the SD-2 overlay ordinance, and the -RM overlay). As discussed more fully below, the project has been reviewed by staff over the past six years for conformance with the existing 1999 General Plan.

General Plan policy LU-I-63 (formerly policy LU-I-43 in the 1994 Plan) states: *“Ensure that development in the foothills is not intrusive and is in keeping with the natural character of the areas.”* Policy LU-I-62 was also added in 1999, requiring the City to *“establish special design and development standards for building within the foothill.”* The City implemented these two policies by adopting Foothill Design standards. A discussion of the City’s Foothill Design Guidelines was included in the DEIR (Page 4.9-15). The applicant chose to prepare project-specific design guidelines for the Project to not only implement the concepts found in the City’s Foothill Design Guidelines, but to also implement the City’s SD-2 overlay and -RM requirement.

Policies LU-I-65 through 67 were also added in the 1999 Plan, which encourage clustering, require photo-simulations, and to explore the feasibility of designating viewshed corridors and viewshed protection standards to protect views of the foothills from the valley floor. The project’s consistency with these policies is provided below:

Consistent with policy LU-I-66, photo-simulations have been prepared for the project. In addition, Condition of approval #8 for the Project requires the following: *“Future subdivisions shall be required to submit individual photo-simulations, as required by the City’s Foothill Development standards set forth in Section 19.66.030 (B) of the Chico Municipal Code.”*

Policy LU-I-67 states: *“Explore the feasibility of designated viewshed corridors and viewshed protection standards to protect views of the foothills from the valley floor.”* This is a city-wide issue to look into designating various viewshed corridors within town, not on the subject property. As such, this policy does not apply to the Project. No implementing ordinance has been prepared to date to establish such viewshed corridors from different parts of town.

General Plan policy LU-I-64 (formerly policy LU-I-44 in the 1994 Plan) states: *“Maintain a predominant sense of open land on the east by allowing the development in the foothills to be clustered and ensuring that foothill views are protected.”* Policy LU-I-68 states: *“Encourage residential development in Humboldt Road Foothills area to be clustered in the western portion of the site, and allow for transfer of development rights from the eastern portion of the site to protect the foothills viewshed and sensitive biological*

habitat.” The DEIR addresses consistency with various General Plan policies and a general overview of policies governing development within the Special Development Area for Humboldt Road. Page 3-11 of the DEIR provides the following discussion:

“The project site has been identified as a “Special Development Area” in the Chico General Plan. Several implementation policies are applicable to the project site, including clustering development to protect the foothills viewshed and sensitive biological habitat. The project site was zoned Planned Development (Foothill) in the City’s Comprehensive Update to Title 19 Land Use and Development Regulations. The Planned Development process will allow the project developer to cluster housing units and to transfer density in the western portion of the site by reducing parcel sizes, setbacks or other development standards.”

A more detailed discussion regarding the Project’s conformance with General Plan policies is provided under item J.1. below.

E. Findings regarding Traffic and Air Quality are not supported by the Record.

E.1. Analysis of Traffic and cumulative traffic analysis is inadequate due to poor description of existing conditions; Traffic conditions have worsened since 1999; While FEIR contains updated descriptions for some areas, not all areas are updated, and the new FEIR info was not recirculated.

See response above under item B.6. regarding the updated traffic analysis which took place as part of the FEIR and Caltrans concurrence regarding the conclusions of the analysis. Because no new significant impacts were identified in the Final EIR, recirculation of the EIR is not required under CEQA.

E.2. EIR uses outdated figures for residential unit counts; no evidence supports this being insignificant difference; traffic analysis fails to adequately describe and analyze traffic from the Project’s commercial development.

Page 4.3-1 of the RDEIR acknowledged the change in residential unit counts for the project. Specifically, Page 4.3-1 states the following:

“The Project consists of two phases.

Phase I, which is referred to as the “43-acre portion of the Subdivision,” consists of:

- 87 low density single-family homes*
- 98 medium density duplex units*
- 132 multi-family high density units*

It should be noted that the traffic analysis was originally completed based on the following distribution of housing units.

- 102 low density single-family homes*

- 94 medium density duplex units
- 103 multi-family high density units

The trip generation results for these two scenarios are very similar, and the differences are within the traffic model's margin of error, so the original assumptions were retained in this traffic analysis."

In addition, Page 4.3-3 of the RDEIR provides the following discussion:

"Phase II is referred to as the Conceptual Master Plan and includes the balance of the site development consisting of:

- 506 low density single-family homes
- 373 medium density duplex units
- 128 multi-family high density units
- 109,000 square feet of community commercial.

It should be noted that the traffic analysis was originally completed based on the following distribution of housing units.

- 491 low density single-family homes
- 377 medium density duplex units
- 157 multi-family high density units
- 109,000 square feet of community commercial.

The buildout trip generation results for these two scenarios are exactly the same; therefore, the original traffic analysis was retained."

The traffic analysis performed for the project did include the development of 109,000 s.f. of community commercial space. The traffic rates and distribution assumptions for the 109,000 s.f. of community commercial space envisioned by the CMP were determined using standard ITE rates for a shopping center (ITE Land Use Code 820) for weekday trips, weekday a.m. peak hour trips, and weekday p.m. peak-hour trips. These standard traffic rates are shown in Table 4.3-2 on Page 4.3-16 of the DEIR under the heading of "community commercial" (66.1 trips per each sq. ft. of commercial space throughout a normal weekday; 1.54 trips per each sq. ft. of commercial space during the weekday a.m. peak hour; and 6.10 trips per each sq. ft. of commercial space during the weekday p.m. peak hour).

E.3. No explanation for why a.m. peak methodology is adequate.

A detailed response to Mr. Hackney's letter was provided by the City's traffic consultant (Steve Weinberger with WTrans) at the 2/24/05 Planning Commission meeting. At that meeting, it was explained that the only data available for future traffic volumes is the p.m. peak hour model, which is not unusual for a jurisdiction to use because the model is based upon the most critical peak hour (p.m.). An analysis of the future a.m. traffic volumes was performed by developing factors which included taking the projected growth rate over the

existing traffic counts and by looking at each specific intersection. The projected growth for the p.m. peak hour was then used to project the percentage increase in future a.m. peak hour volumes as well. Caltrans has reviewed the response to comments in the FEIR and has accepted the City's responses and mitigation measures for the project (see Attachment T of the 5/17/05 City Council staff report packet).

E.4. Air quality findings not supported.

a. Should have used different models to calculated air emissions.

The Final EIR provides a response to the BCAQMD's comments regarding the calculated air emissions and an explanation of the additional air quality analysis performed for the Project. The FEIR concludes that no significant new information regarding air quality was added to the EIR, and recirculation of the Air Quality section was not required. Specifically, Page 5-12 of the FEIR provides the following response:

"Please see Response to Comment 5-5. Following receipt of the Air District's May 31, 2000 letter, an additional air quality analysis of construction and operational air emissions was conducted for the 43-acre portion of the subdivision. The additional air quality analysis did not indicate a substantial increase in the previously identified impact. Also Mitigation Measure 4.4-3(a) was added to require the provision of pedestrian access between bus service and major transportation points. Mitigation Measure 4.4-3(a) would not result in a new impact. Therefore, no significant new information regarding air quality was added to the EIR, and recirculation of the Air Quality section was not required. Please see responses to Letter 5 regarding the adequacy of the Air Quality analysis. Please also see Responses to Comments 4-1. As stated in the Recirculated DEIR, the Conceptual Master Plan is evaluated at a programmatic level, consistent with CEQA Guidelines Section 15168. Subsequent projects developed under the Conceptual Master Plan would require additional CEQA review, including a project-specific air quality analysis."

Page 5-36 of the FEIR addresses the change in residential units and the associated air quality analysis. Specifically, the Page 5-36 of the FEIR states the following:

"The comment is correct that the URBEMIS outputs and, subsequently, the emissions listed in Section 4.4 of the 2000 DEIR are based on an incorrect number of single-family and multi-family dwelling units. An additional analysis of construction and operational emissions was conducted for the 43-acre portion of the subdivision with 87 single-family dwelling units and 230 multi-family dwelling units. Short-term construction emissions are nearly identical to the numbers listed in Table 4.4-5 because the amount of land to be developed is similar to the previous assumptions. Operational emissions would be similar to the previous analysis, and the text of the EIR is changed as indicated below (please see Chapter 3, Text Changes to the Draft EIR of this Final EIR). The conclusions of the 2000 DEIR do not change."

The Planning Commission was also provided with a verbal response from staff at its 2/24/05 meeting addressing the January 26, 2005 letter from the BCAQMD which was

received after the FEIR was prepared. In that letter, the BCAQMD referenced their comments raised in their previous letters, which included some recommended mitigation measures. Staff acknowledged the receipt of the 1/25/05 letter at the Planning Commission meeting and indicated that staff had discussed the items raised in the letter with Gail Williams with the BCAQMC prior to the Planning Commission meeting. Staff reiterated to the Planning Commission that the additional mitigation measures recommended by the District in their May 25, 2000 letter (mitigation measures which facilitate walking, bicycling, and transit use) had already been incorporated into the project by providing for bike lanes/paths and sidewalks, the provision of bus stops within the development, and the addition of a neighborhood-serving commercial uses, as indicated on Page 44 of the project Resolution included in the 5-17-05 City Council staff report packets.

In addition to the identified mitigation measures, conditions of approval have also been developed which will further reduce air quality impacts by promoting alternative modes of transportation and are consistent with the BCAQMD's statement that the BCAQMD "encourages all future developments incorporate transit-oriented and pedestrian friendly practices." These conditions include the following:

10. *Road designs for future subdivisions shall include appropriate traffic-calming measures to reduce vehicle speeds and promote a pedestrian-friendly street environment.*
11. *Roadway dedication and improvements, including bicycle paths where appropriate, shall be required as each phase develops.*
38. *The applicant shall provide safe access for school children to the nearby schools as part of the 43-acre Phase I subdivision by (1) providing bike and pedestrian access from the 43-acre Phase I subdivision site to the Bruce Road/Humboldt Road intersection and (2) installing a traffic signal at the Humboldt/Bruce Road intersection to be reimbursed by the City as provided for in the City's Nexus Study and the Chico Municipal Code.*

As a result, all feasible air quality mitigation measures have been incorporated into the Project (see item 3. below for further discussion).

As noted throughout the EIR, the remainder of the Conceptual Master Plan was analyzed at a programmatic level, which is further explained on Page 5-36 of the FEIR, which provides the following discussion:

"Future project-specific analyses would be tiered from the programmatic evaluation of the Conceptual Master Plan. The CEQA Guidelines Section 15152 states that "[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in the first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed." The design details of the Conceptual

Master Plan have not been prepared at this time, and programmatic analysis in the EIR adequately analyzes the level of detail currently known for the project.”

2. FEIR updated Air Quality analysis was not circulated.

As discussed in item E.4.a. above, the additional air quality analysis did not indicate a substantial increase in the previously identified impact. No recirculation of the EIR is required under CEQA because no new significant impacts were identified.

3. Finding of unavailability is not supported; MM's are available, and no explanation for infeasibility of mitigation finding is given.

Mitigation Measures 4.4-1 (a) through 4.4-1(h) have been incorporated into the Project and will substantially reduce and lessen identified air quality impacts, by managing and preventing air pollution in accordance with all feasible “best management practices.” These techniques regularly are imposed on all similar construction projects and real estate developments, and have proven to be successful.

Specifically, mitigation measures in the IRS Review Guidelines regarding off-site pedestrian facility improvements and off-site bicycle trails would be implemented as part of the project, to the extent feasible. A continuous recreational pedestrian/bike path on the north side of the slough would be constructed. This path would be linked to the City Urban Area bicycle plan. A Class II bike path would also be required along Bruce Road. Also, the street layout in the CMP would provide pedestrian and bicycle connections from the project site to Humboldt Road.

In addition, the response to comments on Pages 5-12 and 5-34 of the FEIR points out that MM 4.3-3(a) was added to require the provision of pedestrian access between bus service and major transportation points. Nevertheless, even after implementation of these mitigation measures by the Project, the air quality impacts remain potentially “significant” as a regulatory issue, due to the regional air basin-wide non-attainment conditions that exist within Butte County and the surrounding jurisdictions. It is not practical or feasible for the Project alone to substantially reduce regional air pollution; the Project is capable only of managing and limiting its own contributions to regional air pollution. So long as the broader air quality basin is in a technical state of non-attainment with regulatory goals, it will not be possible for Project air quality impacts to be technically “insignificant”, and so the foregoing air quality impacts are considered “unavoidable”, even though they can be mitigated or reduced to some degree.

All feasible air quality mitigation measures have been incorporated into the Project, and for the reasons set forth in Section 4, no feasible Project alternatives exist which would further reduce these impacts while meeting the main Project objectives.

F. Findings regarding Biological Impacts are not supported by the Record.

F.1. Mitigation Measures can reduce the loss of seasonal wetlands and realignment to insignificant level is not supported.

The potential impacts to Biological Resources is analyzed in the DEIR. Specifically, MM 4.8-3(b) requires the following:

“For waters of the United States that will be filled, Project applicant shall ensure that no net loss of wetlands occurs. Measures to achieve no net loss may include preservation, creation on-site or off-site, and/or purchase of credits in an approved mitigation bank. This measure may be implemented by first demonstrating that no alternative to the project, which avoids fill of jurisdictional waters while meeting the purpose and need of the project, can be feasibly implemented (Clean Water Act Section 404(b)(1)). This measure maybe further implemented by obtaining a Clean Water Act Section 404 permit from the Corps and conducting all measures required as provisions of the permit. (Conceptual Master Plan).”

In addition, MM 4.8-3(c) requires the following:

“Project applicant shall obtain a Streambed Alteration Agreement for all stream crossings, and comply with the terms of those agreements. (43-acre portion of the Subdivision and Conceptual Master Plan)”

For the reasons stated in the DEIR (page 4.8-22), incorporation of these mitigation measures into the Project will mitigate this impact to a less than significant level, or in the alternative will substantially reduce or lessen this impact, by ensuring that no net loss of wetland or stream habitat value will occur.

F.2. 2.4 acres of Dead Horse Slough may be impacted, but that information was not circulated. Analysis supporting mitigation effectiveness is missing.

The total inventory of wetlands on the project site was increased in the FEIR due to the inclusion of the entire Dead Horse Slough corridor (the project continues to have a 100 foot setback on both sides of Dead Horse Slough). However, the total number of acres of wetlands anticipated to be impacted by the project as identified in the DEIR has not changed and no additional mitigation measures are necessary.

G. Findings regarding Aesthetic Impacts are not supported by Record.

G.1. Alteration of views is significant and unavoidable, but the PMPA would avoid that impact; no findings as to infeasibility of PMPA.

The Shute, Mihaly & Weinberger, LLP letter claims that Alternative 3 (Partial Master Plan Alternative) “would lessen the viewshed impacts to a less than significant level by shifting the development to the western portion of the site.” This statement is not correct. The Alternatives Analysis in the DEIR concludes that although development of Alternative 3 may have reduced visual impacts than the project, it would still result in a significant unavoidable visual impact (see bold type below). Specifically, Page 6-16 of the DEIR states the following:

“Similar to the Project, development under Alternative 3 would convert undeveloped land for developed urban uses. Like development under the Project, the change in the visual character of the area would be considered a significant impact, even with compliance with the City’s Foothills Design Standards. Visually, Alternative 3 would vary from the Project in two ways. First, fewer acres would be converted, so the change in the environment and the change in views would occur in a smaller area. In particular, views of the foothills would not be as affected by development because less development would occur in the eastern portion of the site. This would reduce the severity of the impact, relative to the Project. At the same time, in order to accommodate the increased density on the western portion of the site, development of the western portion would be more dense with taller structures, and less likely to maintain views of oak stands and Dead Horse Slough. So, for the western portion of the project site, Alternative 3 would be more severe than the Project. The impact associated with the creation of light under Alternative 3 would also be reduced, but would still require Mitigation Measure 4.9-3. The cumulative impact on aesthetics and visual resources would remain significant and unavoidable.”

See G.2. below for further discussion of the Alternatives.

G.2. Alternative #4 also would lessen the aesthetic impacts by reducing units in upper area; inadequate findings regarding feasibility of Alternative #4.

As acknowledged in the Alternatives Analysis of the DEIR, Alternative #4 would lessen the aesthetic impacts; however, the DEIR concludes that aesthetic impacts of this alternative would still remain significant and unavoidable. The DEIR also finds that Alternative #4 would have increased impacts with respect to traffic, air quality, etc. and would not implement the City’s Housing Element policies of providing a mix of housing types, which is one of the key objectives of the project. Therefore, given that the intent of the Alternatives analysis is to identify reduce “significant impacts, neither Alternative #3 or #4 would reduce aesthetic impacts to a less than significant level and neither would implement the General Plan Housing Element.

Given various site constraints (required 100-foot setback from Dead Horse Slough, viewshed buffers from Highway 32, and oak trees, coupled with the requirements of condition of approval #39 which prohibits the location of housing units on land with remediated soils), there is very limited land available on the western portion of the site to accommodate increased an additional 485 dwelling units that would shifted from the east. While it is possible that every R3 and R2 parcel could be developed at maximum densities (14 units per acre for R2 lands and 22 units per acre for R3 lands), this will result in large, multiple story buildings on each parcel with vast expanses of parking lots. It would not implement the City’s Housing Element by providing a quality development and mix of housing types as envisioned by the various General Plan and zoning designations for the site.

H. Findings regarding Human Health Hazards are not supported by the Record.

H.1. Findings of less than significant impacts after mitigation is based on Abatement Order, but the order is being appealed as inadequate; Improper basis for finding; Efficacy of MM's not independently analyzed.

The referenced appeal has been dismissed. As stated in the RDEIR (Page 4.10-29), all remedial actions, including actions subject to the City's RAP, would be required to comply with applicable federal, State, and local laws and regulations, which would sufficiently protect human health and the ecological environment from potential effects due to remediation activities. The City does not have any jurisdiction over the soil remediation activities. Because cleanup will be completed in compliance of an approved RAP, this would be a less-than-significant impact.

H.2. Sewerage system breakages on site not analyzed. See letters to City.

The claims of worsened water quality impacts raised in the Shute, Mihaly & Weinberger letter are not substantiated by any evidence. The sewer lines will be inspected by the Department of Public Works at the time of site development to ensure that the lines meet all City standards.

I. Findings regarding other impacts are inappropriate.

I.1. No findings regarding historical/cultural resources; Findings inadequate, less than significant impact not supported; cumulative impact findings inadequate, not supported; indirect impacts on Humboldt Road, wagon ruts rock walls and SR 47 are not adequately analyzed.

The issue relating to the adequacy of the cultural resources analysis was addressed in the Final EIR and the 5-17-05 City Council staff report. As set forth on Page 24 of the Council staff report, in the response to comments C-6 and C-7 pertaining to impacts on historic Humboldt Road, Pages 3-9 and 5-14 of the FEIR includes the following revision to text which address the potential impacts to historic resources:

"The Project would have no direct physical impact on Old Humboldt Road, which consists of the wagon ruts located between the rock wall and the asphalt-covered modern Humboldt Road, or the rock wall. In addition, these features are not considered to be historically significant. The Project would have an indirect effect on old Humboldt Road due to the visual impact (previously identified under Impact 4.9-2 of the 2000 DEIR) from development of a subdivision on land that is currently undeveloped. The setting of old Humboldt Road has already been somewhat affected by the construction of the new road, powerlines, and other modern utilities. While the project would have no direct physical impact on the Old Humboldt Road, construction of the subdivision immediately across the modern asphalt surface of Humboldt Road in a currently vacant parcel of grassland and oak trees would have a visual impact that would be a substantial change to the setting of the resource. However, this change of setting would not result in the Old Humboldt Road becoming ineligible for the CRHR and would

be reduced by retention of the visual buffer zone between the Old Humboldt Road resources and the subdivision that is provided under the current site plans.
Implementation of the Project would not result in Old Humboldt Road or the wagon wheel ruts becoming ineligible for the CRHR. Therefore, this would be a less-than significant impact."

Additionally, the following response is included on Page 5-21 of the FEIR which addresses the issue of setting:

"The comment is noted and will be forwarded to the decision-makers for their consideration. As stated on page 1-1 of the Recirculated DEIR, members of the public raised concerns about the historic significance of Humboldt Road after the close of the public comment period for the 2000 DEIR. In recognition of that concern, an Historic Resources Inventory and Evaluation Report was prepared and a Cultural Resources section was added to the Recirculated DEIR. As stated under Impact 4.11-1 in the Recirculated DEIR, implementation of the Project would not result in Old Humboldt Road, which includes the wagon wheel ruts, becoming ineligible for the California Register of Historic Resources. The change in the visual setting would be reduced by retention of the visual buffer zone between Humboldt Road and the subdivision that is provided under the current site plans. As stated on page 4.2-6 of the 2000 DEIR, greenbelts to preserve open space, existing oak trees, and scenic vista are also proposed. In addition, development at and above 250-foot elevation must comply with the City's Foothill Design Criteria (see pages 4.9-15 through 4.9-19 in Section 4.9, Aesthetics and Visual Resources, of the 2000 DEIR)."

These responses acknowledge the effects of the proposed subdivision on the surrounding setting and conclude that with the proposed buffer and clustering along the roadway, the impacts of such development on the setting of Humboldt Road will not affect its eligibility for listing in the California Register of Historic Places.

I.2. Indirect analysis in FEIR was inadequate and never circulated.

The discussion of impacts to Humboldt Road in the FEIR was the result of comments received on the RDEIR. The response clarifies the RDEIR discussion and the findings of the City's historic consultant. A copy of the FEIR was provided to each individual who commented on the DEIR and RDEIR. FEIRs are not required to be circulated for public review. Because no new significant impacts were identified in the analysis, recirculation of the document is not required.

I.3. No findings regarding water quality; only analysis was 1998 initial study; analysis is outdated; conclusion of no impact not supported in view of allegation (Vlami's letter of 6/1/00) that water quality may have changed since 1998.

The allegation of changes to water quality made by Ms. Vlami are not supported by any evidence provided to the City and are not tied to the proposed subdivision. The cleanup of the burn dump is regulated by the RWQCB and the work is now nearing completion. City responsibility/jurisdiction is with subdivision, for which City has adopted standards set

forth in the City's Storm Drainage Master Plan (2000) which will be implemented to reduce water quality impacts to a less than significant level.

I.4. EIR relies on Project Implementation of State and Regional Board's requirements, but CEQA requires actual analysis of the impacts and efficacy of mitigation.

See discussion below under item I.5.

I.5. Mitigation to insignificance is not supported merely by reliance on collateral agencies' enforcement; Failure to impose MM's in deference to collateral agency not authorized by CEQA.

As discussed in the DEIR, RDEIR, and FEIR, the City does not have any jurisdiction over cleanup of the Burn Dump site and cannot impose any conditions on that cleanup. The RWQCB has determined that cleanup of the Burn Dump in accordance with an approved Remedial Action Plan meeting RWQCB standards will adequately address potential water quality impact from the cleanup work.

Construction activities associated with the development of the Oak Valley project will be subject to both City and State standards with respect to water quantity and water quality issues. As stated in the EIRs, all construction work will be subject to the City's adopted Storm Drainage Master Plan (2000) and the RWQCB permitting process to address requirements of the National Pollution Discharge Elimination System (NPDES) program. The City's Storm Drainage Master Plan sets forth a number of best practices that are available to mitigate potential water quality and quantify impacts. Mitigation measure 4.7-1 on Page 4.7-9 of the DEIR requires the following:

"4.7-1 Prior to approval of any improvement plans for the Conceptual Master Plan, applicants shall submit and obtain approval of final drainage plans from the City of Chico Public Works Director. Final drainage plans shall demonstrate that post-development surface drainage peak flows shall be reduced to pre-development conditions. The drainage plan shall be prepared by a registered civil engineer and shall be in conformance with City of Chico requirements. The drainage plan shall include at a minimum a description of existing conditions, pre- and post-development runoff, proposed on-site improvements, appropriate calculations, a watershed map, and maintenance responsibilities. (Conceptual Master Plan)"

The deferral to these requirements of the City's Storm Drainage Master Plan and for the submittal of a drainage plan which implements the best practices set forth in the plan commits the City to a realistic performance standard or criterion that will ensure the mitigation of the significant effect. The use of performance standards is appropriate, particularly in connection with a Program EIR. Additional project-level environmental review will take place as each subdivision proposed as part of the CMP is analyzed.

I.6. No findings regarding geology and soils, reliance on 1998 initial study is outdated.

At the time the Initial Study and DEIR were prepared for the Project, an analysis of the area was conducted, and together with knowledge of the area from other nearby projects, no potential significant impacts were identified with respect to the geologic setting or soils setting. No evidence has been presented contrary to the findings of the DEIR regarding the existing setting. As stated on Pages 6 and 7 of the Initial Study (Appendix A of the DEIR), among the many standards future development on the site will be subject to the City's Grading Ordinance standards, Foothill Development standards, the City's Master Storm Drainage Master Plan, and the Uniform Building Code, all of which set forth development standards and mitigation measures relating to construction on sloping lands.

I.7. No findings regarding affordable and employee housing; reliance on 1998 initial study is outdated.

The City of Chico does not have an "inclusionary housing" ordinance. As such, there is no legal requirement of the project to provide "affordable" housing. The project does provide a mix of different housing types (single-family, duplex and multi-family) which implements General Plan Housing Element policy H-G-29.

The cited Napa court case involved the County's adoption of a Specific Plan which did not call for the construction of any housing in the Project area. As such, the plan to provide additional retail/manufacturing lands would bring people into the area and the EIR was required to analyze the resulting housing needs. In the case of the Oak Valley project, the project is proposing over 1,300 housing units and 109,000 sq. ft of commercial retail space, both of which are consistent with the General Plan and zoning for the site.

The Growth-Inducing Impacts analysis on Page 5.1-2 of the DEIR addresses the issue of increased employment opportunities and housing by including the following discussion:

"Economic Growth

The Project has the potential to foster new economic growth through increased residential development. The 43-acre portion of Subdivision and Conceptual Master Plan would extend the City's urban core into an undeveloped area. Under full buildout, an increase in population of approximately 2.34 persons per dwelling unit is anticipated as a result of project development. This would result in a population growth of approximately 700 persons for the 43-acre portion of the Subdivision and approximately 3,100 persons for the full Conceptual Master Plan. The additional residents could increase demand for supporting commercial services.

The Project would also provide some additional employment opportunities, primarily through the development of 109,000 square feet of commercial space. Construction jobs could lead to short-term, temporary increases in population and employment, depending on local labor force conditions. These employment opportunities would not be large, and would not exceed employment projections of the General Plan. While the Project is not

anticipated to substantially increase permanent employment opportunities, the success of the Oak Valley development could encourage future population and housing growth; however, this would not be considered an exclusive effect of the Project.

The Project includes development and services that is anticipated in the General Plan, and the Project is not anticipated to substantially increase permanent employment opportunities. For these reasons, the Project would not induce growth beyond the levels assumed in adopted City plans and analyzed in prior environmental documents. The growth resulting from the project would be consistent with the City of Chico General Plan.

I.8. No findings regarding growth-inducing impacts and impacts to public services, reliance on 1998 initial study is outdated;

As discussed in more detail under item I.7 above, the Project includes development and services that is anticipated in the General Plan, and the Project is not anticipated to substantially increase permanent employment opportunities. For these reasons, the Project would not induce growth beyond the levels assumed in adopted City plans and analyzed in prior environmental documents. The growth resulting from the project would be consistent with the City of Chico General Plan.

In addition, the project site is located at the edge of the city limits and Sphere of Influence line. As such, infrastructure for the project is being sized to serve only this project, as stated on Page 5.1-1 of the DEIR. It will not be oversized to accommodate any future growth east of the site. As discussed above under item I.6., Page 5.1-1 of the DEIR states the following with respect to growth-inducement:

"Implementation of the Project (both the proposed 43-acre portion of the Subdivision and Conceptual Master Plan) would facilitate the development of land currently used for seasonal grazing in the City of Chico. The Project is consistent with General Plan land use designations, and the project area would be developed as a Special Development Area under the General Plan Policies LU-I-62 through LU-I-68. The project would be consistent with the General Plan zoning, and no new zoning or a change in use designation is proposed which may increase development in adjacent lands.

As stated on Page 4.6-1 of the DEIR, potential effects on police services, fire protection services, wastewater, electricity, natural gas, libraries, parks and recreation, and cable and telephone service were evaluated in the Initial Study and were determined to be less than significant or result in no impact because the project is consistent with the City's General Plan and its buildout projections (see Appendix A), so these issues are not addressed further in the EIR. In response to the Notice of Preparation (NOP), additional information was provided by the Chico Unified School District regarding current schools capacity and enrollment, and is discussed in this EIR.

J. Approval is not consistent with certain General Plan policies, as required by the Subdivision Map Act and the State Planning and Zoning Law.

J.1. Project not consistent with LU-I-63: Ensure that development in the foothills is not intrusive and is in keeping with the natural character of the areas.

Project is not consistent with LU-I-64: Maintain a predominant sense of open land on the east by allowing the development in the foothills to be clustered and ensuring that foothill views are protected.

Project not consistent with LU-I-67: Explore the feasibility of designated viewshed corridors and viewshed protection standards to protect views of the foothills from the valley floor.

Project not consistent with LU-I-68: Encourage residential development in Humboldt Road Foothills area to be clustered in the western portion of the site, and allow for transfer of development rights from the eastern portion of the site to protect the foothills viewshed and sensitive biological habitat.

A discussion of policies LU-I-62 through 68 is provided on Page 17 of the 5-17-05 City Council staff report. Specifically, the staff report states:

"In addition to the aforementioned residential designations, the entire site is designated Open Space for Environmental Conservation/Safety in the General Plan. This designation is for areas that contain sensitive habitats. Areas with sensitive biotic habitats within this designation are further defined as Resource Conservation Areas (RCAs) or Resource Management Areas (RMAs). The project site is designated an RMA in the General Plan.

The project is also included as a "Special Development Area" in the General Plan under Foothill Development, and Foothills South of SHR-32. General Plan policies LU-I-62 through 68 seek to minimize grading, encourage the clustering of development on the western portion of the site, preserve native vegetation, and protect the foothill viewshed. The City's existing Foothill Development Standards, as well as the applicant's proposed Oak Valley Project Foothill Design Guidelines, implement these policies.

As discussed earlier in the Background section, the property has several overlay zones: -RM (Resource Management), SD-2 (Humboldt Road-Foothill - see Title 19 section 19.52.070), and -PD (Planned Development - Foothill). The whole property is being processed as a Planned Development. To implement the -PD, SD-2, and -RM overlay requirements, the Oak Valley Foothill Design Guidelines and a Resource Management, Monitoring, Reporting and Information Plan have been prepared by the applicant and reviewed by staff."

The 5/17/05 City Council staff report also includes the following discussion on Page 19:

"V. ANALYSIS

A. General Plan Community Design Element & Resource Management Policies

The subject property is designated for residential and commercial development in the General Plan and its development represents a key component in implementing the City's Housing Element. Development of the property is subject to numerous General Plan policies and development standards set forth in Title 19. A discussion of the project's consistency with some of the key design and resource management policies in the General Plan is provided below. A detailed overview of the project's consistency with specific General Plan policies is provided in each section of the EIR. Also provided below is an analysis of the project's density in comparison with the allowable density for the site and the Plan's relationship to the ongoing soil remediation efforts on the site.

City Form - *The proposed Plan and 43-acre subdivision (Phase I) are consistent with the goal of reinforcing the compact form of the city because the subject property is within the City of Chico Sphere of Influence and the development under the Plan would not result in development of open space beyond the level anticipated by the 1994 General Plan and accompanying General Plan EIR. Development of the Plan would be consistent with the size and scale of existing development north of SHR-32.*

Continuity and Connection - *The Plan is consistent with the goal of establishing a central focus of activity within each neighborhood by maintaining the corridor along Dead Horse Slough as open space and designing the project streets such that the slough becomes one of the main focal points of the development, including development of a multi-use trail. The street pattern for the 43-acre subdivision has been designed to provide views and physical access to Dead Horse Slough. The 43-acre subdivision (Phase I) also provides other areas of passive open space, an active "pocket park" and a 60-foot wide landscape buffer along the SHR-32 frontage for both the 43-acre subdivision and the remainder of the Plan.*

The Plan and the 43-acre subdivision (Phase I) are consistent with the goal of encouraging a fine-grained and integrated pattern of streets and encouraging the continuity of streets between neighborhoods by connecting existing streets and accommodating connections to planned streets, both on- and off-site.

The Plan provides a mix of residential types and densities, varying lot sizes, clustering of units, and allows the transfer of allowable densities to those locations across the site which are appropriate for development, providing permanent protection for those portions of the site which are not appropriate for development. The Plan has been designed to fit the natural topography of the site, preserve unique natural and historic features present on the site, and preserve the main "ribbons" of blue oaks in open space areas rather than private yards. The design also provides angled streets to provide views into Dead Horse Slough and other open space areas from the SHR-32 corridor. Open space areas containing the oak woodlands and riparian/creek are visually linked to the developed portions of the plan by providing view corridors and a natural transition from the formalized landscape along street edges and in private yards to the natural grassland.

Consistent with the -PD, -RM and SD-2 overlay zones, development would take place in accordance with the Oak Valley Project Foothill Design Guidelines prepared specifically for the 43-acre subdivision (Phase I). The applicant has also developed a Resource Management, Monitoring, and Reporting Plan (RMMRP), which together with the EIR was used to guide planning for the site. Preparation of similar design guidelines, RMMRP's, and photo-simulations would also be a condition of approval for future subdivisions as required by the site's overlay designations.

***New Residential Neighborhoods** The 43-acre subdivision is consistent with the goal of creating new neighborhoods that have a human scale and are oriented to the pedestrian by limiting the length of blocks, providing both passive and active open space areas, providing separated sidewalks throughout the development, as well as bicycle/pedestrian paths along both Dead Horse Slough and Humboldt Road. The shared open space within the project area will foster a sense of community among future residents.*

The Plan is consistent with the goal of designing streets with a priority on neighborhood structure and pedestrian scale because the street configuration allows for easy connection and circulation through the development, either by auto, pedestrians or cyclists. The Plan is also consistent with the goal of integrating special features as landmarks to heighten a sense of orientation within new residential neighborhoods: the existing Dead Horse Slough would be maintained as an open space area with a bike and pedestrian path on either side.

The Plan has been modified to provide for neighborhood-serving commercial uses along the main access into the development (the Yosemite Drive/Potter Road extension) on Lot F in close proximity to the residential units.

Consistent with the General Plan, no gates or restrictive entrances are proposed as part of the Plan. The only area where a combination landscaped berm and sound wall would be constructed is along the SHR-32 corridor for noise attenuation; the berm and wall would be appropriately landscaped. A landscape plan has been developed for the 43-acre portion of site to blend the wall with the environment. Similar plans would be developed for other subdivisions developed consistent with the Plan along the highway frontage.

B. Special Development Policies & Overlay Zoning Districts

The Plan is subject to myriad development policies to protect foothill environs and resources, and is also subject to the Planned Development Permit (PDP) process. Pursuant to CMC section 19.52.050, the purpose of the PDP overlay zoning districts is to provide for flexibility in site planning and design...where site characteristics and environmental resources, adjacent land uses, or other community conditions may be benefitted by site-specific planning or the design of structures that would not otherwise be allowed in the primary zoning district. Planned developments are encouraged to produce projects of equal or greater quality than would normally result from more conventional development.

The PDP process is also being utilized to cluster and transfer densities to appropriate locations on site. Areas in between clusters would remain in a natural state, with the exception of connecting roadways. Recognizing the sensitivity of the site and guidance provided by the City's Foothill Development standards and the -PD, SD-2, and -RM overlay zones, the applicant has prepared the Oak Valley Project Foothill Design Guidelines to guide future grading and development of the site, which set forth practices pertaining to grading, street design, architecture and site design, and landscaping. The applicant also prepared an RMMRP, which together with the EIR and conditions of approval will ensure that the timing and implementation of mitigation measures will be carried out as development occurs.

To comply with provisions of the SD-2 overlay district pertaining to protecting visual resources along the SHR-32 corridor, the 43-acre subdivision and Plan both include a 60-foot wide landscaping easement/buffer between the development areas and SHR-32. In addition, the applicant has submitted a conceptual landscape plan for the 43-acre portion of the site (Phase I) which provides for a combination landscaped berm and stone wall (see **Attachments I and O**).

It must be recognized, however, that even with compliance with the proposed grading/foothill guidelines and clustering, any development of the site, especially on small lots, will still require significant grading, and such development will be a prominent feature on the foothill environment as seen from the highway and surrounding properties. Both the General Plan EIR and the FEIR for the project recognize this fact and conclude that development of the site and other foothill properties will result in a significant, unavoidable aesthetic impact.

C. Project Density

The Plan provides for residential lot sizes ranging from approximately 4,000 square feet to 20,000 square feet. The higher densities (R2 and R3 zones) are planned for the western portion of the project site, closest to the existing urbanized land uses. The lower densities (R-1 and RS-20) are planned for the eastern portion, with the very lowest densities adjacent to the eastern boundary, providing a transition to open space areas to the east. The easternmost portion of the site (Lot Q), comprising approximately 80 acres, is designated Very Low Density Residential (0.2 to 2.0 units per acre) in the General Plan. The accompanying zoning proposed for this portion of the site is RS-20, which allows for a 20,000 square foot minimum lot size (two units per acre).

The residential zoning districts for much of the property appear to be unrealistic for foothill development at the middle or high end of the allowable density ranges, as the property has many physical and environmental constraints. Constraints include a location adjacent to SHR-32 (SHR-32 requires significant setback and noise buffering), Dead Horse Slough (which requires a significant setback and creekside dedication), ribbons of blue oaks, and slopes ranging from 5 percent to 20 percent. As a result, development of densities at the low end of the General Plan designations

appears to be the most appropriate, as well as shifting densities to the flatter western portions of the site.

To comply with Land Use policies LU-I-62 through -68, which seek to limit development of the eastern portion of the site, the Project has been conditioned to allow Lot Q to be developed with a minimum of 80 clustered residential lots, with up to 180 clustered residential lots to be considered upon demonstration that the additional units will not create additional impacts as approved by the Planning Commission.” (Note: at its 5-17-05 meeting, the City Council further restricted the number of dwelling units on Lot Q to a maximum of 80).

Further analysis of General Plan policies is provided on Page 22 of the 5-17-05 City Council staff report, which states:

“To comply with Land Use policies LU-I 62 through 68, which seek to limit development of the eastern portion of the site, the Project has been conditioned to allow Lot Q to be developed with a minimum of 80 clustered residential lots, with up to 180 clustered residential lots to be considered upon demonstration that the additional units will not create additional impacts as approved by the Planning Commission.”

Lastly, Page 28 of the 5-17-05 City Council staff report provides the following discussion regarding consistency with General Plan policies:

“The subject property, including the easternmost portion, was originally zoned R1 (Low Density Residential) from the 1970's up until 1994. In 1994, General Plan policies LU-I-62 through 68 were adopted to require the shifting of some of the residential densities to the west. This land use concept was then implemented by rezoning the easternmost portion of the site from R1 to RS-20. The lost densities were transferred to the western portion of the site which was rezoned to accommodate multi-family units (R2 and R3 zoning).

The SD-2 Special Design Considerations Overlay zone was also adopted for the site. The SD-2 Overlay Zone states: “...transfers and cluster development to lower elevations of the site and cluster development at the higher elevations to the least visible areas.” This wording, therefore, does acknowledge that there will be some development in the higher (eastern) elevations of the site and it is staff's position that the referenced General Plan policies do not seek to completely shield or eliminate views. The Oak Valley Foothill Project Design Guidelines approved by the Planning Commission (Attachment K) implement the General Plan policies and the SD-2 overlay district requirements by requiring, to the extent possible, the clustering of houses in lower, less visible open areas, screened from the valley floor and Highway 32 by the terrain and trees. In addition, photo-simulations will be required for all subsequent subdivision maps for the site which will analyze the specific viewshed issues for each proposal to determine whether any additional units above the minimum allowed by the RS-20 zoning for Lot Q (80 units) will be allowed.”

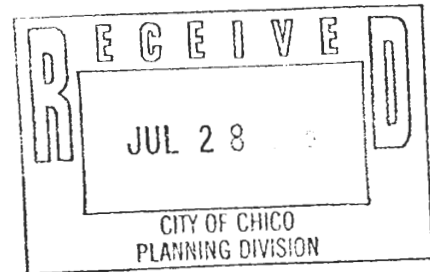
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July 26, 2005

Patrick Murphy, Senior Planner
City of Chico
Planning Department
P. O. Box 3420
Chico, CA 97927



Dear Mr. Murphy:

Oak Valley Subdivision and Conceptual Master Plan Recirculated EIR # 1998032048

The State Office of Historic Preservation (OHP) has broad responsibility in the implementation of federal and state historic preservation programs in California. We have been contacted by Mr. Francis Farley regarding the above document and are offering the following comments for your consideration.

Reviewing the above document, we find that the *Cultural Resource Assessment* is inadequate. It fails to clearly identify the boundaries of the project, the existing historical resources in relation to the project, and therefore also fails in delineating the potential impacts to the existing historical resources and therefore cannot propose effective mitigation measures required by law to mitigate significant effects.

The document does not cite the appropriate regulatory framework, the California Environmental Quality Act (CEQA); it cites the Public Resources Code section 5020.1 q, in the *Assessment of Potential Change to Old Humboldt Road, Introduction*. This is incorrect. CEQA Sections 21000 et seq, which is part of the Public Resources Code (PRC) and the CEQA Guidelines, the regulations that govern the implementation of CEQA, are to be used. The CEQA Guidelines are codified in the California Code of Regulations (CCR), Title 14, Chapter 2, Sections 15000 et seq. and are binding on state and local public agencies.

The first step of any cultural resource analysis is to establish the existing conditions, the precise area of the project and whether historic resources exist in the described area or in its immediate surroundings. Once the existing conditions have been established, the next step is to determine the potential project-related impacts to historical resources as defined in CEQA Guidelines § 15064.5. Finally, mitigation measures for the project are discussed and proposed and the level of significance after mitigation is discussed. While an historical resource must be evaluated against the California Register of Historical Resources Criteria to establish the significance and integrity of a resource, the goal of CEQA is to make sure that informed decisions can be made by the city council regarding a planned project and the impacts this project will have on the environment.

ATTACHMENT E

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Therefore, the *Introduction* of the above document should have stated, pursuant to CEQA Guidelines § 15064.5 (b) that “a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” Subsection (1) clearly defines such effect on the environment as “substantial adverse change in the significance of an historical resource [meaning] the physical demolition, destruction, relocation, or alteration of the resource **or its immediate surroundings** such that the significance of an historical resource would be materially impaired.” Pursuant to CEQA, the statutory definition of a “project” is an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Public Resources Code 21065; CEQA Guidelines § 15378) Furthermore CEQA says effects or impacts to be analyzed include “direct or primary” effects and “indirect or secondary” effects which are caused by the project and are related to physical change. (CEQA Guidelines § 15358)

The above cultural resource assessment fails to look at the whole of the resource and is focused on individual parts, almost like examining individual artifacts, rather than the resource in its entirety, its setting and its surrounding. The document refers to wagon ruts, rock walls and to the Old Humboldt Road among other things but is unclear, also in its documentation where the historical resources are in relationship to the planned project. The document does neither address the direct and indirect physical changes in the environment nor does it address the primary and secondary changes to the environment.

Therefore, the impact to the historical resource cannot be clearly determined. The document is leading with a conclusion without establishing proof, how it arrived at this conclusion. It states, “Change in setting will not result in Old Humboldt Road ceasing to be eligible for CRHR. As noted above, CEQA states that a substantial adverse change [to a historical resource] includes demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired. The proposed project will have none of those effects. However, it will involve a change in the setting to the resource.”

However, change to the “immediate surroundings” of a resource does constitute an impact under CEQA and this impact needs to be adequately addressed, clearly established and mitigated, and any cumulative changes to a historical resource need to also be clearly established and addressed. “Loss or relocation of a few features usually does not affect overall historic integrity, but the repeated loss of buildings, or structures, or roadways, and small scale elements, as well as gradual changes to boundaries and land use, may cumulatively destroy integrity. New construction and incompatible land uses covering extensive acreage – such as residential subdivision, . . . refuse dumps and land fill, limited access highways and their interchanges – cause the greatest damage. Not only do they introduce mayor visual intrusions, and interrupt the continuity of a historic scene, but they reshape the land, disturb subsurface remains, and introduce a-historical characteristics.” (National Register Bulletin # 30, Guidelines for Evaluating and Documenting Rural Historic Landscapes, page 24)

In summary, therefore we highly recommend that a separate, independent cultural resources study be commissioned either as part of a new EIR or as a separate document that thus becomes a supplement to the current EIR. This new, independent study should very carefully apply the regulatory framework of CEQA and examine **ALL** impacts on the historical

resources, direct and indirect changes, and design mitigations measures that **DO** mitigate all significant impacts below a level of significance. CEQA is quite clear that mitigation measures that do not truly reduce or avoid the impact to the significant historical resource are inadequate under CEQA. Mitigation measures must be made fully enforceable through permits, conditions, agreements and other measures. (CEQA Guidelines § 15064. 5 (b) (3-5) and have to be clearly spelled out. If mitigation cannot occur, if there are unavoidable significant impacts, this must be clearly stated in the EIR and then has to be adopted by a City Council as such when the final EIR is approved.

After all, the purpose of CEQA is to maintain a high-quality environment now and for the future and to provide the decision makers of local agencies with the appropriate facts to make informed decisions for their planned projects. The above document fails in this attempt.

If you have any further questions, please don't hesitate to contact Michelle C. Messinger, CEQA Coordinator Local Government Unit at (916) 653-5099 or at mmessinger@parks.ca.gov.

Sincerely,

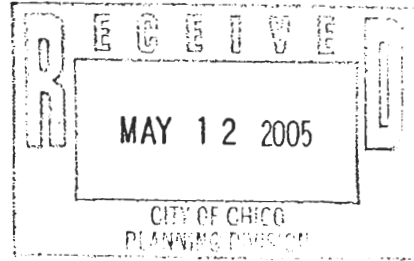


Michelle C. Messinger
Historian II
CEQA Coordinator Local Government Unit

cc: Francis Farley

Partners
Rand F. Herbert
Stephen R. Wee
Meta Bunse

May 10, 2005



JRP
HISTORICAL CONSULTING

Patrick Murphy, Senior Planner
Planning Department, City of Chico
PO Box 3420
Chico, CA 95927

Dear Mr. Murphy,

You have asked that I prepare a letter that further clarifies or explains our recommendation that the changes in setting to the Old Humboldt Road [hereafter OHR] would not constitute a substantial adverse change under the California Environmental Quality Act (CEQA).

As you are probably aware, the definitions of a substantial adverse change are outlined in various regulations and guidance documents propounded by the State of California and the Office of Historic Preservation. A substantial adverse change [emphasis added] is defined in CEQA Guidelines, Title 14 CCR 15064.5, *Determining the Significance of Impacts to Archaeological and Historical Resource*, Subsection (b), which states: "A project with an effect that may cause a substantial adverse change in the significance of a resource is a project that may have a significant effect on the environment." In 14 CCR 15064.5(b)(1) it is stated that "substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired."¹ In the case of the OHR segment, it is only alteration of its surroundings or setting that is contemplated.

We came to this conclusion (i.e., no substantial adverse change) for the following reasons:

1. The proposed project will not result in a direct impact or material impairment to the OHR or its wagon ruts. They will not be subject to removal or demolition.
2. The proposed project will be located to the north of the modern asphalt county road which is itself north of the OHR location, and will be separated from the OHR by, in sequence running north to south, a landscaped area, the modern county road, and a varying width of road shoulder.

¹ Title 14 CCR 15064.5(b)(2) further defines material impairment of historical resources, and subsections (A), (B), and (C) of that section further discuss demolition or material alteration in an adverse manner.

3. The proposed project will change the setting of the area north of the road, by the construction of modern houses and a new street pattern between the county road and SR 32. This was acknowledged in our report. In our opinion, the construction of the modern houses would not cause a sufficient change in the setting to render the OHR ineligible for listing in the California Register of Historical Resources. That is, if the OHR were to be evaluated *de novo* after the construction of the subdivision, the change in setting would be taken into account; but it is highly likely that the evaluator would not consider the change in setting caused by the new houses to be of such magnitude that it would render the OHR site ineligible.
4. The houses in the proposed subdivision will not be oriented to face the existing county road; rather their back yards and associated fences will front the landscaped strip north of the County road. They will also be located on the down-slope away from the OHR.

Furthermore, the treatment of the site by the City during and after construction also weighed on the analysis of impacts. Title 14 CCR Section 15126.4(b), Mitigation Measures Related to Impacts on Historical Resources, includes several measures for mitigating impacts. Of this section, subsections (1) and (2) refer to mitigations to historic buildings or structures, and focus on substantial alteration or demolition of the resources. Subsection (3) is focused primarily upon archeological sites, but aspects of its guidance bear directly on the OHR site(s). It states:

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

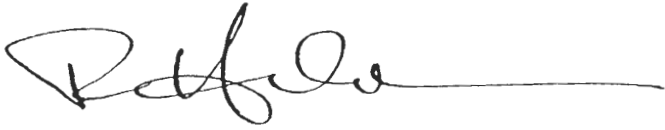
(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;
2. Incorporation of sites within parks, greenspace, or other open space;
3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
4. Deeding the site into a permanent conservation easement.

It is my understanding that the City contemplates following (3)(B) 1 and 2 in the above discussion for the OHR sites, and that the OHR sites are within the public right of way for the road and thus within the City's control. This, in combination with the assessment of impacts discussed above, led to our conclusions.

Please feel free to contact us if you have further questions or need additional clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Rand Herbert", followed by a long horizontal line extending to the right.

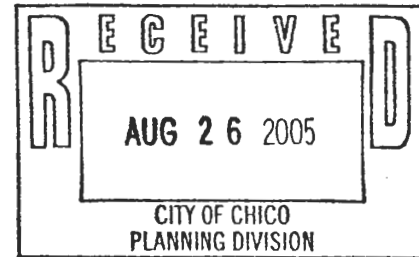
Rand Herbert
Principal

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



August 25, 2005



Patrick Murphy, Senior Planner
City of Chico
Planning Department
P. O. Box 3420
Chico, CA 97927

Dear Mr. Murphy:

Oak Valley Subdivision (Chico) FEIR (SCH#1998032048)

Thank you for sending us the FEIR for the above project and the letter dated May 10, 2005 from your consultant, JRP Historical Consultants and for taking the time to discuss the project with us. We have reviewed the documents carefully and after further, additional deliberation, submit the following comments for your consideration.

Firstly, we want to acknowledge that, in general, assessments and evaluations of linear historical resources such as roads, tunnels, canals, ditches, etc., and any kind of circulation features, can be rather challenging because, by far, rather than seeing the resource(s) in its overall setting, often times it is viewed on the basis of feature(s), more as an object, and not in its surroundings, taken as a whole.

Secondly, while we agree that the project does neither demolish, destruct nor alter - therefore does not have a direct impact on the Old Humboldt Road - we disagree with the conclusion that the project will have no substantial adverse change to the historical resources because the Cultural Resource Assessment has not examined the impact of the project on the setting. Moreover, the Cultural Resource Assessment does not approach the evaluation of the resources in its overall context, but rather from an archeological perspective of individual sites thus failing to establish the overall perspective, the framework for the resources.

In general, adverse effect includes but is not limited to physical destruction, damage, or alteration of a landscape for instance, but also isolation from or alteration of the setting or introduction of intrusive elements. While change is often an inescapable part, especially to the continuing use of landscapes and linear transportation features, the effect of continuing use on the resource's integrity depends to a large degree on the overall historic context. A road that has been slightly widened may retain integrity, if its original features such as fences, retaining walls, bridges, etc., and overall alignment remain. But intrusions that can come from new construction or incompatible land use, or growth of residential subdivisions or other activities that reshape the land, introduce major visual intrusions, or disrupt a historic scene, can affect the integrity of the resource, its sense of feeling and place.

ATTACHMENT G

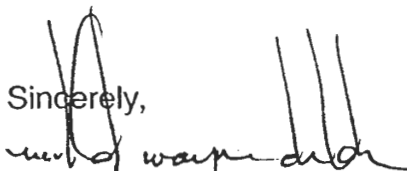
196.

Therefore, we recommend that a third, independent historic resource assessment is conducted. This assessment might include an aerial view of the overall context of the Old Humboldt Road, of State Route 32, etc., in addition to clearly assessing the historical resources in the broader geographical context looking at the land and the natural setting. We believe that after a careful overall assessment of the historical resources and their setting (and as we said initially, that we are aware of the challenges of evaluating linear resources), the effects of the proposed project can also be more clearly determined and appropriate mitigation measures developed.

The National Register Bulletin # 30 *Guidelines for Evaluating and Documenting Rural Historic Landscapes* and Preservation Brief # 36 *Protecting Cultural Landscapes* provide valuable information in general and also for the identification and assessment of linear resources types.

If you have any further questions, please don't hesitate to contact Michelle C. Messinger, Historian II/CEQA Coordinator Local Government Unit at (916) 653-5099 or at mmessinger@parks.ca.gov.

Sincerely,

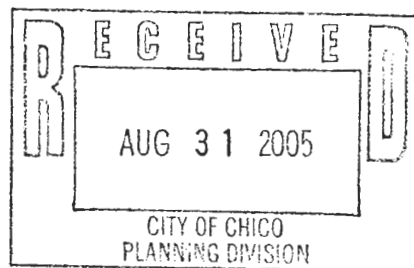


Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

Cc: Francis Farley

To: Patrick Murphy, Senior Planner

Planning Department, City of Chico
PO Box 3420
Chico, CA 95927



From: Rand F. Herbert, JRP Historical Consulting

Date: August 31, 2005

You have asked that I prepare a letter / memorandum that further clarifies or explains our recommendation that the changes in setting to the Old Humboldt Road [hereafter OHR] would not constitute a substantial adverse change under the California Environmental Quality Act (CEQA), and addresses issues raised in the letters received by the City of Chico from the State Office of Historic Preservation [OHP] on July 26 and August 25, 2005.

I am operating at a bit of a disadvantage, not having seen exactly what OHP reviewed; however, the issues raised in their letter of August 25, 2005 are relatively straightforward.

First, OHP agreed that there would be no direct impact on Old Humboldt Road. As you are probably aware, the definitions of a substantial adverse change are outlined in various regulations and guidance documents propounded by the State of California and the Office of Historic Preservation. A substantial adverse change [emphasis added] is defined in CEQA Guidelines, Title 14 CCR 15064.5, *Determining the Significance of Impacts to Archaeological and Historical Resource*, Subsection (b), which states: "A project with an effect that may cause a substantial adverse change in the significance of a resource is a project that may have a significant effect on the environment." In 14 CCR 15064.5(b)(1) it is stated that "substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired."¹ We noted that the proposed project will not result in a direct impact or material impairment to the OHR or its wagon ruts. They will not be subject to removal or demolition. OHP agreed with that assessment.

In the case of the OHR segment, it is only alteration of its surroundings or setting that is contemplated. OHP disagreed with the opinion that the change in setting along Humboldt Road would not constitute a substantial adverse change. As noted in our letter of May 10, 2005, our judgment in this case was based on the following considerations:

1. The proposed project will be located to the north of the modern asphalt county road which is itself north of the OHR location, and will be separated from the OHR by, in sequence running north to south, a

¹ Title 14 CCR 15064.5(b)(2) further defines material impairment of historical resources, and subsections (A), (B), and (C) of that section further discuss demolition or material alteration in an adverse manner.

landscaped area, the modern county road, and a varying width of road shoulder.

2. The proposed project will change the setting of the area north of the road, by the construction of modern houses and a new street pattern between the county road and SR 32. This was acknowledged in our report. In our opinion, the construction of the modern houses would not cause a sufficient change in the setting to render the OHR ineligible for listing in the California Register of Historical Resources. That is, if the OHR were to be evaluated *de novo* after the construction of the subdivision, the change in setting would be taken into account; but it is highly likely that the evaluator would not consider the change in setting caused by the new houses to be of such magnitude that it would render the OHR site ineligible.
3. The houses in the proposed subdivision will not be oriented to face the existing county road; rather their back yards and associated fences will front the landscaped strip north of the County road. They will also be located on the down-slope away from the OHR.

The OHP letter pointed out the following in regard to setting:

In general, adverse effect includes but is not limited to physical destruction, damage, or alternation of a landscape for instance, but also isolation from or alteration of the setting or introduction of intrusive elements. While change is often an inescapable part, especially to the continuing use of landscapes and linear transportation features, the effect of continuing use on the resource's integrity depends to a large degree on the overall historic context. A road that has been slightly widened may retain integrity, if its original features such as fences, retaining walls, bridges, etc., and overall alignment remain. But intrusions that can come from new construction or incompatible land use, or growth of residential subdivisions or other activities that reshape the land, introduce major visual intrusions, or disrupt a historic scene, can affect the integrity of the resource, its sense of feeling and place.

The materials provided to OHP may not have been clear enough in presenting the current integrity of setting for this resource. Our discussion focused on the OHR and location adjacent to the modern asphalt surface of the current Humboldt Road, and mentioned the fact that SR 32 was located to the north within the viewshed of the OHR linear resource. The forms we provided recording segments of the road and its ruts included photographs of the modern wooden power poles running parallel to both Humboldt Road and OHR (and in some cases placed in or immediately adjacent to the OHR ruts). I have included some additional photographs that show these intrusive elements, along with modern high-tension power lines that cross the project area, the recently constructed burn dump site at the intersection of Humboldt Road and Bruce Road, a cell tower complex to the east of the project area, and an aerial photograph showing the project area in relation to the dump and modern subdivisions to the north on one-third the length of the project. Given the totality of the intrusive elements (modern road, power line, major transmission lines, adjacent subdivision, modern burn dump, and

cell tower complex), it appeared to us that the setting had been compromised to the point where the proposed development would not be a substantial adverse change.

OHP also mentioned Bulletin #30, *Guidelines for Evaluation and Documenting Rural Historic Landscapes*, and Preservation Brief #36, *Protecting Cultural Landscapes*, as guidance for "identification and assessment of linear resource types." Linear features such as OHR are often part of rural historic landscapes or cultural landscapes, but also are more often "stand-alone" resources. It is not clear to me exactly what is meant by this advice, unless OHP is suggesting that the OHR is part of some larger resource.

Bulletin 30 explains how to identify and evaluate rural historic landscapes, and notes that standard National Register criteria A-D must apply. In addition, integrity of the resource to the period of significance must be assessed. In this instance, the OHR's period of significance dated to the mid-1860s when it was used as a transportation route. Subsequent features constructed along the line mentioned above (the modern road, modern power poles, transmission lines, etc.) have already adversely affected the OHR's integrity of setting. The bulletin notes changes that, when occurring after the period of significance, may adversely affect the historic integrity of a rural landscape (see page 23). Among these are the following that apply to a greater or lesser extent to the OHR area:

- "Abandonment and realignment of roadways and canals"
- "Widening and resurfacing of historic roadways"
- "Introduction of nonhistoric land uses (quarries; tree farms; sanitary landfill; recreational areas; limited access highways and interchanges; power plants, wastewater treatment plants, and other public utilities; subdivision for residential, commercial, or industrial development)"

Of course, if the OHR ran along its current path without the modern road, power poles, and other intrusions, the argument that it was part of a rural historic landscape would have greater strength. It would certainly have a much stronger sense of time and place, as specified in the guidance.

OHP's Preservation Brief #36 offers much the same guidance, and references National Register Bulletin #30. Under the subject of integrity and intrusions, Preservation Brief #36 states:

Loss of integrity can come from new construction or incompatible land uses, such as modern mining or quarrying, the growth of residential subdivisions, new freeway construction, or other activities that reshape the land, disturb subsurface remains, introduce major visual intrusions, or interrupt the continuity of the historic scene. Changes outside the landscape's boundaries can constitute intrusions when such changes introduce incompatible visible, audible, or atmospheric elements to the historic property, regardless of whether the setting itself is a contributing element. The effect of intrusions on a landscape's integrity depends on the qualities that make the landscape eligible and must be assessed on a case-by-case basis. In some instances, large rural districts may be able to absorb changes that occur in relatively few or small isolated pockets within the landscape, but the cumulative effect of such changes must be considered.

... Integrity is lost when a landscape's important features are removed or altered, or when intrusions disrupt the landscape.

In the case of the OHR, the intrusion of modern features (the power poles, transmission lines, adjacent subdivision, and modern road) all are intrusions that suggest that while the road is a linear feature, it would not be part of a rural historic landscape, even though currently still in a rural setting. That setting has been compromised by the intrusions. As noted above, I have included some photographs at the end of this memorandum that illustrate the intrusions.

As I noted in my May 10, 2005 letter, the treatment of the site by the City during and after construction also weighed on our analysis of impacts. Title 14 CCR Section 15126.4(b), Mitigation Measures Related to Impacts on Historical Resources, includes several measures for mitigating impacts. Of this section, subsections (1) and (2) refer to mitigations to historic buildings or structures, and focus on substantial alteration or demolition of the resources. Subsection (3) is focused primarily upon archeological sites, but aspects of its guidance bear directly on the OHR site(s). It states:

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

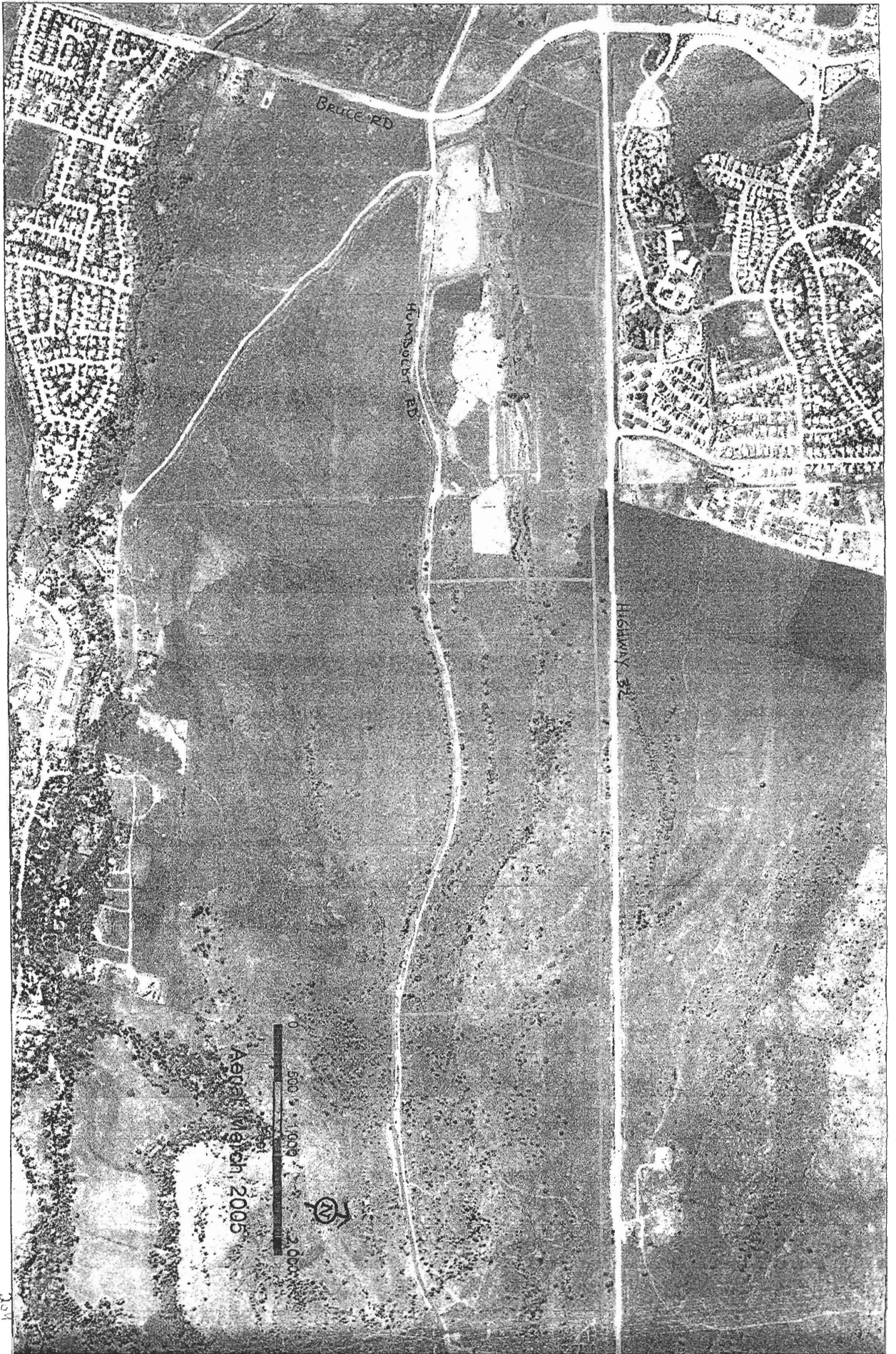
1. Planning construction to avoid archaeological sites;
2. Incorporation of sites within parks, greenspace, or other open space;
3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
4. Deeding the site into a permanent conservation easement.

It is my understanding that the City contemplates following (3)(B) 1 and 2 in the above discussion for the OHR sites, and that the OHR ruts are within the public right of way for the road and thus within the City's control. This, in combination with the assessment of impacts discussed above, led to our conclusions.

Given the position taken by OHP, it appears to me that the City has several options. First, it can accept the OHP's judgment that the change to setting will result in a substantial adverse impact, and mitigate accordingly. Second, the City could take the position that its proposed mitigation measures will reduce the impacts to below the level of significance. Third, it could accept the OHP's recommendation that calls for "a third, independent historic resource assessment." OHP suggested that that third assessment

include an aerial view of the overall project area; I have provided one with this memorandum.

Please feel free to call if you wish to discuss this matter further.



Bruce Rd

Homsbour Rd

Highway 32

Aerial March, 2005

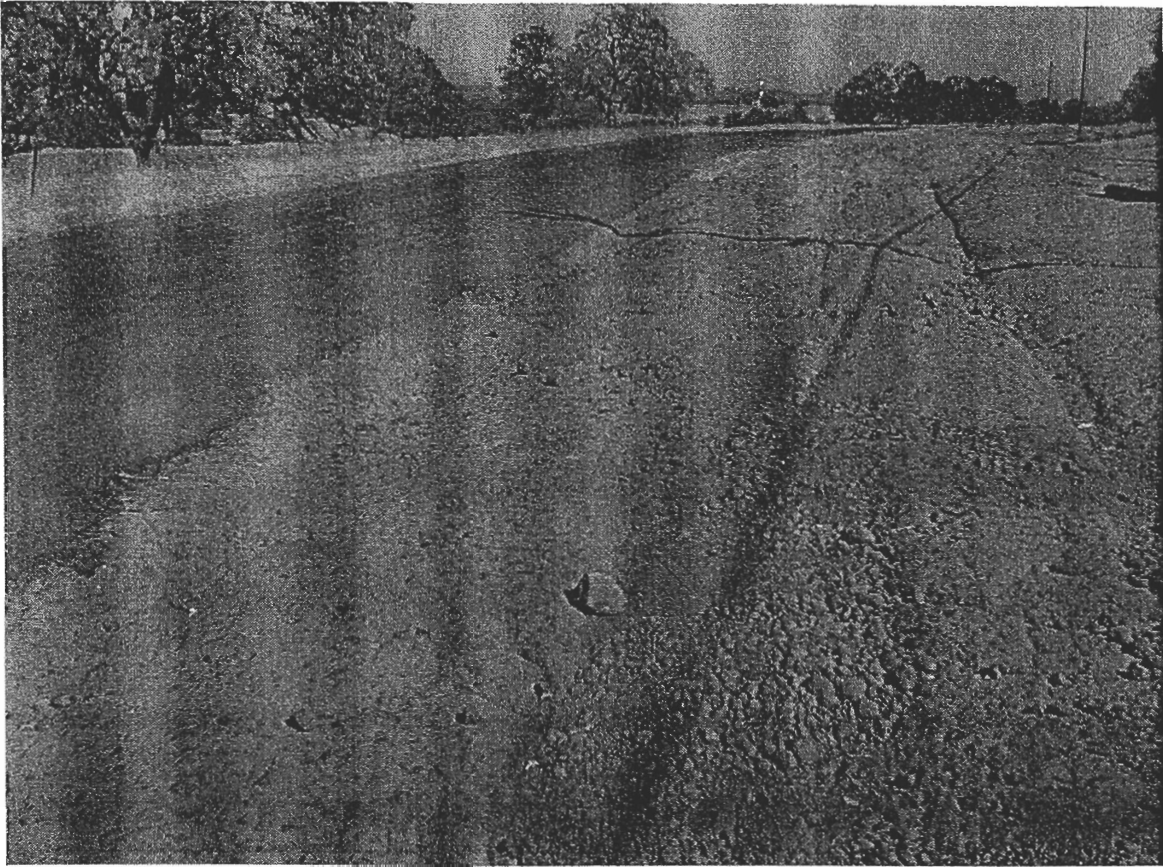


Study area photographs.

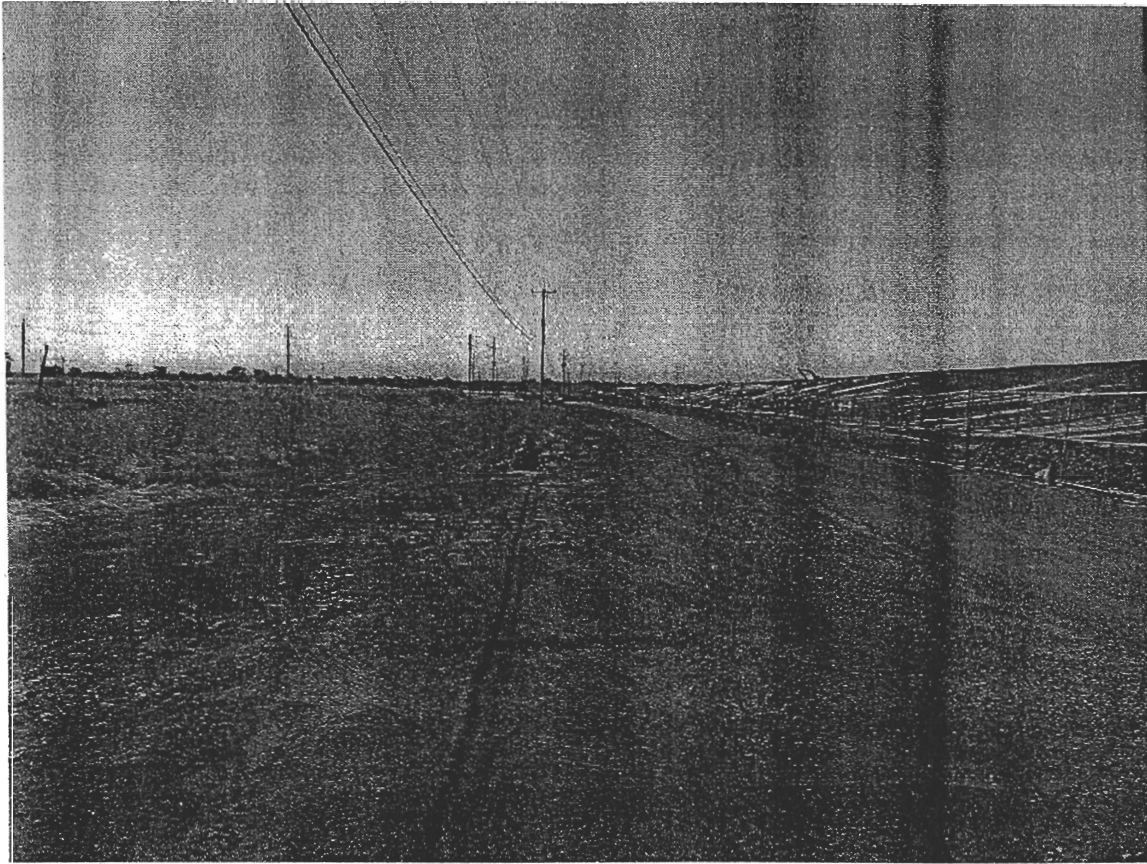
These photographs depict typical locations along the OHR and modern Humboldt Road corridor.



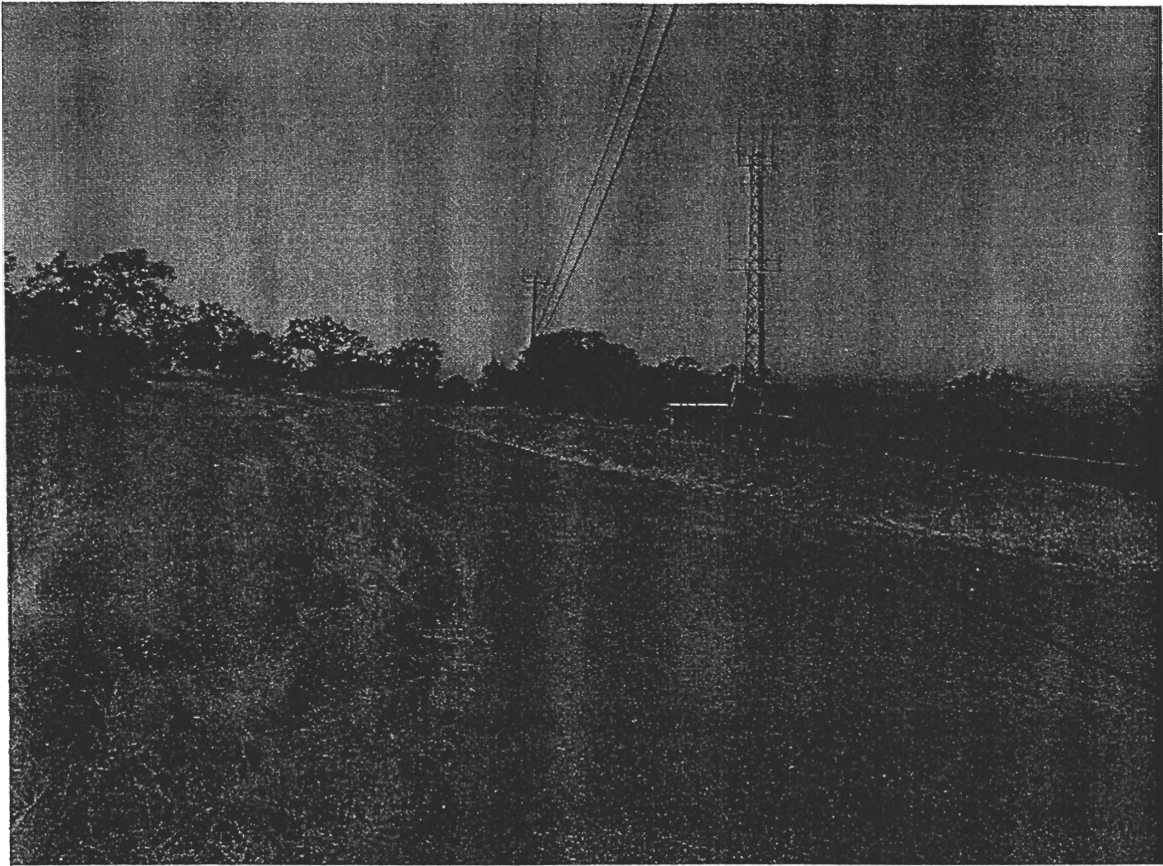
View to west of wooden power pole immediately adjacent to OHR at lower end of study area. Modern Humboldt Road is visible on the right; rock field wall on left.



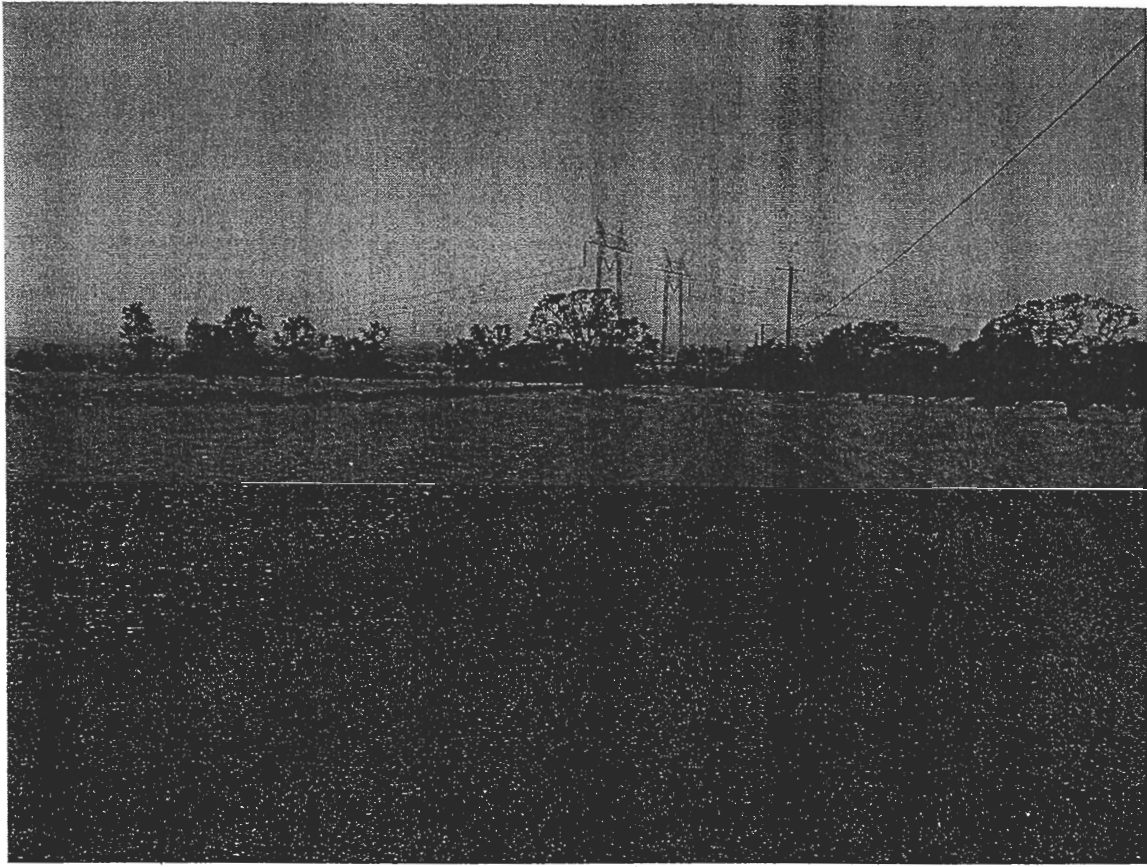
View looking east of OHR ruts adjacent to modern asphalt surface of Humboldt Road.



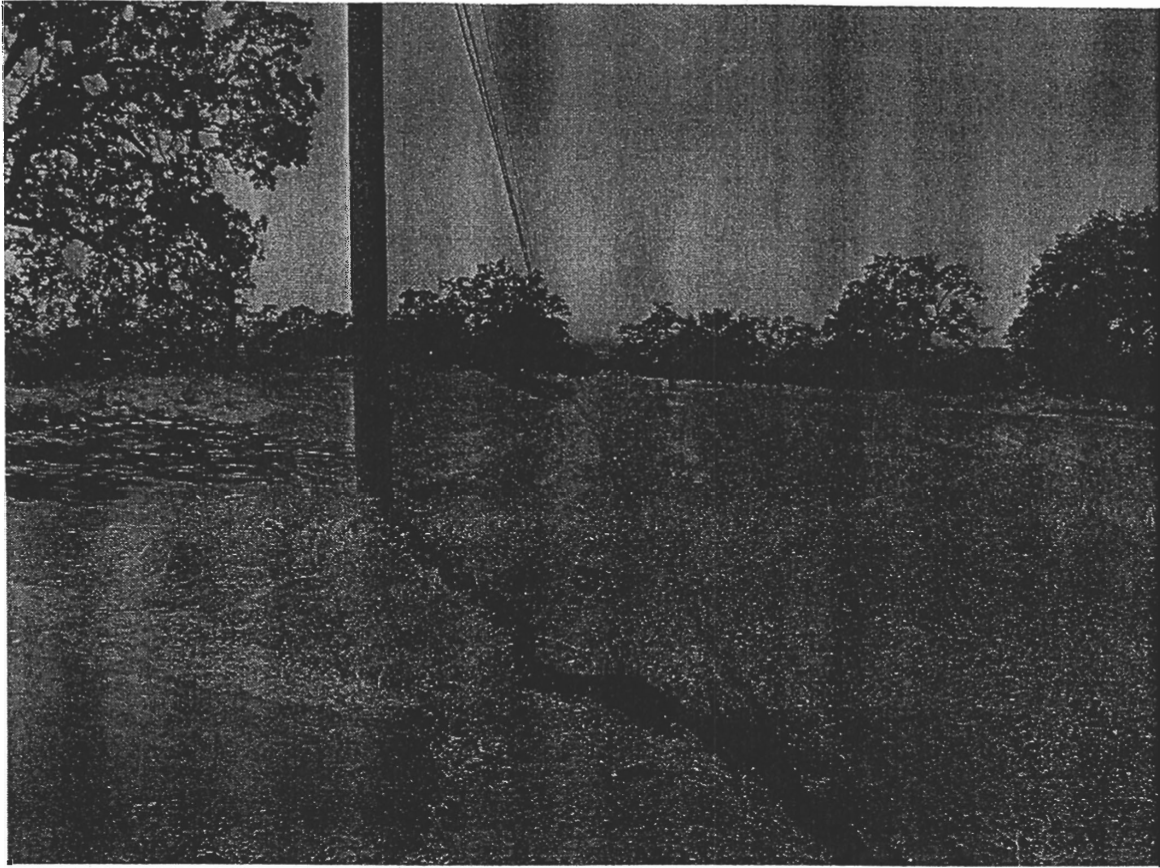
View looking west at lower end of study area. Burn dump on the right, modern asphalt surface and power poles parallel to OHR on left.



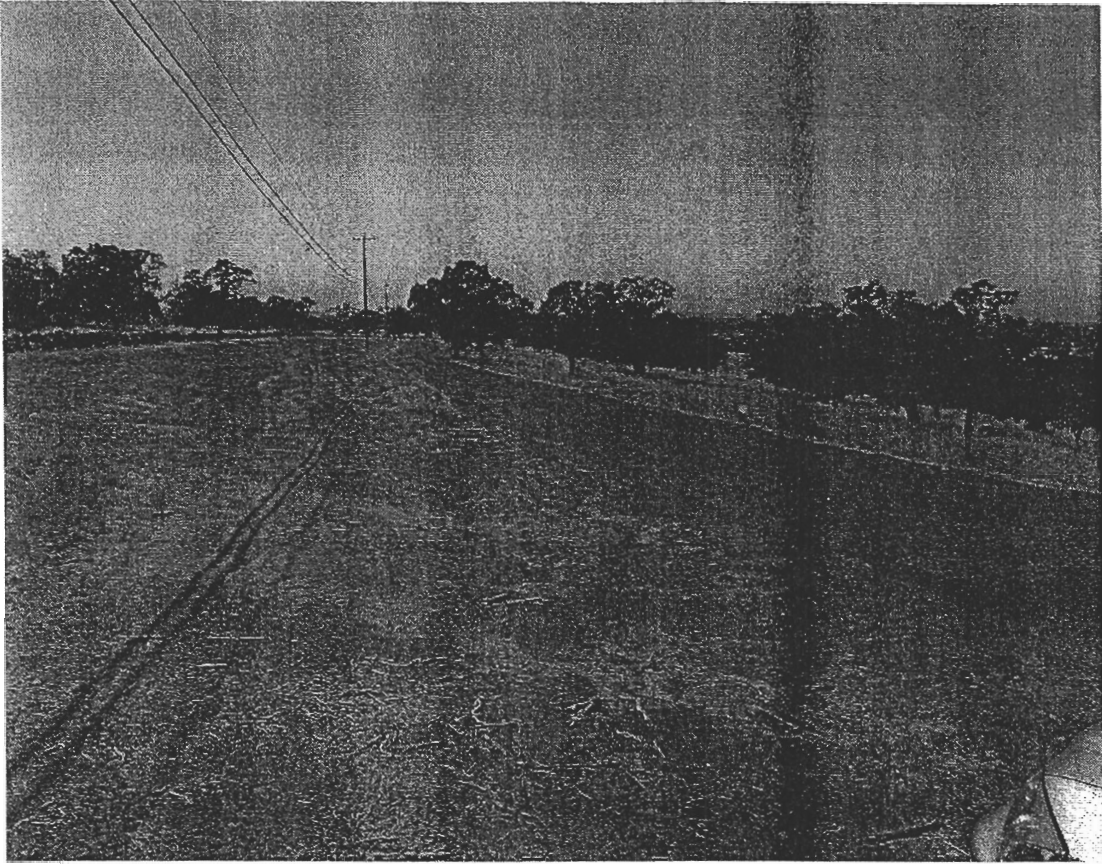
View to west of power line crossing modern road and of cell phone facility, located to the east of study area.



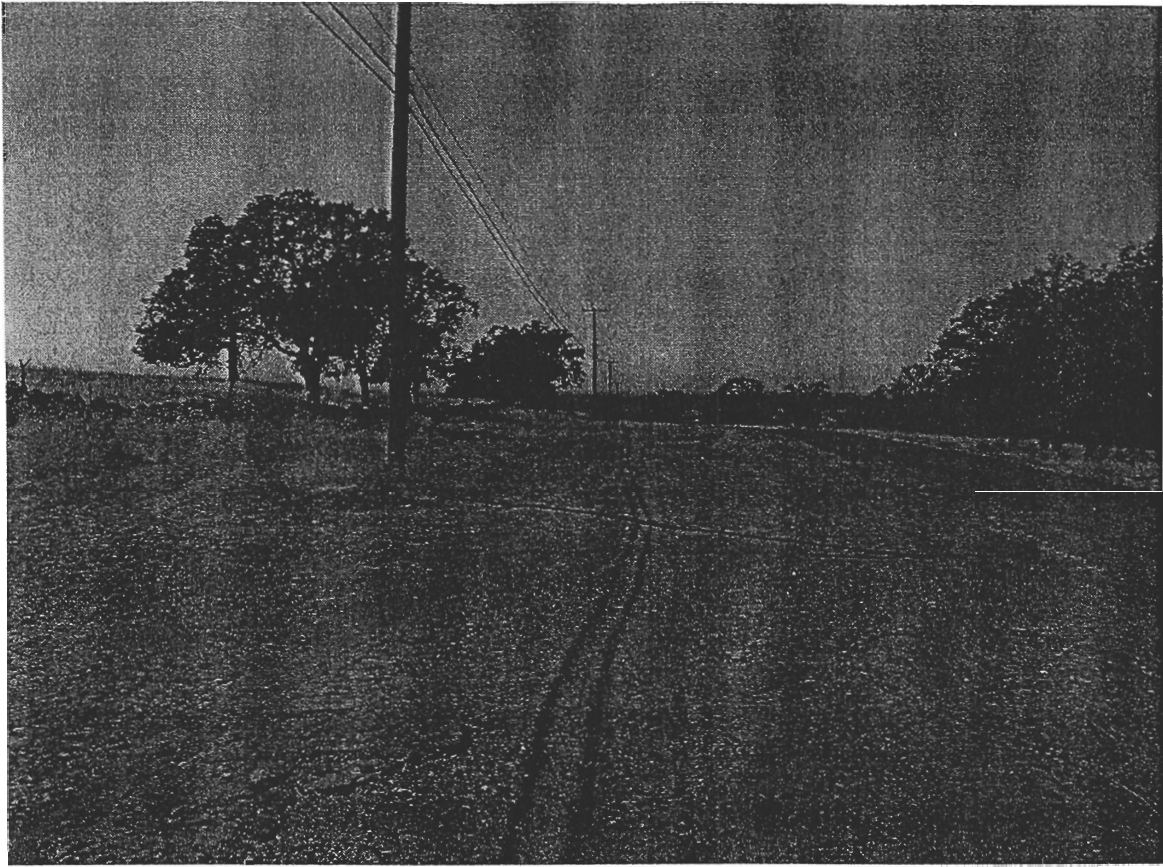
View to west of modern Humboldt Road, with OHR ruts on the left. At this location the power poles are on the opposite side of the road from the OHR. The transmission lines cross the OHR and modern Humboldt Road in the study area.



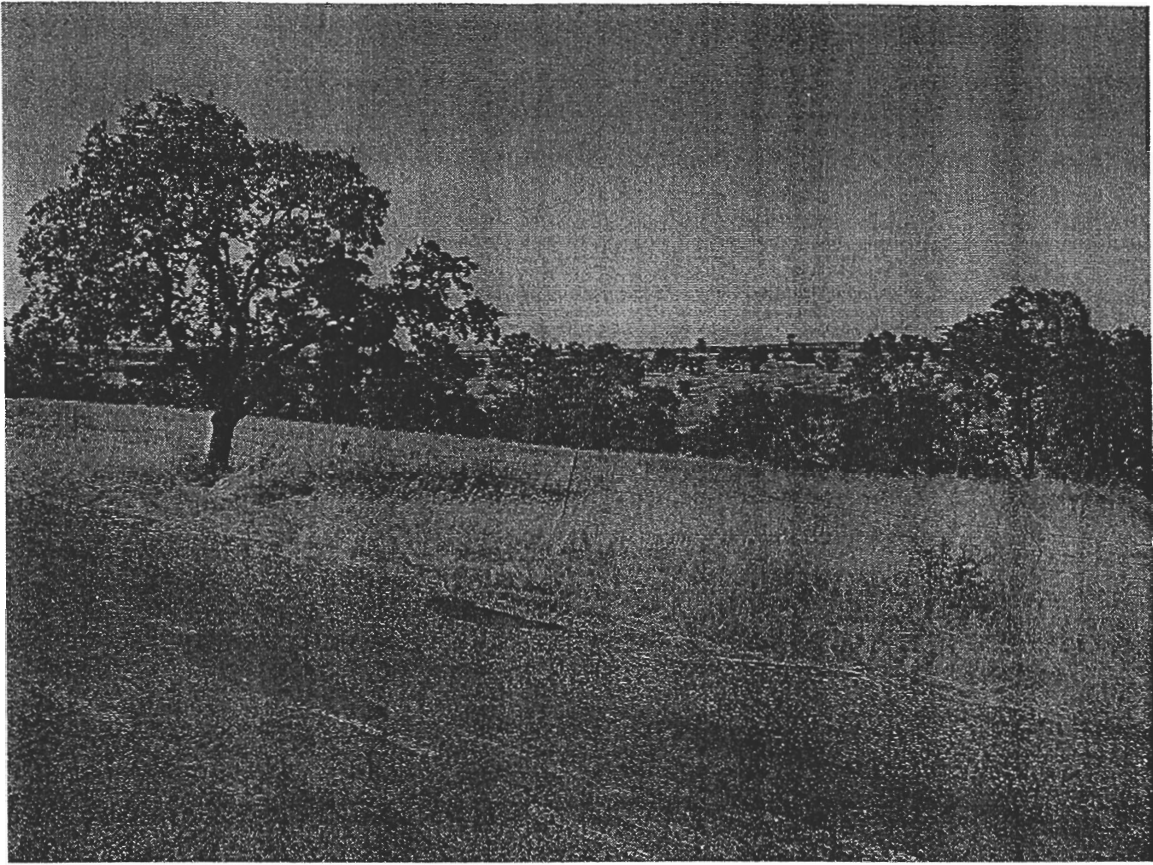
Power pole within the study area immediately adjacent to OHR ruts. Modern asphalt surface is visible on the right.



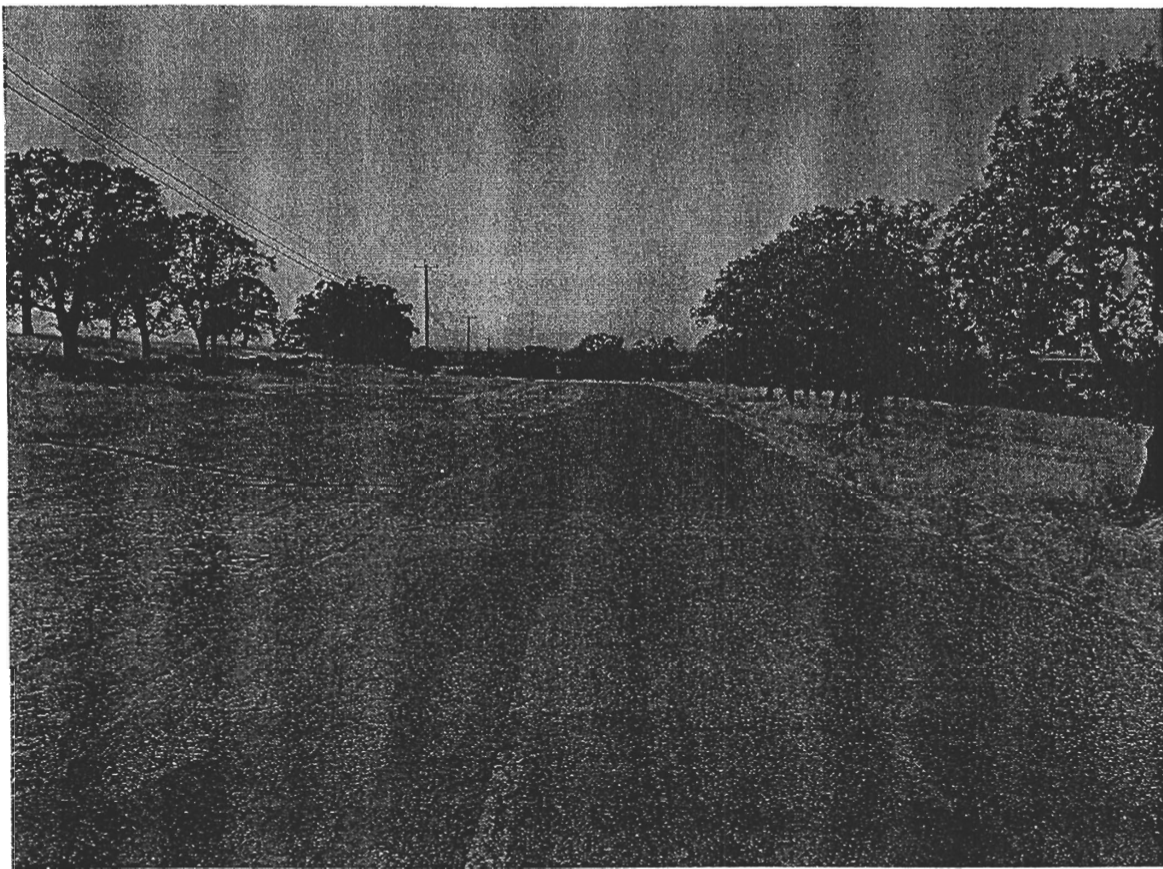
View to west of terrain in the study area. Development will be on the right of the modern asphalt surface on the down-slope. OHR is to the left of the modern road, closer to the rock wall. The power poles are sited between the OHR and modern Humboldt Road.



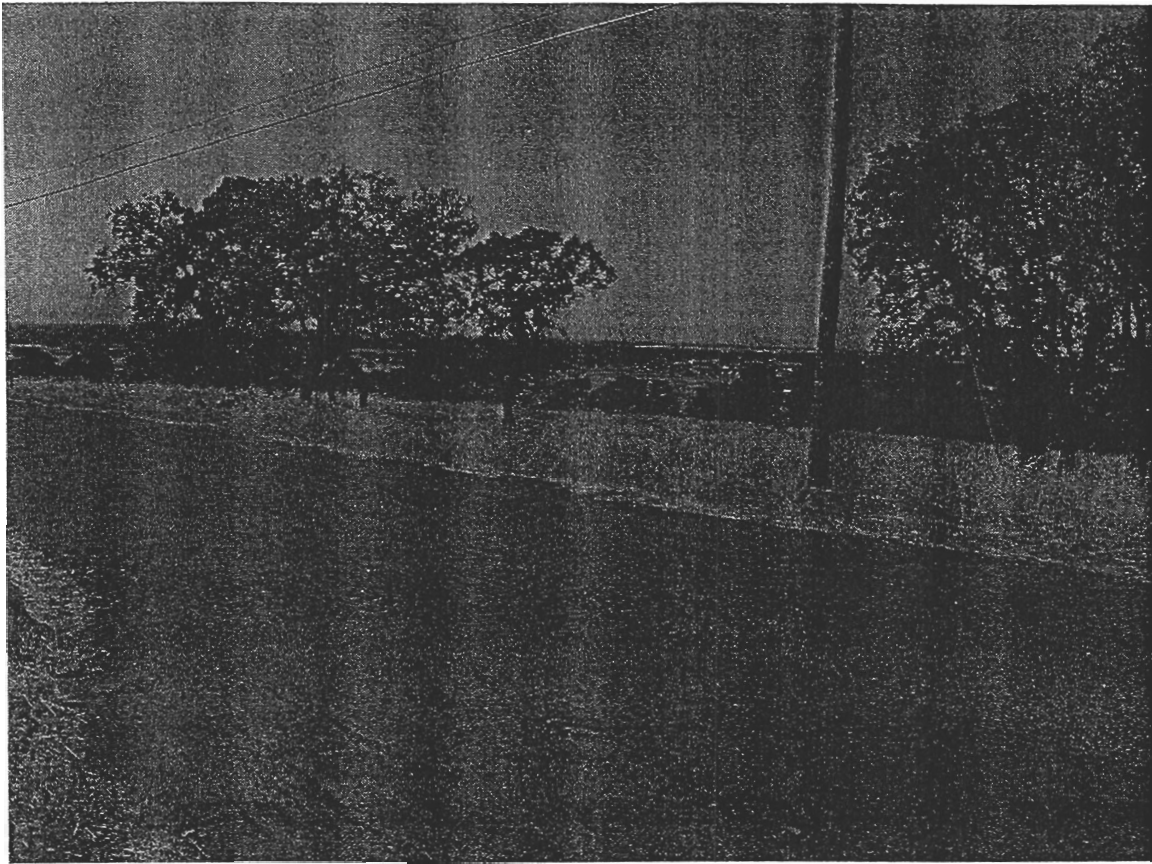
View to west of rock wall, OHR, power poles, and modern asphalt surface in the middle of the study area.



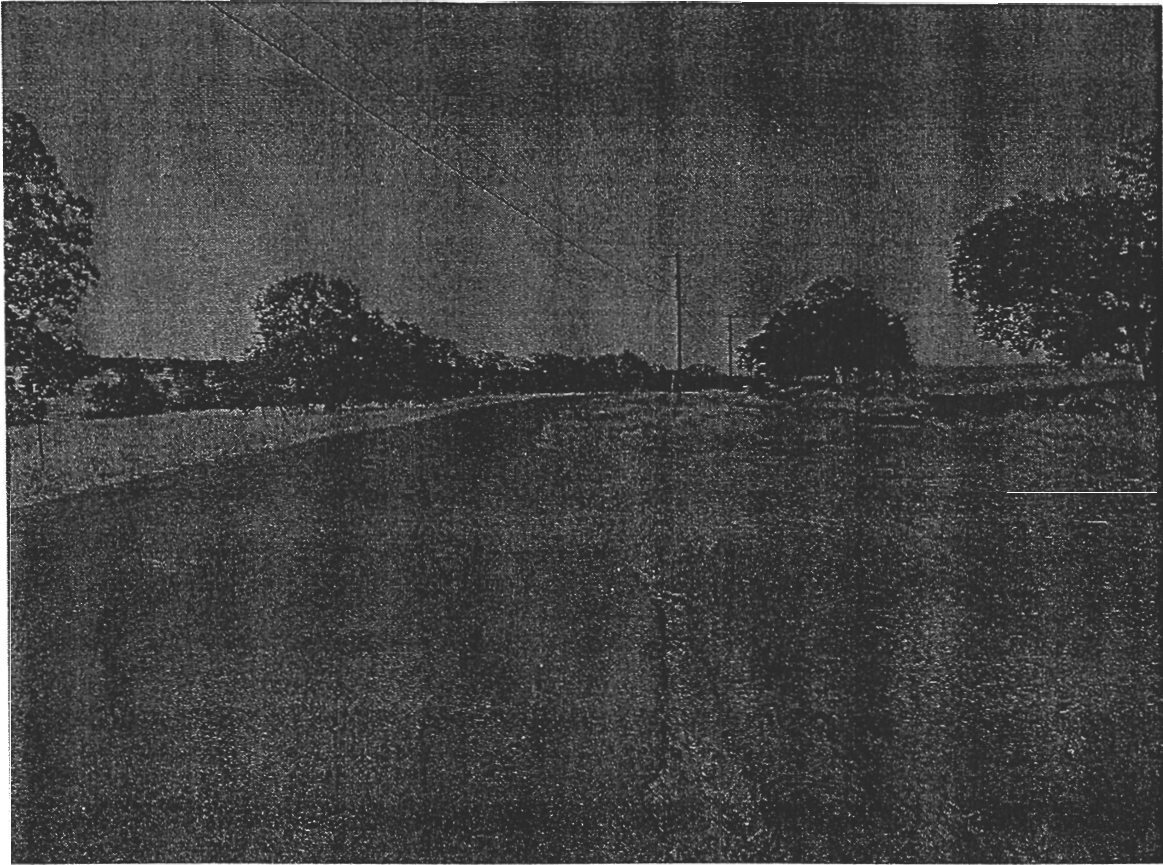
View to the northwest across the study area toward SR 32 located on the ridge in the background. Modern asphalt surface in foreground.



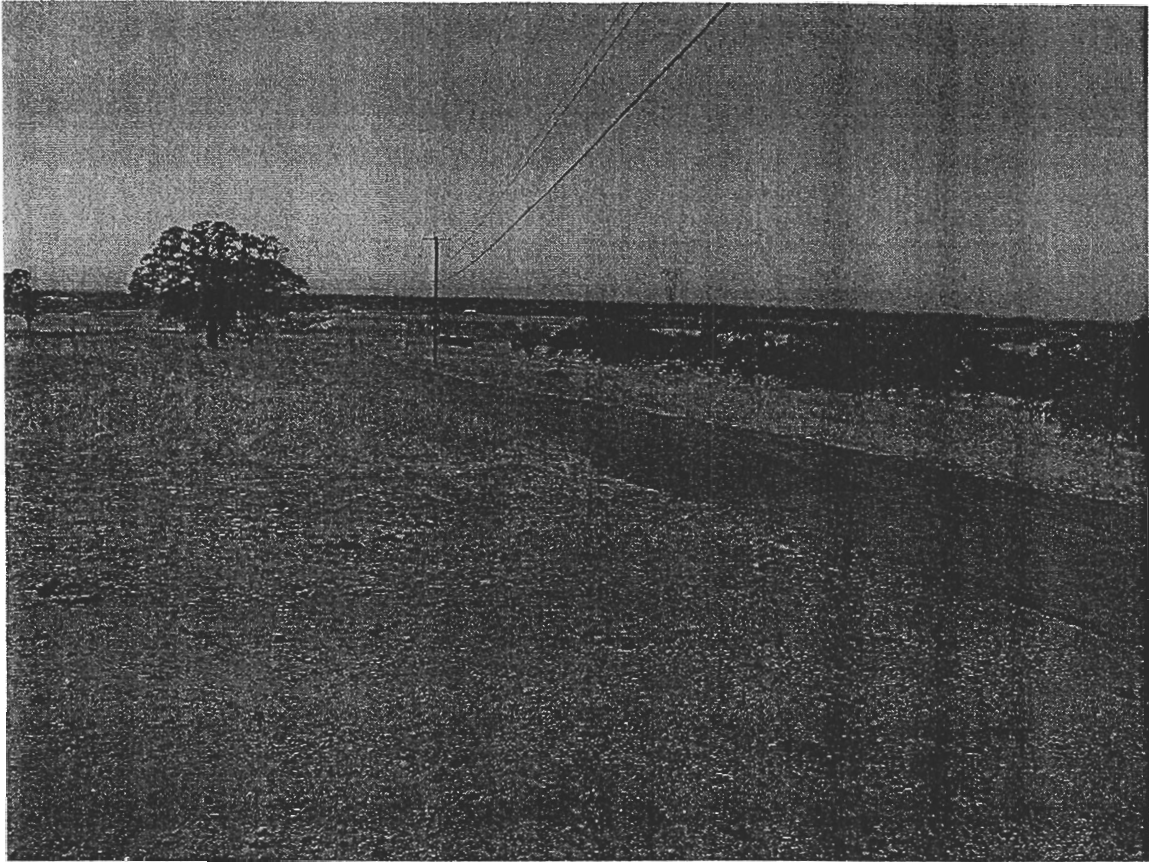
View to west of (left to right) rock wall, OHR, power poles, asphalt surface. Study area is to the right.



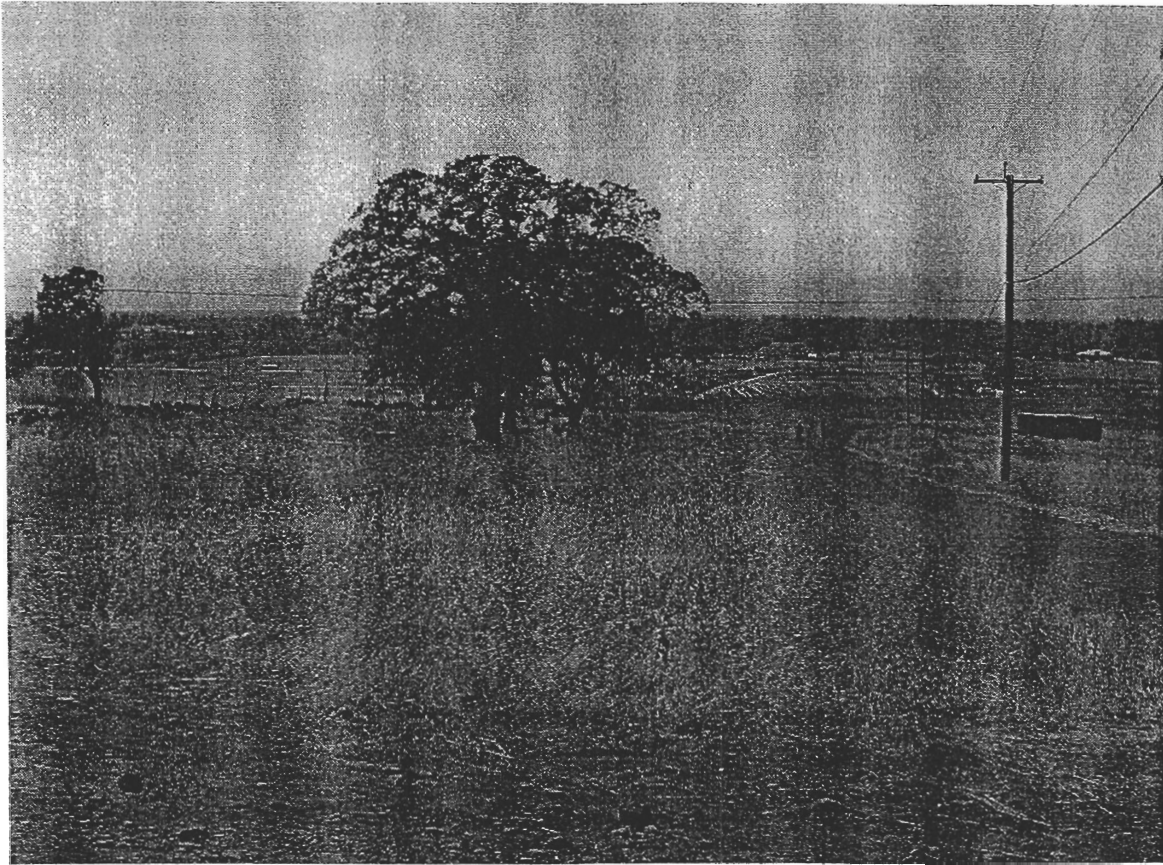
View to west across modern Humboldt Road showing power pole crossing the road, with modern subdivision in the distance.



View looking east showing OHR ruts immediately adjacent to modern asphalt surface. Power poles and lines cross both at this location at lower end of study area.



View to west of modern power poles, transmission line, and asphalt surface. Burn dump is in the background.



View to west of rock wall, location of OHR, modern asphalt surface, and power poles. The burn dump is in the background.



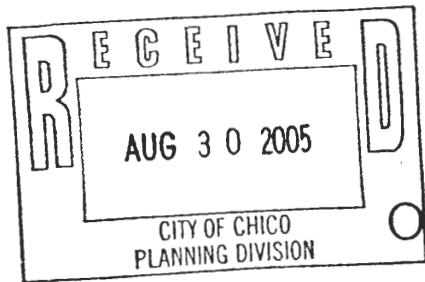
View of modern subdivision adjacent to the study area on the northwest, and transmission line crossing the study area.

"HAND DELIVERED"

RECEIVED

AUG 30 2005

CITY CLERK
CITY OF CHICO



Oak Valley Development

Friends of the Foothills respectfully requests that, at the next counsel meeting on the Oak Valley matter, the mayor starts the session by reading aloud CD-G-2 and LU-G-4 from the Chico General Plan and opens up a discussion that allows all of the counselors to argue their postions based on the interpretation of this and other provisions in the General Plan. We would also like clarity on provision LU-G-4, as it pertains to the elevation of this development.

Thank you

Phil Johnson
 Barbara Vlamijs
 Scott Hodgkinson
 Karen Laslo
 Mac Todenhagen
 Julie Vlasar
 KATHRYN HOOD
 JACKSON SHEDD
 Jackson Shedd
 WAYLAND AUFUR
 John M. Oswald
 JOHN Mertz
 Randy Abbott
 Nita Torres
 Andy L. Tomaselli
 Steven Schuman
 Rachel Oriana Schroeder
 NAN JONES
 Rebecca Herring Resner
 Rick Resner
 Daniel GROER
 Daniel R. Bel

B. Vlamijs
 Scott Hodgkinson
 Karen Laslo
 Mac Todenhagen
 Julie Vlasar
 Kathryn Hood
 Jackson Shedd
 W. B. Lynn
 W. B. Lynn
 Randy M. Abbott
 Nita Torres
 Andy L. Tomaselli
 Steven Schuman
 Rachel Schroeder
 Nan Jones
 Rebecca Herring Resner
 Rick Resner
 Daniel Grover
 Daniel R. Bel

DATE 8/20/05 AGENDA 16/05 COUNCIL 7
 CLK CM/DESK AGM GA RM
 AM ISD PER.D FIN.D DPW
 CDD PLD PK.D COP FC
 OTHER

ATTACHMENT **I**

General Plan information

CD-G-2 Create a clear definition of the physical extent of the city.

Sharpening the distinctions between natural and urbanized landscapes contributes to a sense of place. Natural and physical features, such as creeks, **elevational changes**, orchards and railroad tracks, as indicated in figure 2-3 below, are important elements in creating a clear definition of the physical extent of the city. In the future, portions of Mud Creek, **Little Chico Creek diversion**, Butte Creek, and the transmission line corridor, as well as the foothill on the east and agricultural lands on the west, although not contiguous, will generally define the physical extent of the city.

LU-G-4

Maintain long-term boundaries between urban and agricultural uses in the west, and urban uses and the **hillside in the east**, and limit expansion north and south to maintain compact urban form. The hillside is generally defined as the area **where oak woodland habitat begins**, approximately the **300-foot contour** in all areas, except in the Northeast where it is defined the the 250-foot contour. Multiple approaches to restrict urbanization outside the City's sphere of influence will be used, including large-lot-zoning and possibly acquisition of land for a greenbelt.

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AUG 29 2005

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CITY OF CHICO

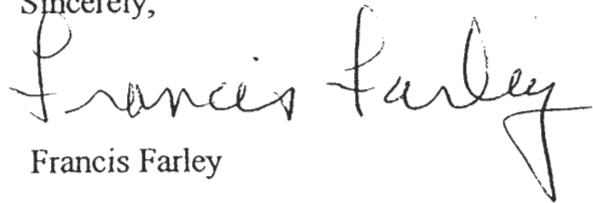
August 26, 2005

Dear Council Members,

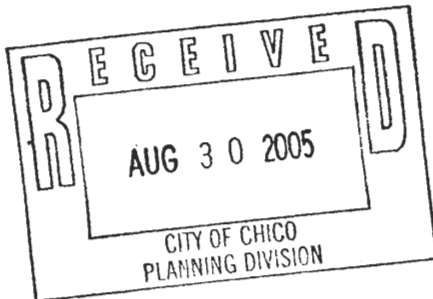
Following receipt of a letter from the Office of Historic Preservation, July 26, 2005, Patrick Murphy sent them a copy of the final EIR concerning the cultural resources of Humboldt Road and a cover letter from JRP Historical Consultants. The enclosed letter reviews those documents.

Thank you again for the extended time and the opportunity to present reviews of the re-circulated and final EIRs.

Sincerely,



Francis Farley



DATE 8/29/05 AGENDA 9/6/05 COUNCIL 7
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**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov
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August 25, 2005

Patrick Murphy, Senior Planner
City of Chico
Planning Department
P. O. Box 3420
Chico, CA 97927

Dear Mr. Murphy:

Oak Valley Subdivision (Chico) FEIR (SCH#1998032048)

Thank you for sending us the FEIR for the above project and the letter dated May 10, 2005 from your consultant, JRP Historical Consultants and for taking the time to discuss the project with us. We have reviewed the documents carefully and after further, additional deliberation, submit the following comments for your consideration.

Firstly, we want to acknowledge that, in general, assessments and evaluations of linear historical resources such as roads, tunnels, canals, ditches, etc., and any kind of circulation features, can be rather challenging because, by far, rather than seeing the resource(s) in its overall setting, often times it is viewed on the basis of feature(s), more as an object, and not in its surroundings, taken as a whole.

Secondly, while we agree that the project does neither demolish, destruct nor alter - therefore does not have a direct impact on the Old Humboldt Road - we disagree with the conclusion that the project will have no substantial adverse change to the historical resources because the Cultural Resource Assessment has not examined the impact of the project on the setting. Moreover, the Cultural Resource Assessment does not approach the evaluation of the resources in its overall context, but rather from an archeological perspective of individual sites thus failing to establish the overall perspective, the framework for the resources.

In general, adverse effect includes but is not limited to physical destruction, damage, or alteration of a landscape for instance, but also isolation from or alteration of the setting or introduction of intrusive elements. While change is often an inescapable part, especially to the continuing use of landscapes and linear transportation features, the effect of continuing use on the resource's integrity depends to a large degree on the overall historic context. A road that has been slightly widened may retain integrity, if its original features such as fences, retaining walls, bridges, etc., and overall alignment remain. But intrusions that can come from new construction or incompatible land use, or growth of residential subdivisions or other activities that reshape the land, introduce major visual intrusions, or disrupt a historic scene, can affect the integrity of the resource, its sense of feeling and place.

Mr. Murphy
August 25, 2005
Page 2

Therefore, we recommend that a third, independent historic resource assessment is conducted. This assessment might include an aerial view of the overall context of the Old Humboldt Road, of State Route 32, etc., in addition to clearly assessing the historical resources in the broader geographical context looking at the land and the natural setting. We believe that after a careful overall assessment of the historical resources and their setting (and as we said initially, that we are aware of the challenges of evaluating linear resources), the effects of the proposed project can also be more clearly determined and appropriate mitigation measures developed.

The National Register Bulletin # 30 *Guidelines for Evaluating and Documenting Rural Historic Landscapes* and Preservation Brief # 36 *Protecting Cultural Landscapes* provide valuable information in general and also for the identification and assessment of linear resources types.

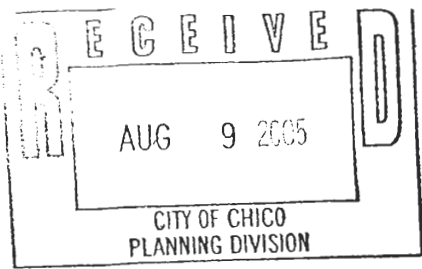
If you have any further questions, please don't hesitate to contact Michelle C. Messinger, Historian II/CEQA Coordinator Local Government Unit at (916) 653-5099 or at mmessinger@parks.ca.gov.

Sincerely,



Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

Cc: Francis Farley



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AUG - 8 2005

CITY CLERK
CITY OF CHICO

August 6, 2005

Dear Council Members,

The attached letter from the Office of Historic Preservation is a review of the Cultural Resource Assessment for the Oak Valley project. Its conclusion of inadequacy echoes the review of the same Cultural Resource Assessment by Amy Huberland in her letter to Planning dated May 24, 2004. I'm attaching that letter as well as a previous letter from her, March 14, 2002, relating to the same issue.

The letters point out the inaccuracies and omissions present in Dr. Jensen's assessment and ask for another EIR addressing the direct and indirect effects of the proposed project on our cultural resources, the wagon ruts and the rock wall.

Ms. Huberland's letters early formed the basis for my contention that the EIR is inadequate, does not comply with CEQA regulations and that a new EIR is required. Michelle Messinger's review confirms all that I have been attempting to make clear to you. I'm grateful that this delay allowed me to do so.

I have already met with Patrick Murphy and Maureen Kirk on a related matter. Patrick dismisses the OHP letter as a difference of opinion among experts, that this is a matter of interpretation. Make no mistake, this is not a matter of interpretation but one of inaccuracies and omissions. Clearly the omissions are questionable and may be the result of ignorance of the process, eg using the wrong guidelines, not addressing all the impacts on the immediate surroundings and not providing written analyses of the indirect effects of those changes on the historical significance of the cultural resources and not providing any mitigation measures to reduce the impact of those substantial adverse changes. Patrick is writing to the consultant asking him to explain his improper use of the guidelines and why he did not include written reports and mitigation measures addressing impact of project on the immediate surroundings of the resources.

At the meeting I thought some compromise might be worked out but I realize that talking about compromise is premature. The fact is you are dealing with an invalid EIR. We don't know to what extent the cultural resources on Humboldt Road are threatened. The obvious next step is to ask for another EIR to complete the process. The OHP letter suggests a new EIR as a separate document that will be a supplement to the current EIR.

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DEPARTMENT OF PARKS AND RECREATION
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July 26, 2005

Patrick Murphy, Senior Planner
City of Chico
Planning Department
P. O. Box 3420
Chico, CA 97927

Dear Mr. Murphy:

Oak Valley Subdivision and Conceptual Master Plan Recirculated EIR # 1998032048

The State Office of Historic Preservation (OHP) has broad responsibility in the implementation of federal and state historic preservation programs in California. We have been contacted by Mr. Francis Farley regarding the above document and are offering the following comments for your consideration.

Reviewing the above document, we find that the *Cultural Resource Assessment* is inadequate. It fails to clearly identify the boundaries of the project, the existing historical resources in relation to the project, and therefore also fails in delineating the potential impacts to the existing historical resources and therefore cannot propose effective mitigation measures required by law to mitigate significant effects.

The document does not cite the appropriate regulatory framework, the California Environmental Quality Act (CEQA); it cites the Public Resources Code section 5020.1 q, in the *Assessment of Potential Change to Old Humboldt Road, Introduction*. This is incorrect. CEQA Sections 21000 et seq, which is part of the Public Resources Code (PRC) and the CEQA Guidelines, the regulations that govern the implementation of CEQA, are to be used. The CEQA Guidelines are codified in the California Code of Regulations (CCR), Title 14, Chapter 2, Sections 15000 et seq. and are binding on state and local public agencies.

The first step of any cultural resource analysis is to establish the existing conditions, the precise area of the project and whether historic resources exist in the described area or in its immediate surroundings. Once the existing conditions have been established, the next step is to determine the potential project-related impacts to historical resources as defined in CEQA Guidelines § 15064.5. Finally, mitigation measures for the project are discussed and proposed and the level of significance after mitigation is discussed. While an historical resource must be evaluated against the California Register of Historical Resources Criteria to establish the significance and integrity of a resource, the goal of CEQA is to make sure that informed decisions can be made by the city council regarding a planned project and the impacts this project will have on the environment.

Therefore, the *Introduction* of the above document should have stated, pursuant to CEQA Guidelines § 15064.5 (b) that "a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment." Subsection (1) clearly defines such effect on the environment as "substantial adverse change in the significance of an historical resource [meaning] the physical demolition, destruction, relocation, or alteration of the resource **or its immediate surroundings** such that the significance of an historical resource would be materially impaired." Pursuant to CEQA, the statutory definition of a "project" is an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Public Resources Code 21065; CEQA Guidelines § 15378) Furthermore CEQA says effects or impacts to be analyzed include "direct or primary" effects and "indirect or secondary" effects which are caused by the project and are related to physical change. (CEQA Guidelines § 15358)

The above cultural resource assessment fails to look at the whole of the resource and is focused on individual parts, almost like examining individual artifacts, rather than the resource in its entirety, its setting and its surrounding. The document refers to wagon ruts, rock walls and to the Old Humboldt Road among other things but is unclear, also in its documentation where the historical resources are in relationship to the planned project. The document does neither address the direct and indirect physical changes in the environment nor does it address the primary and secondary changes to the environment.

Therefore, the impact to the historical resource cannot be clearly determined. The document is leading with a conclusion without establishing proof, how it arrived at this conclusion. It states, "Change in setting will not result in Old Humboldt Road ceasing to be eligible for CRHR. As noted above, CEQA states that a substantial adverse change [to a historical resource] includes demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired. The proposed project will have none of those effects. However, it will involve a change in the setting to the resource."

However, change to the "immediate surroundings" of a resource does constitute an impact under CEQA and this impact needs to be adequately addressed, clearly established and mitigated, and any cumulative changes to a historical resource need to also be clearly established and addressed. "Loss or relocation of a few features usually does not affect overall historic integrity, but the repeated loss of buildings, or structures, or roadways, and small scale elements, as well as gradual changes to boundaries and land use, may cumulatively destroy integrity. New construction and incompatible land uses covering extensive acreage – such as residential subdivision, . . . refuse dumps and land fill, limited access highways and their interchanges – cause the greatest damage. Not only do they introduce mayor visual intrusions, and interrupt the continuity of a historic scene, but they reshape the land, disturb subsurface remains, and introduce a-historical characteristics." (National Register Bulletin # 30, Guidelines for Evaluating and Documenting Rural Historic Landscapes, page 24)

In summary, therefore we highly recommend that a separate, independent cultural resources study be commissioned either as part of a new EIR or as a separate document that thus becomes a supplement to the current EIR. This new, independent study should very carefully apply the regulatory framework of CEQA and examine **ALL** impacts on the historical

resources, direct and indirect changes, and design mitigations measures that **DO** mitigate all significant impacts below a level of significance. CEQA is quite clear that mitigation measures that do not truly reduce or avoid the impact to the significant historical resource are inadequate under CEQA. Mitigation measures must be made fully enforceable through permits, conditions, agreements and other measures. (CEQA Guidelines § 15064. 5 (b) (3-5) and have to be clearly spelled out. If mitigation cannot occur, if there are unavoidable significant impacts, this must be clearly stated in the EIR and then has to be adopted by a City Council as such when the final EIR is approved.

After all, the purpose of CEQA is to maintain a high-quality environment now and for the future and to provide the decision makers of local agencies with the appropriate facts to make informed decisions for their planned projects. The above document fails in this attempt.

If you have any further questions, please don't hesitate to contact Michelle C. Messinger, CEQA Coordinator Local Government Unit at (916) 653-5099 or at mmessinger@parks.ca.gov.

Sincerely,



Michelle C. Messinger
Historian II
CEQA Coordinator Local Government Unit

cc: Francis Farley

Northeast Center of the
California Historical Resources
Information System

BUTTE
GLENN
LASSEN
MODOC
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SHASTA

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Phone (530) 898-6256
Fax (530) 898-4413
neinfoctr@csuchico.edu

Second EIR incorrect, inadequate - request third EIR

May 24, 2004

Mr. Patrick Murphy, Senior Planner
City of Chico Planning Division
P.O. Box 3420
Chico, California 95927

Re: Programmatic Draft EIR for the Oak Valley Conceptual Master Plan and Project
Specific Draft EIR for the 43-acre Portion of the Subdivision (EIP Associates 2004).

Dear Mr. Murphy,

On April 20th, 2004, local resident Frances Farley brought to my attention potential problems with the Cultural Resources section of the above-referenced EIR. Since our office had not received a copy of the EIR for review, he provided us with a copy. I would like to offer the following comments regarding the Cultural Resources section and the Historic Resources Inventory and Evaluation Report, Humboldt Road (Herbert and Jensen 2002). I have also enclosed excerpts from a report by Trudy Vaughan describing the National Register status of the road.

As we discussed in our April 21st telephone conversation, I also have some concerns over the inclusion of the archaeological site record for CA-BUT-892H (Humboldt Road) in the EIR. The record describes archaeological features including wagon ruts, rock walls, and historic refuse deposits, and clearly depicts their locations on topographic maps. Because of their sensitive nature, the locations of archaeological resources are considered confidential information and should not be included in any public documents. Further, in order to receive a copy of the site record for CA-BUT-892H from our office, historical resource consultants Peter Jensen and Rand Herbert were required to sign an "Agreement of Confidentiality" which clearly states that the recipient "...agree[s] to respect that confidentiality by not disclosing specific site locations to unauthorized individuals or in publicly distributed documents." Please remove the archaeological site record for CA-BUT-892H from the subject EIR. Also, please remove Jensen & Herbert's "Figure 1" that is a topographic map depicting the exact locations of features (ruts and rock walls) associated with CA-BUT-892H. There is no reason that this map or the site record needs to be included in the EIR. Further, including the locations of sensitive archaeological features or sites in a public document is a violation of the CHRIS (California Historical Resources Information System) Confidentiality Agreement.

My comments on *Historic Resources Inventory and Evaluation Report, Humboldt Road, Chico, Butte County, California* (Herbert and Jensen 2002) follow.

1. On page 8 of the report, the authors state "(.the setting has already been affected by construction of the modern asphalt automobile road (SR47).)" In her evaluation of other portions of CA-BUT-892H, archaeologist Trudy Vaughan states in her report *Archaeological Inventory Survey Report and Site Evaluations for 18 Bureau of Land Management Parcels in Butte County, California* that "...the realignment of the C&HWR [Chico and Humboldt Wagon Road] first as Route 47 and then as Highway 32 is considered to be part of its history rather than a negative impact to the property" (1996:31; see enclosed). In fact, SR47, built in 1933, is also a historical resource that should be addressed in Rand & Jensen's evaluation report. Portions of SR47 have been recorded and are listed in our office as CA-BUT-1493H.

inaccurate

2. On page 8, the authors also state "(.the wagon ruts of the Old Humboldt Road do not appear to be directly related to the construction and use of the old road...)" and later "...the ruts are not currently listed in the City's list of historic resources." The lack of listing on a local level is also mentioned in the Cultural Resources section of the EIR (page 4.11-7) where it is stated further "(The Project would have no direct physical impact on Old Humboldt Road, the wagon ruts, or the rock wall. In addition, these features are not considered to be historically significant. Implementation of the Project would not result in Old Humboldt Road becoming ineligible for the CRHR.)"

inaccurate

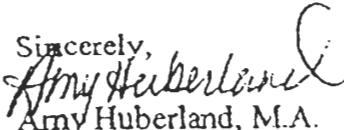
inaccurate

In actuality, it is precisely the wagon ruts that are considered one of the contributing elements that make Old Humboldt Road eligible for listing on the National Register. The extant ruts, swales, and rock wall retaining features are virtually all that is left of Humboldt Road anywhere along its length. Our office maintains files including documentation of additional segments of CA-BUT-892H outside the current project area. In both these records (Jensen 1998; Vaughan 1996), recorded wagon wheel ruts and rock retaining walls are considered significant features of CA-BUT-892H.

Humboldt Wagon Road, CA-BUT-892H, is listed as eligible for the National Register of Historic Places and is eligible for the California Register of Historic Resources. Whether or not this archaeological site is listed in a local city or county inventory does not change its status in terms of significance under CEQA.

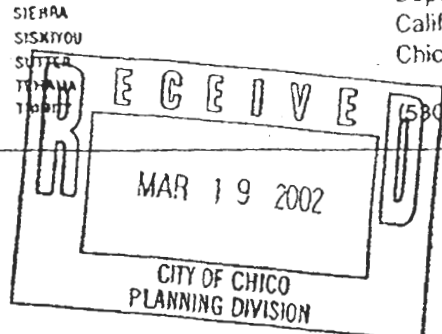
In conclusion, I appreciate the opportunity to comment on the Oak Valley Master Plan EIR, and hope that our comments will be considered during your review period. I would offer the following recommendations: (1) the extant portion of SR47 (Humboldt Road) within the project area should be recorded and evaluated; and (2) those portions of Humboldt Road considered to be elements contributing to its significance under CEQA (e.g., wagon ruts and construction features) be evaluated in terms of direct and indirect effects of the proposed project. In addition to the site's archaeological and historical significance, I am sure you must be aware that many long-time residents in the Chico vicinity consider the wagon ruts important.

For your information, the Northeast Information Center of the CHRIS is under contract with the State Office of Historic Preservation (OHP) to maintain archival data for archaeological and historical resources within its 11-county jurisdiction on behalf of OHP, and to provide this information to qualified individuals and agencies on a legitimate need-to-know basis, subject to confidentiality restrictions. If you require additional information concerning the CHRIS, it is available on the OHP website at www.ohp.parks.ca.gov. We would also appreciate being included on your review list in the future (please send us EIR's and Initial Studies for review).

Sincerely,

Amy Huberland, M.A.
Assistant Coordinator

Cc: John Thomas, Office of Historic Preservation
Cindy Woodward, Office of Historic Preservation
Michael Magliari, Public History Program, California State University Chico

BUTTE
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SHASTA



(530) 898-6256



March 14, 2002

Ms. Pam Figge
City of Chico
411 Main Street, 2nd Floor, Planning Division
Chico, California 95928

① consultants should have gone to to research the
historic/archeologic sites in the area.

Re: Oak Valley Subdivision and Master Plan
Applicant: Fogarty

I.C. File # R02-5

Dear Ms. Figge,

Amg appalled at the lack of historical stuff
on part of the consultants

As we discussed in our March 11th telephone conversation, it has come to our attention that significant cultural resources may be located within a project currently under review by the City of Chico, namely the Oak Valley Subdivision and Master Plan (Applicant: Fogarty). Specifically, a portion of the historical Humboldt Wagon Road is known to be located within the project area. As we understand, proposed road construction slated for this project may impact this recorded archaeological site, CA-BUT-892, which has been determined eligible to the National Register of Historic Places and the California Register of Historical Resources.

Humboldt Wagon Road, completed in 1865, linked Chico to the Honey Lake Valley. John Bidwell initiated construction of this road in an effort to capitalize on mining strikes in Idaho and Nevada and to improve transportation in the Butte County area. During the 1860s, the Humboldt Wagon Road gained importance as a lumber transportation route. Agricultural products were transported from Chico to the mines via the Humboldt Road, and the route became popular among summer tourists traveling to the mountain resorts at Butte Meadows, Jonesville, and Prattville. In 1898 the Chico and Humboldt Road became a public road. In 1935, Deer Creek Highway (State Route 47) was completed, following the same approximate route of the old wagon road. The road was subsequently renamed State Route 32, and between 1955 and 1970 the highway was realigned and modernized.

While portions of this historical resource have been impacted by road reconstruction and other modern developments, our records for CA-BUT-892 indicate intact wagon ruts and rock retaining walls may be located within the Oak Valley Subdivision project area. Additionally, as mentioned above, this site has been determined eligible to the National Register of Historic Places (ADOE-04-97-003-00), and is also considered significant under

CEQA

establishes the historical significance of resources

① a real education for Planning Dept.
recommendations

Due to the fact that the Oak Valley Subdivision project area is highly sensitive in terms of its potential for both historic and prehistoric archaeological sites, we offer the following recommendations:

- (1) The City of Chico or the applicant should file for a complete record search (project review) for this project with the Northeast Information Center. The record search would identify all known cultural resources within the project area, and would determine which portions of the project have been previously subjected to an archaeological survey.
- (2) The applicant should hire a professional archaeologist to conduct a field survey of any areas not previously inventoried that are within the Oak Valley Subdivision project area. Any road construction slated for this project also would also require a field survey.
- (3) The applicant and/or the City of Chico should hire a professional archaeologist to determine the integrity and significance of those portions of the historic Humboldt Wagon Road (CA-BUT-892) that may be located within the Oak Valley Subdivision project area or within any road construction right-of-ways associated with this undertaking. The project archaeologist would be able to work with the applicant and the City to determine avoidance or protection measures for any significant portions of CA-BUT-892 or any other cultural resources within the proposed project area.

We appreciate your concern in preserving California's cultural heritage. If you have any questions regarding these recommendations, please feel free to contact me at the NEIC.

Sincerely,

Amy Huberland

Amy Huberland
Assistant Coordinator

"HAND LIVERED"

JUL 25 2005

7-25-05

CITY CLERK
CITY OF CHICO

Dear Council Members,

After reading these additional notes, I believe you will be far enough along in your understanding of the serious flaws in the EIR that you can consider the next step, looking at a solution.

A proper EIR complies with CEQA regulations and guidelines. It should: (1) Analyze the impact of a project on the historical resources. What are the direct effects of road construction on the historical resources, the wagon ruts and rock wall? Does the impact destroy, demolish, relocate or alter the resources to the point where the historical significance of the resources is impaired? Will that impairment cause the resources to lose their eligibility for entry in state and national historical registers? And, the EIR should also: (2) analyze the impact of a project on the immediate surroundings (the setting) of the resources. What is the indirect effect (on the resources) of road construction adjacent to the resources? Does destroying, demolishing, relocating or altering the immediate surroundings of the resources (bike path and heavily traveled collector road, etc.) have the effect of impairing the historical significance of the resources? And does that impairment threaten the resources' eligibility for entry in state and national historical resources?

If these substantial adverse changes - causing a loss of historical significance- are present, then the impact must be mitigated, reduced to a less than significant impact. Substantial adverse changes require written reports - evidence that the impacts to the resource or its immediate surroundings have been addressed. The above is not a wild interpretation of CEQA 15064.5. The words flesh out the guidelines, sticking to the basic tenets of the guidelines.

The present EIR does not address the indirect effects of road construction in and on the immediate surroundings of the wagon ruts and rock wall. There are no written reports to indicate that impacts to setting were addressed. The only change to setting acknowledged in the EIR is, ".....construction of the subdivision immediately across the old road." Dr. Jensen calls this a "visual impact" that would be "a substantial change to the setting." The change "would not result in a change of eligibility" and could be mitigated by "a buffer of trees." Further, the EIR states "the project would have no direct physical impact on the road." Dr. Jensen ends there, addressing direct impacts only and the lone visual impact.

Had the EIR also addressed the indirect impacts, a completely different conclusion would have been reached. "The many changes to setting - collector road, traffic, bike path, side roads, power line removal, etc. (some of these are future changes that will affect the immediate surroundings and should have been considered) would very likely cause the cultural resources to lose their historical significance." It would then be up to the Planning Department to come up with mitigation measures that would reduce the impact to a "less than significant impact."

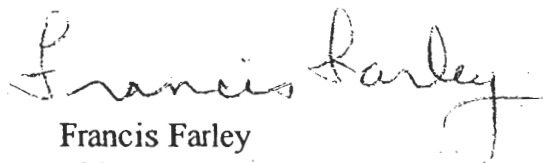
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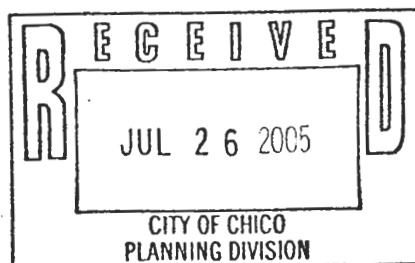
Patrick Murphy is telling you that the EIR protects the wagon ruts, that they won't be paved over, that there will not be a direct physical impact. He is not telling you that the (missing) indirect effects of changes to setting will destroy the wagon ruts just as surely as though the ruts had been paved over. Without historical significance, the resources are worthless. Ask Patrick to point to any reports in the EIR that seriously address impacts to setting and the indirect effects of those impacts on the cultural resources. Ask him why this important provision of CEQA guidelines, "alteration of the resource's immediate surroundings," is missing from the EIR. You should also ask the City Attorney to look at the omission.

You're dealing with an invalid EIR. Rather than ask for another EIR, the third!, there is a simple solution. Planning can move the collector road slightly to the north and scrap the bike path. Allow a modest buffer zone, 30 feet, 50 feet?. between the edge of Humboldt and a narrower collector road of twenty feet. The new collector road can parallel Humboldt Road for at least a half mile or so before the land becomes too steep. The collector road will then turn north and join the internal roadways of the project. Such an arrangement will not impair the historical significance to any serious degree, especially if a buffer of trees can be placed on both sides of the setting. The old road can continue to be used as a bike/pedestrian path.

Humboldt Road should be allowed to await development to its full potential by the people of Butte County. It will be a unique, open space in the midst of developments. Eventually, it will be a linear park, a historic park, "Humboldt Road Historic Park", Chico's Appian Way.



Francis Farley
70 Rose Ave.
Chico, CA 95928
343- 1453
Francisx@shocking.com



JUL 05 2005

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CITY OF CHICO

The basis for my contention that the EIR, as it relates to historical resources, is not in compliance with CEQA guidelines is found in the following documents - all part of the record in your possession: (Oak Valley Appeal, Attachment B)

*HAND DELIVERED

Amy Huberland is the Assistant Coordinator for the Northeast Center of the California Historical Resources Information System here in Chico. As an archeologist and historian she has surveyed many of the archeological and historical sites here in Northern California including Humboldt Road and the rock wall. CEQA requires consultants to work with Ms. Huberland when researching the location of cultural sites that may be impacted by building projects.

(Attachment C) Ms. Huberland was asked to review the first EIR and noted the absence of historical research and failure to address impacts of the Project on the cultural resources found on Humboldt Road.

(Attachment D) Her letter to Pam Figge recommended a record search and field survey with an emphasis on impact of any road construction in the vicinity of the wagon ruts and rock wall.

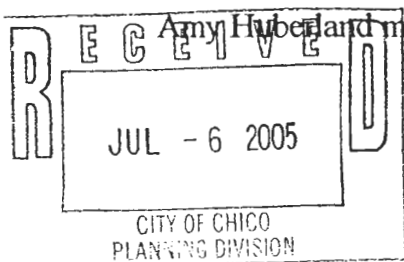
(Attachment F) Scope of Consultant Services directed Dr. Jensen to supply the missing historical resource search and to evaluate any impact of road construction on the segment of Humboldt Road in question.

(Attachment G) The draft EIR omits a key provision of CEQA guidelines relating to indirect impacts to resources. The EIR fails to address the many changes to setting that affect the resources except for a report of visual impact to the setting and assurances that there will be no direct physical impacts to the wagon ruts.

(Attachment H) Ms. Huberland reviewed the second EIR and again wrote to Planning with her concerns about the inaccuracies and omissions. She recommends an additional survey, "...wagon ruts and construction features (the rock wall) be evaluated in terms of direct and indirect effects of the proposed project."

Planning made several weak responses to the letter, decided against a third EIR and to go with this flawed, invalid EIR.

Amy Huberland may be reached at: California Historical Resources Information System
California State University, Chico
Building 25, Suite 201
Chico, California 95929-0377 898-6256



Francis Farley
343-1453

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JUN 28 2005

CITY CLERK
CITY OF CHICO

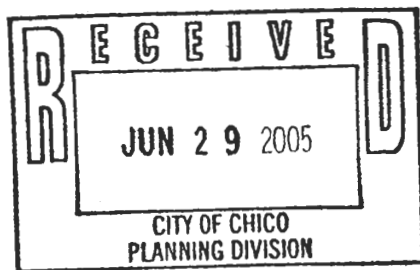
Humboldt Road is the perfect setting for our unique cultural resources, the wagon ruts and the rock wall. Both of these features are significant under CEQA, i.e., they pass the means test in CEQA regulations qualifying them for entry in state and national historical registers. As such, they are "protected" against any loss of historical significance as a result of impacts to either the resource or the resource's immediate surroundings, the resource's setting. A loss of historical significance could cause the resource to become ineligible for entry in state and national registers.

CEQA guidelines ask if impacts to the resource or to the setting have the direct or indirect effect of destroying the historical significance of the resource. If so, the impact must be mitigated to a less than significant impact. In our case, the most important provision of CEQA guidelines is the one relating to the many direct changes to the setting, collector road, bike path, etc., which in turn have an indirect effect on the historical significance of the ruts and the wall. The provision states: "Substantial adverse change in the significance of an historical resource means physical (demolition, destruction, relocation, or) alteration of the resource's immediate surroundings, such that the significance of an historical resource would be materially impaired."

It appears that the consultant omitted this key provision. It is not part of his analysis nor is it quoted in his introduction, p. 8. If the Oak Valley EIR had truly complied with CEQA, the EIR would include reports of all the changes to setting which would have some effect on the historic significance of the resources. No such written reports appear, except for a report of a "visual impact" and "no direct physical impact" to the ruts." Nor are there mitigation measures for the many changes except for a "buffer of trees" to take care of the visual impact of the subdivision.

The project should not proceed until there is a legal EIR or until the collector road can be repositioned.

Changes to setting (immediate surroundings): collector road



- collector road traffic
- bike/pedestrian path
- side roads (south)
- traffic on side roads
- removal of power poles from setting
- power lines underground in setting
- visual impact of subdivision

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FRANCIS FARLEY
 70 ROSE AVE
 CHICO, CA 95928
 343-1453
 francis@chicobk.ca.gov

Chico City Council,

The illustration is not a before and after picture of Humboldt Road. One scene is the result of an EIR that complies with CEQA regulations. The other is what will occur if Dr. Jensen's EIR is approved. Dr. Jensen, an archeologist, mistakenly bases his entire analyses of impacts to resources and setting, not on CEQA guidelines, 15064.5, but on the definition of a "substantial adverse change", PRC 5020.1 (q).

In Dr. Jensen's EIR, the wagon ruts are not paved over but the cumulative changes to the immediate surroundings (the setting) has the indirect effect of seriously impairing the historical significance of the wagon ruts and the rock wall. Such a change is called a "substantial adverse change" and requires mitigation measures to reduce the impact to a less than significant impact. A loss of historical significance would cause a resource to become ineligible for entry in state and national registers. The only acknowledgments of impacts Dr. Jensen mentions is "a visual impact", "the road (Humboldt) will be widened" and there will be "no direct physical impact", the wagon ruts will not be paved over.

The entire point of CEQA safeguards is to protect our cultural resources from a loss of historical significance and from becoming ineligible for historical registers. Dr. Jensen's EIR allows these changes and losses to occur by not complying with CEQA guidelines. He ignores one of the most important CEQA provisions (in our case) which is, "Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation or alteration of its (the resource's) immediate surroundings such that the significance of an historical resource would be materially (substantially) impaired."

An EIR requires written reports of changes that might impair a resource's historical significance. No such reports appear in Dr. Jensen's EIR. His use of less than complete guideline language inadvertently subverts the intent of the California Environmental Quality Act which is to protect the natural and cultural resources of the people of California. The EIR is invalid.

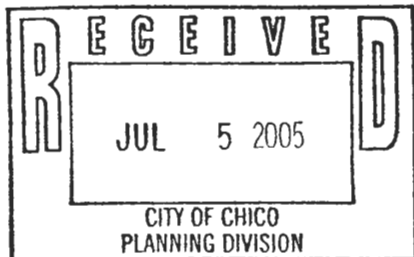
Francis Farley
70 Rose Ave
Chico Ca 95928

343-1453
e-mail: francisx@shocking.com

From: "Steve Kasprzyk" <c21falconer@sunset.net>
 To: <dpresson@ci.chico.ca.us>
 Date: 7/1/2005 12:32:18 PM
 Subject: council email from website

I AM VERY CONCERNED ABOUT THE OAK VALLEY SUBDIVISIONS POTENTIAL ENCROACHMENT UP INTO THE FOOTHILLS. THE NAME IS OAK VALLEY, SO WHY NOT HAVE THE HIGHER DENSITIES AT THE BOTTOM AND LEAVE THE FOOTHILLS ALONE.

MOST OF US HAVE COME FROM OTHER AREAS THAT HAVE BEEN RUINED BY POOR PLANNING AND DEVELOPMENT. ARE WE GOING TO RUIN THIS AREA TO? STEVE KASPRZYK, CENTURY 21 JEFFRIES LYDON, 899-5932



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July 5, 2005

City Council
City of Chico
Chico, CA 95928

RECEIVED
JUL 05 2005
CITY MANAGER
CITY OF CHICO

RE: Wagon Wheel Ruts along Humboldt Road, Chico

As a descendent of the "men-of-the-whip", who drove the freight wagons from the Sacramento Valley to the Honey Lake-Susanville area, I strongly urge the Chico City Council to protect our history and the ruts that were created from the wheels of thousands of heavily loaded wagons. These ruts were left in the lava rock along Humboldt Road between Bruce Road to Highway 32.

In that same area, our present General Plan calls for a Class #1 bike path to be constructed between the ruts and the rock wall that run parallel with Humboldt Road. And since City Staff has to follow the General Plan exactly, the integrity of the ruts could be compromised. I recently viewed the ruts, again, to help me analyze how the plan can be followed without disturbing the ruts and the rock wall, and I honestly do not see how it is possible. As you know, construction of a Class #1 bike path requires almost as much preparation and finishing as a roadway. In many different locations, the space between the ruts and the rock wall is so small that this is a disaster waiting to happen. By the time a grader and paver gets finished, the rock wall and the ruts could both be destroyed.

City Staff assured me that they will oversee the entire project – step by step, but let us be serious, if it has to be watched that closely, trouble is waiting. Of course, if something does happen, it can always be said that the contractor did it. I am not interested in pointing fingers or finding someone to blame, I just want the ruts and the rock wall protected.

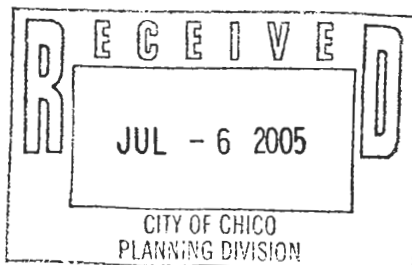
I suggest a compromise. The bicyclists can use the paved roadway and our history can be protected. I respectfully request that you amend the General Plan to remove the requirement of a Class #1 bike path between the ruts and the rock wall along Humboldt Road between Bruce Road and Highway 32.

Thank you for your attention to this matter.

Sincerely,

Mary Andrews

Mary Andrews



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From: "Steve Kasprzyk" <c21falconer@sunset.net>
 To: <dpresson@ci.chico.ca.us>
 Date: 9/8/2005 12:14:20 PM
 Subject: council email from website

I WOULD LIKE TO APPLAUD THE CITY COUNCILS DECISION TO TRY AND STOP THE DEVELOPMENT UP INTO THE FOOTHILLS BY NOT ONLY FORGERTIES PROJECT BUT ANY DEVELOPERS.

MOST OF US HAVE COME FROM AREAS THAT WERE RUINED BY POOR PLANNING AND A GOOD EXAMPLE OF THAT RIGHT HERE IS THE HOMES THAT WERE ALOUD TO BE BUILT ON THE RIM OF UPPER PARK. THANK YOU, STEVE KASPRZYK CENTURY 21 JEFFRIES LYDON, 899-5932

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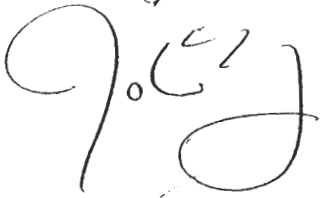
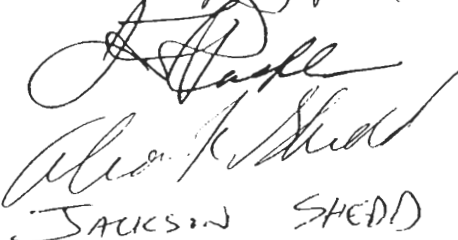
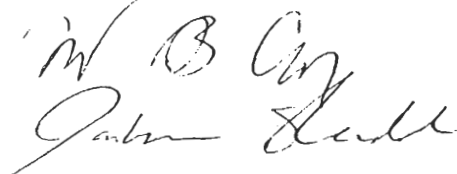
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CITY CLERK
CITY OF CHICO

Dear City Council

Thank you very much for taking the current change of direction on the Oak Valley issue. We understand the frustration that this is causing some members of the council and staff, but we feel that you have made a wise decision to rethink the upper boundry limits of this project. The Planning Commision made a huge mistake by not adopting the "environmentally superior alternative 3"(a postition that we still think is the most appropriate for this parcel). Removing all units from Lot Q will be an important step towards containing foothill sprawl. Please do everything that you can to save the priceless beauty of our remaining foothill viewshed.

Thank you,
Altacal Audubon Society
Butte Co.

Phil Johnson	
Kathryn Hood	
	
JACKSON SHEDD	

P.S. We will do our part to streamline the upcoming public comment period.

SEP 14 2005

9/14/05

CITY CLERK
CITY OF CHICO

Dear Sirs: To Whom it may concern,

My concerns for the proposed Oak Valley Development Project are these.

Large developments of course take Chico's beautiful open land and wildlife. I know that growth is inevitable, but too much, too soon may not be good for our city.

Maybe fill in gaps within before taking more open space.

I love the open area that Chico has and would truly like to see it preserved.

Thank You,

E. Papin

Resident

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No return address on letter or envelope

Reg Oak Valley Dev

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SEP 14 2005

CITY CLERK
CITY OF CHICAGO

Please modify Project to
transfer 80 residential units
from lot Q to other locations

This is a historic site & needs to be
preserved

Thank you -

Carole Cleary 5349590

DATE 9/14/05 AGENDA Adopt¹ COUNCIL 7
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MEDIATION LAW OFFICE
CONFLICT RESOLUTION SPECIALIST

JON LUVAAS, MEDIATOR
Counselor at Law
Mediation, Arbitration, Consulting

P.O. Box 3276, Chico, Ca 95927
341 Broadway, Room 211
(530) 343-4934 Fax 899-7634

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SEP 14 2005

CITY CLERK
CITY OF CHICO

September 14, 2005

To the Chico City Council
Re: Oak Valley Project

Dear Councilors:

I'm writing to highlight why I opposed portions of this project when it was heard by the Planning Commission and to urge you to reduce development at the upper elevations, as I sought to do.

On balance, in weighing conflicting General Plan policies, I would have approved the 43 acre portion and the Master Plan from Bruce Road up to Lot G, in spite of non-compliance with some General Plan and Title 19 foothill development standards. Above that point, stricter limits are needed to reduce impacts to the foothills, urban sprawl, traffic hazards, housing costs, and public maintenance costs.

As a compromise measure, I believe you should at least eliminate development from the area designated Lot Q for several reasons:

1. General Plan Inconsistency: Although the General Plan Land Use Map designates the land for development, the Plan's policies say how and where development will occur. Policies repeatedly emphasize clustering development out of visible areas at higher elevations and shifting it westerly to lower elevations. If one reads these policies together with the General Plan's core policy of keeping a compact urban form to reduce sprawl and traffic, one must conclude that the uppermost area can't be developed as proposed.
2. City Code: To implement the Fogarty property General Plan policies, City Land Use and Development Regulations were amended to add Section 19.52.070 D.2, b.(2)(a), which specifically requires the City to:
"Transfer and cluster development to lower elevations of the site and cluster development at higher elevations to the least visible areas..."
3. Clustering to a "least visible area" is physically impossible on Lot Q, except perhaps the lowest 20 feet of elevation in the southwest corner north of the creek (up to about the 510 foot elevation line, 2 contour lines up), where about 2-3 acres are partly screened by the hillside. That area might accommodate up to 6 clustered lots, but trees would be lost and rooftops and lights would be visible from town, SR32, and upper Humboldt Road's historic area. Anywhere above about 510 feet would be the most visible location on the entire property.
4. Public Safety: If Lot Q is built, circulation requires an outlet onto upper Highway 32, which CalTrans will restrict to right turn exits. Illegal left turns or U-turns will be the norm, into high speed downhill traffic.
5. Housing Needs: There is no significant need for high-priced half-acre or acre view lots, especially contrasted with the critical need for affordable small and multi-family homes. Housing needs will be met only by shifting densities from large view lots to affordable homes in the west.

6. Sprawl Buffer Needed: To discourage further easterly sprawl and development at high elevations on the Drake properties north and south, the upper area must be preserved as an undeveloped open space buffer.

7. Protecting Humboldt Historic Resources: Without development on Lot Q, upper Humboldt Road's historic, scenic, and recreational resources can be preserved in their natural surroundings. This serves a far greater, long-term public good than expensive view lot housing for a fortunate few. It also should relieve the developer from the cost of widening that part of the road.

8. Preserving the Upper Area is Not a "Taking": A taking occurs only when an existing parcel is denied all economic use, but no parcel Q exists today. The land presently owned by Mr. Fogarty will receive substantial economic use, if not on the portion he wants divided out as Lot Q. Since he will have major use of other parts of the current parcels, there is no taking. For other good reasons, the City is also requiring creekside greenway open space preserves and restricting toxic fill areas from development, which also is not a taking for similar reasons.

The RS-20 zoning in the upper area gives no guarantee or entitlement of development there because no parceling or entitlements have been granted and the zoning can still be changed to open space or other use.

9. If "taking" still remains a concern, other options would eliminate any possibility of it:

a. Create Lot Q, with a concurrent change of its zoning to O-S, in order to comply with General Plan policies to avoid loss of foothill viewshed and the predominant sense of open space. The area could then be dedicated to or purchased by the City as a foothill preserve.

b. Or merge Parcels P and Q into a single parcel, while restricting development to below the proposed P-Q boundary line and designating the area above as a "no build" area. Assign ownership of the "no build" area to one or more of the new parcels created when the area is later subdivided, or require that it be dedicated to or purchased by the City.

c. Preserve the applicant's expectation of building 16 to 80 units in the upper area by granting him a transferable density bonus of 16-80 units at another location. The density of Lot P cannot be increased without significant impacts on views. So it seems wise to designate specific locations to receive added density, which could include several of the R-2, R-3, or CC areas. The least constrained areas are in CC zoning, which can accommodate far more than 16-80 units. Housing Element policy H-I-12 particularly supports housing above commercial to improve affordability without wasting land.

Respectfully submitted,



Jon Luvvaas

Rural Consulting Associates

Land Development • Entitlements
Project Management

70 Declaration Drive, Suite 101
Chico, CA 95973

(530) 899-9849
FAX (530) 891-3690

September 9, 2005

Mayor Scott Gruendl
City of Chico
P.O. Box 3420
Chico, CA 95927

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CITY OF CHICO

Re: **OAK VALLEY PROJECT**

Dear Mayor Gruendl,

As you might imagine, the owners of this property (and probably everyone who desires a greater supply and variety of housing in Chico) were extremely disappointed by the vote of some members of the Chico City Council at your meeting held on Tuesday, September 6, 2005. I would like to make some points for you and your colleagues to consider prior to the September 20, 2005 Chico City Council meeting.

I began working with Tom Fogarty in the early 1990's, soon after Tom purchased the property, including the 80-acre area now known as "Parcel Q" at the eastern end of the project site. At that time, this parcel had been General Planned and Zoned R - 1, for up to 560 single-family homes, for many years. Tom immediately planned for clustering of homesites on Parcel Q, and building less than the maximum number authorized, to allow for more open space on this beautiful part of the property. Tom's partner Ildo Rosellini purchased Parcel Q, even though it was at the far eastern end of the City, at the City's request, so that its added acreage would support formation of the Southeast Chico Sewer Assessment District, which was necessary to extend infrastructure to the entire surrounding area in implementation of the General Plan. Needless to say, Tom has fully paid all of the special assessments for infrastructure levied against parcel Q.

We have been very patient for over a decade, because the city requested us to delay filing of project applications until the Humboldt Road (Chico Municipal) Burn Dump was remediated. We are all familiar with this issue, but it delayed for many years the filing of a subdivision map for Oak Valley. Now, after filing applications for project approval seven (7) years ago, and waiting while it took several years to prepare an EIR for the project, we are again waiting for approvals on a 43-acre Vesting Tentative Subdivision Map and a Conceptual Map on the balance of the property.

Sometime in 1993, Tom and I were approached by Clif Sellers (then Chico's Planning Director) to discuss a rezone of this 80-acre parcel from R-1 to RS-20 as a result of discussions held by the Chico General Plan Task Force. Clif served as staff to the appointed General Plan Task Force. I was a member of this Task Force and remember the

discussions clearly. Tom, always seeking to cooperate with the City, felt that it was okay to downzone his property, in spite of the huge potential economic loss caused by changing the R – 1 density on this 80-acre parcel from a maximum of 560 units to approximately 164 single family residential units.

On May 27th, the City Council, on a vote of 6-1, approved the Oak Valley Project, while reducing the number of clustered homesites on Parcel Q from a maximum of 160 to 80. That decision, for better or worse, was final, and the City Council directed City staff to bring back the properly amended and conformed resolutions that effectuated that decision. Sometime between May 27th and now, however, Chico's land use regulatory process disintegrated. A handful of anti-housing advocates, who had chosen not to participate in the formal process of considering the Oak Valley project at the protracted Planning Commission level, surfaced with a San Francisco law firm, threatening litigation if Chico actually had the nerve to implement its long-standing and carefully crafted General Plan housing policies.

This last-minute hijacking of Chico's established land use process apparently had its intended effect. Now the majority of the Chico City Council proposes to completely remove all economic use of this 80-acre parcel, effectively condemning it, by prohibiting even the 80 single-family homes that it authorized in May, even though clustered residential development there is explicitly desired and authorized by the General Plan and zoning, and fully complies with the Hillside Overlay and Special Development Area zoning regulations that were specifically enacted to guide development at this location.

This new Council proposal represents a whimsical abandonment of the stability, predictability and permanent interrelationships among land uses that the General Plan and Zoning Designations are intended to provide. It shows that a handful of activists threatening spurious lawsuits at the last minute matter more to the City Council than do the scores of citizen volunteers, professional City staff and housing industry leaders who have shaped and refined the General Plan and zoning over the past 20 years.

The Oak Valley project did not just fall off a truck last week. It represents the best insights, provided over the past twelve (12) years, of at least two generations of Chico's senior professional Planning and Public Works staffs, dozens of citizen members of the General Plan Task Force, the Planning Commission, the City Council, all those who contributed to City policymaking on HRBD remediation, the owner's expert site designers and engineers, the City's EIR consultant team (experts in Botany, Biology, drainage, aesthetics, air quality, etc.), numerous state and federal regulatory agencies, and countless Chico residents who offered their ideas and commentary as the project evolved.

This project has set new records and precedents for City control of its design. Chico enacted two separate ordinances to control its homesite placement and design, and wrote detailed "Design Guidelines" to further regulate its aesthetic appearance. The Planning Commission spent over sixteen (16) hours of public hearings refining and amending the City staff's final recommendations, before approving the project on a 6-1 vote. The Oak Valley project that was approved by this City Council on May 27th (also by a 6-1 vote) is exactly the master-planned, graduated-density, sensitive and varied development that Chico has said that it wants for this location.

Authorizing 80 clustered homesites on Parcel Q represents a variety, balance and integration of land uses and housing types that complements the project as a whole. The City Council is well aware that the present approval of this Master Plan still requires future developers to prove to the City just where, how, and how attractively new homesites will fit into Parcel Q's topography, native vegetation and natural features. The City retains complete discretion to move or remove future proposed homesites if they aren't as desirable as anticipated. For the City Council at the last minute, however, to throw out or disregard the General Plan and zoning policies and careful placement of 80 homesites in Parcel Q, after so much thought went into their role in the project as a whole, is factually unfounded, a repudiation of the owners' cooperation and trust, and a complete breakdown in Chico's own land use consideration processes.

The City Council obviously had no policy reason to effectively "take" 80 acres of private property without paying compensation for it. On the contrary, Chico's land use policies for this property are spelled out in detail in the General Plan and zoning, which are violated by keeping Parcel Q vacant. The shameful reality, obvious to the entire community, is that the only reason for this abrupt Council reversal is the meaningless (and routine) litigation threat by a handful of anti-housing activists.

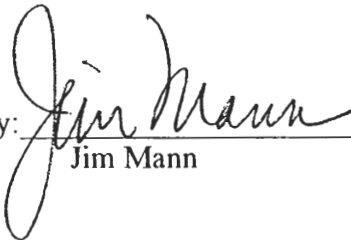
When the City Council acted on May 27th, it fully and finally exercised its land use approval discretion over the project. This is both a legal characterization of the May 27th vote and a description of stable, predictable, responsible land use policy and procedure. If the Chico City Council can be stampeded into changing its mind on something this thoroughly evaluated, by last-minute empty threats of lawsuits by a few who simply failed to persuade Chico's decisionmakers as the project evolved, then responsible planning in this community has just been destroyed.

The City Council now owes it to all who participated in the twelve (12) years of debate over the project to uphold the carefully deliberated General Plan and zoning ordinances that provide for sensitively clustered homesites on Parcel Q. The Council must uphold the Planning Commission, stand by its own May 27th decision, and resist the bullying tactics of a disgruntled few who could not persuade their fellow citizens of the merit of their ideas.

On behalf of the property owners, we respectfully request that the City Council adopt the resolutions prepared at the Council's May 27th request, and preserve the design integrity and housing policy benefits of the approved Oak Valley project.

Respectfully submitted,

Rural Consulting Associates

By: 
Jim Mann

cc: Vice Mayor Maureen Kirk
Councilmember Steve Bertagna
Councilmember Andy Holcombe
Councilmember Dan Herbert
Councilmember Ann Schwab
Councilmember Larry Wahl
Tom Lando, City Manager
David Frank, City Attorney
Lori Barker, Deputy City Attorney
Tony Baptiste, Community Development Director
Fritz McKinley, Public Works Director
Kim Seidler, Planning Director
Pat Murphy, Senior Planner
Tom Fogarty, Fogarty Investments
Doug Aikins, General Counsel Associates

Mayor Gruendl and Members of the Chico City Council
C/o Office of the City Clerk
City Hall
Chico, California

RECEIVED
SEP 14 2005
CITY CLERK
CITY OF CHICO

September 14,2005

Re: City Council Action on Appeals of the Planning Commission and Approval of the Oak Valley Project, Vesting Tentative Subdivision Map S99-12, Planned Development Permit PDP02-01, Conceptual Master Plan and EIR Certification

Dear Mayor Gruendl and Members of the City Council:

This letter and attachments are submitted into the record of the appeals, approvals set forth above, and procedures to certify the adequacy of the EIR on behalf of Friends of the Foothills, and appellants Philip Smith and Nora Todenhagen . Pursuant to the Notice of Supplemental Hearing dated September 7,2005, these written materials are being submitted to the Clerk not later than 5pm on Wednesday, September 14, 2005, within the required time frame.

1. Letter dated June 3,2005 to the City Council from attorneys Fran M. Layton and Amy J. Bricker, of Shute, Mihaly and Weinberger on behalf of Friends of the Foothills, Nora Todenhagen and Philip Smith.
2. Letter dated June 6,2005 to David Frank, City Attorney, from Douglas B. Aikins, of GCA Law Partners, LLP requesting a continuance of approvals for the Oak Valley Subdivision project.
3. Letter dated July 26,2005 to Patrick Murphy, Senior Planner, City of Chico, from Michelle C. Messinger, Historian II, CEQA Coordinator Local Government Unit, Office of Historic Preservation, Department of Parks and Recreation.
4. Letter dated August 25,2005 to Patrick Murphy, Senior Planner City of Chico, from Milford Wayne Donaldson,FAIA, State Historic Preservation Officer, Office of Historic Preservation, Department of Parks and Recreation.

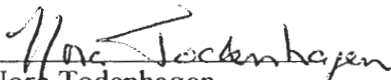
In addition, the following issues are raised and made a part of the record in the above stated appeals, approvals, as well as the procedures to certify the adequacy of the EIR:

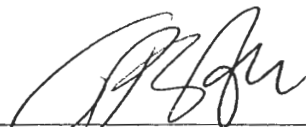
1. The Supplemental Hearing Notice erroneously states the action taken by the Council on May 17, 2005. In fact, the appeals of Nora Todenhagen and Philip Smith were partially granted. The deadline imposed for submittal of written materials does not allow for the review of the Resolutions and other documents that will be before the Council on


Page two
September 14, 2005

2. The Vesting Tentative Subdivision Map, Subdivision S 99-12 should be modified to delete reference to minimum and maximum numbers of units for lots A through U. Other than the lots identified as within Phase One. (Lots 1 through 126), the vesting tentative map should clearly reflect the council's intent that the number of units, or range of units, on lots A through U is not before the council at this time, and no vesting map rights are being granted. The deadline imposed for submittal of written materials does not allow for the review of the Resolutions and other documents that will be before the Council on September 20, 2005. References in the Resolutions, maps and other documents, as described above, should be deleted and modified in a consistent manner.

Please do not hesitate to contact the undersigned if you wish to discuss this.


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Appellant


Philip Smith
Appellant


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June 3, 2005

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Via E-Mail and Hand Delivery

Mayor Gruendl and
Members of the Chico City Council
c/o Office of the City Clerk
PO Box 3420
Chico, CA 95927

Re: City Council Action on Appeals of the Planning Commission
Approval of the Oak Valley Project, Vesting Tentative Subdivision
Map S 99-12, Planned Development Permit PDP 02-01, Conceptual
Master Plan, and EIR Certification

Dear Mayor Gruendl and Members of the Chico City Council:

This letter is submitted on behalf of Friends of the Foothills ("Friends"), an unincorporated association comprised of individuals who are concerned about development in the foothills of the City of Chico ("City"). Among other individuals, Friends includes Philip Smith and Nora Todenhagen, both of whom have appealed the Planning Commission's approval of the Oak Valley Vesting Tentative Subdivision Map S 99-12, Planned Development Permit PDP 02-01, and Conceptual Master Plan ("Project"), as well as the Planning Commission's certification of the environmental impact report ("EIR") for the Project.

We have reviewed the City Council's ("Council's") proposed Resolution Certifying the Final EIR and Adopting a Statement of Overriding Considerations ("EIR Resol.") and its Resolution approving the Project ("Project Resolution"), Attachments A and B, respectively, to the May 31, 2005 City of Chico Memorandum on the Project (collectively "Findings"). We submit this letter to set forth our position that the Findings are inadequate under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.*; the CEQA Guidelines, California Code of

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Regulations, title 14, Section 15000 *et seq.* ("CEQA Guidelines"); the State Planning and Zoning Law, Gov't Code § 65300 *et seq.*; and the Subdivision Map Act, Gov't Code § 66410 *et seq.* The Findings are (1) not supported by substantial evidence, and/or (2) do not supply the logical step between the findings and the facts in the record, as required by state law.

The Findings were first made available for public review in the late afternoon on June 2, 2005, weeks after the close of the May 17, 2005 public hearing on the Project. We are therefore submitting these comments in the most timely manner possible under the circumstances. It is our understanding that upon receipt of this letter at the Office of the City Clerk, copies of this letter will immediately be placed in the Council Members' mailboxes and will be provided to each Council Member at the June 7, 2005 Council meeting. In addition, we are delivering a copy of this letter to each of the City Council members at their respective homes or places of business on June 3, 2005 in order to ensure that the City Council members have an adequate opportunity to consider these comments on the Project Findings.

SUMMARY

The most egregious of the Findings' numerous deficiencies, as set forth in detail in the remainder of this letter, are:

- (1) Rejecting the Partial Master Plan Alternative (*see* EIR Resol. at pp. 10-11), which the Council's Findings state is the environmentally superior alternative, although it meets all of the Project objectives, including providing a wide variety of housing types consistent with the Housing and Land Use Elements of the General Plan;
- (2) Basing findings on a severely outdated Initial Study;
- (3) Basing findings on updated information, such as new traffic data, without circulating this significant new information to the public for comment;
- (4) Failing to make any findings on impacts identified by the public as potentially significant, such as impacts to historical resources; and

- (5) Finding that the Project is consistent with the Chico General Plan, where the Project clearly contradicts numerous General Plan Policies regarding protection of the eastern portion of the Project site.

For these reasons and the reasons set forth in detail below, Friends urges the Council to grant the present appeals and overturn the Planning Commission's approval of the Project and its certification of the Project EIR. In the alternative, Friends asks the Council to prohibit any development on the Project site to the east of the power lines by adopting the Partial Master Plan Alternative (*see* EIR Resol. at pp. 10-11). In conjunction with adopting the Partial Master Plan Alternative, we request that the Council approve Conditions 27 and 39 and all other conditions, as set forth in Exhibit I to the Project Resolution, that are consistent with this alternative.

I. THE FINDINGS DO NOT COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

CEQA and the CEQA Guidelines require the Council to make specific findings regarding the Project's significant environmental effects before it may approve the Project. *See* Pub. Resources Code § 21081; CEQA Guidelines § 15091. One reason for CEQA's findings requirements is to "enable parties to the agency hearing to determine whether and on what basis they should seek review." *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 516. The agency's findings must be supported by substantial evidence in the record. *See* Pub. Resources Code § 21081.5; CEQA Guidelines § 15091(b). Additionally, the findings must contain an explanation to supply the logical step between the ultimate finding and the facts in the record. *See Topanga*, 11 Cal.3d at 515. Findings cannot simply put forth bare conclusions; they must contain the basis for the agency's conclusion. *See Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 440. For the reasons set forth below, the Findings for the Project do not comply with these requirements.

A. The Record Does Not Support the Council's Findings Regarding the EIR Because the Project Description Is Incomplete and Inaccurate.

The Findings state that the EIR for the Project has been "completed in compliance with the requirements of the California Environmental Quality Act and fully and adequately discloses and addresses all environmental issues associated with the Project." EIR Resol. at 7. The Findings further state that, except for various impacts

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which the Council has found to be significant and unavoidable, “[t]he potential environmental impacts identified in detail in the EIR as resulting from the Project . . . are fully mitigated or mitigated to a level of ‘less than significant.’” EIR Resol. at 13. However, these findings are not supported by substantial evidence in the record because, as indicated by several commenters (*see, e.g.*, letter from Butte County Air Quality Management District, May 31, 2000; letter from Christy Strauch, June 2, 2000), the EIR contains an incomplete and inadequate Project description.

CEQA’s most fundamental requirement is that an EIR contain an accurate, complete project description. *See County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185 (1977); *see also* CEQA Guidelines § 15124. Without a complete project description, an agency and the public cannot be assured that all of a project’s environmental impacts have been revealed and mitigated, and therefore the Council cannot make adequate findings pursuant to CEQA. The Council’s Findings are flawed from the outset because they rest on an inaccurate and incomplete description of the Project in the EIR.

The Project description is incomplete and inaccurate because it does not include or accurately describe all of the components of the Project and omits information about the Project that is critical to an adequate analysis of project-related and cumulative impacts. First, the EIR states that the Project includes a “Conceptual Master Plan,” but fails to delineate what legal approvals actually comprise the “Conceptual Master Plan.” For example, the Project description does not specify whether the Conceptual Master Plan includes any documents containing standards or guidelines in textual form, such as the Oak Valley Project Foothill Design Guidelines. If the Oak Valley Project Foothill Design Guidelines or other documents containing text regarding the subdivision or Conceptual Master Plan are a part of the Project, the EIR should state this fact and include the text in the EIR so that the public will have a chance to comment on the substance of these documents.

Second, the Project description states that the Project involves the approval of a Planned Development Permit (“PDP”), but fails to attach a copy of that document. This document is essential to a complete Project description for both the 43-acre subdivision and the Conceptual Master Plan. For example, the May 10, 2005 Staff Report for the Project states that the proposed densities for the 43-acre parcel exceeds those allowed by R2 zoning and that the PDP will allow a density “swap” from other portions of the site. Staff Report at 6, fn. 1. The Project description currently fails to include any information regarding this density swap. It is important for the public to

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know the areas of the Project site integral to the "swap" so that the public can (1) assess the relative environmental impacts of the areas at issue and (2) ensure that when future development proposals are put forth pursuant to the Conceptual Master Plan, the City applies the proper densities resulting from the swap.

Third, the Project description states the Project will ultimately include 109,000 square feet of commercial development, but remarkably fails to identify the type of commercial uses that the Project will entail. The type of commercial uses are critical to an adequate assessment of the Project's impacts because various types of uses may or may not attract day-users to the Project site, thereby increasing traffic in the Project area, increasing demand for public services, and potentially increasing impacts such as air and water quality impacts and cumulative impacts.

Fourth, the Project description lacks any description of the construction activities associated with build-out of Oak Valley, including Project phasing or timing of phasing for both the 43-acre subdivision and the Conceptual Master Plan. Given the fact that the Project provides for the construction of 1,324 dwelling units and 109,000 square feet of commercial development in an area that is currently undeveloped, a high level of ongoing construction could be a fact of life in the area for years to come. The impacts of construction on residents and on the environment in the area must be described and analyzed.

Finally, the EIR fails to describe adequately the infrastructure improvements needed to support the development allowed under the Conceptual Master Plan. CEQA requires an agency to analyze the environmental impacts of the complete project, defined as the "whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA Guidelines § 15378(a). An agency may not narrow the project description in such a way that minimizes the project's impacts and prevents full disclosure and public review. Courts have routinely found inadequate EIRs that narrow the project description or analyze a smaller project than the one actually proposed. *See, e.g., Rural Land Owners Ass'n v. City Council of Lodi* (1983) 143 Cal.App.3d 1013 (finding inadequate an EIR for a general plan amendment that failed to describe or analyze the full amount of development that would follow annexation of land to the City).

Here, although the EIR indicates that the Project will entail the construction of roads, new sewer laterals, and new water facilities, the EIR does not adequately

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describe these components as part of the Project, or adequately analyze their environmental impacts. For example, the impacts of roadway expansions include growth inducement, fragmentation of habitat, disruption of wildlife corridors, and construction impacts (e.g., additional traffic generated by construction vehicles and temporary road closures and diversions to accommodate construction), among others. These impacts are not analyzed in the EIR. Further, the public is left completely in the dark as to where or how the new water facilities will be built. This information could reveal significant environmental impacts that are not currently addressed in the EIR. While the Findings state that "specific plans for water supply infrastructure for the Conceptual Master Plan and the 43-acre Portion of the Subdivision are not available" (EIR Resol. at 27), this approach is not countenanced by CEQA. Instead, CEQA requires the lead agency to "use its best effort to find out and disclose all that it reasonably can." *Citizens to Preserve the Ojai v. Ventura* (1986) 176 Cal.App.3d 421, 431. Because the EIR has failed to disclose these important components of the Project, the EIR has improperly narrowed the scope of the Project:

The Council cannot adopt findings stating that the EIR for the Project complies with CEQA when that document does not contain a complete description of the Project and the public has not had an opportunity to review and comment on each component of the Project.

B. The Record Does Not Support the Council's Findings Regarding the EIR Because the EIR's Environmental Baseline and the Description of the Project Setting Is Outdated and Inadequate.

The record also does not support the Council's Findings that the analysis and mitigation of the Project's environmental impacts is adequate because the EIR fails to provide an adequate description of the setting for the Project. CEQA requires a description of the physical environment in the vicinity of a proposed project because such a description is necessary to provide the baseline against which to measure a project's environmental impacts. *See* CEQA Guidelines § 15125(a). An EIR's description of the project setting must include a large enough geographic area such that the full environmental context of a project is considered. *See* CEQA Guidelines § 15125(c). The description of project setting must include both the local and regional setting. *See* CEQA Guidelines § 15125(a). With respect to the regional setting, special emphasis must be given to environmental resources that are rare or unique to the region and would be affected by the project. *See* CEQA Guideline § 15125(c). Despite this clear mandate, the

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EIR fails to describe important aspects of the project setting, including existing local and regional biological resources and wildlife corridors; levels of public services and resources; square footage of commercial development; existing number of day-use trips associated with recreational and other facilities; and the amount (i.e., shortfall) of affordable housing.

Even more critically, the EIR bases its environmental setting information, and hence the environmental baseline upon which the Project's environmental impacts are measured, on outdated environmental documentation. For many environmental impact areas, the EIR relies on Project setting information set forth in the March 27, 1998 initial study for the Project, a document which is over seven years old. For other environmental impact areas, the Project setting information has not been updated since the 2000 Draft EIR. As a state agency reviewing the environmental documents for the Project pointed out to the City, many components of the Project setting, such as the amount of traffic in the Project vicinity, have significantly changed in the intervening seven years and therefore the baseline data is plainly outdated. See letter from California Department of Transportation ("CalTrans"), June 7, 2004 at p. 2 ("The City of Chico has experienced significant growth in the project vicinity.") California courts have repeatedly held that agencies may not rely on clearly erroneous or outdated data in calculating a project's environmental impacts. *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1989) 47 Cal.3d 376, 409 n.12; *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1367 ("By using scientifically outdated information derived from the 1991 profile, . . . the EIR was not a reasoned and good faith effort to inform decision makers and the public about the increase in [toxic] emissions that will occur as a consequence [of the project]").

While the time of publication of the NOP is generally the proper time for establishing the baseline (Guidelines § 15125(a)), agencies may not blindly adhere to this guideline to avoid disclosing significant impacts. As the Court recently explained in *Save Our Peninsula Comm. v. Monterey County* ("SOPC"):

[T]he date for establishing baseline cannot be a rigid one. . . . In some cases, conditions closer to the date the project is approved are more relevant to a determination whether the project's impacts will be significant. [] For instance, *where the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in traffic over time.* Since the environmental review

process can take a number of years, *traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline* against which to measure the impact of the project. *See, e.g., Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238 (maximum estimated traffic was appropriate baseline).

(2001) 87 Cal.App.4th 99, 125-26 (emphasis added).

Thus, it is common practice for agencies to update baseline conditions where doing so could affect the EIR's conclusions regarding significant impacts. *See, e.g., Cadiz Land Co. v. Rail Cycle, LP* (2000) 83 Cal.App.4th 74, 108-09 (approving county decision to review baseline conditions and make "revisions [] to several areas where updated information is available that makes a significant change in the estimated project emissions"); *Berkeley Jets*, 91 Cal.App.4th at 1351 n.2 (agency "reviewed regularly changes in baseline information that could affect the discussion of significant impacts").

Given the outdated nature of the environmental baseline, the Council's Findings regarding the EIR's environmental analysis are not supported by substantial evidence. This problem pervades the Council's Findings and is addressed below in the discussion of specific sections of the Findings.

C. The Record Does Not Support the City's Findings Regarding Project Alternatives.

CEQA gives an agency authority to adopt a project alternative other than the proposed project, particularly if the agency finds that the alternative will be less environmentally damaging than the one proposed. Pub. Resources Code §§ 21002-21002.1, 21004; CEQA Guidelines § 15002(a). Further, where, as here, the Project will result in environmental impacts that will not be avoided or substantially lessened by mitigation measures, CEQA requires the Council, before it approves the Project, to make findings that the alternatives identified in the EIR that would reduce the Project's impacts are infeasible. Pub. Resources Code § 21081(a)(3); CEQA Guidelines § 15091(a)(3); *see also Citizens for Quality Growth v. Cit of Mt. Shasta* (1988) 198 Cal.App.3d 433.

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The EIR for the Project has identified Alternative 3 (the "Partial Master Plan Alternative") as the environmentally superior alternative, and also identified Alternative 4 (the "Reduced Density Alternative") as lessening some of the Project's environmental impacts. Alternative 3 assumes construction of the identical residential and commercial densities as the Conceptual Master Plan, but it concentrates the development in the western, flatter portion of the Project site. Alternative 4 would develop the same area as the Project site, but at lower densities.

However, the Council's Findings regarding these alternatives are both factually inaccurate and wholly inadequate under CEQA. First, the Findings are inconsistent. The Findings state that the Partial Master Plan Alternative is the "environmentally superior alternative." EIR Resol. at 11. Nonetheless, the Findings assert that "[t]he Project, with the proposed mitigation measures, is equal to all other project alternatives except the 'No Project/No Development Alternative' in terms of significant adverse environmental impacts." EIR Resol. at 8. CEQA requires that an alternatives analysis "focus on alternatives to the project that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines § 15126.6(b). Further, CEQA requires an agency to identify an environmentally superior alternative, other than the "No Project Alternative." CEQA Guidelines § 15126.6(e)(2). The Findings cannot have it both ways. Either the Partial Master Plan Alternative lessens the environmental impacts of the Project, or it does not. If it does not, the EIR must put forth another environmentally superior alternative (besides the No Project alternative). If it does, then the Council must make appropriate Findings regarding the infeasibility of the Partial Master Plan Alternative.

Here, the Council's Findings rejecting the Partial Master Plan Alternative are erroneous and not supported by substantial evidence. The only evidence cited to support the City's rejection of this alternative, besides claiming that it is not actually environmentally superior to the Project, is the following statement: "This alternative is rejected because it would not fulfill Project objectives of providing a wide variety of housing types consistent with the Housing and Land Use Elements of the General Plan." EIR Resol. at 11. This does not constitute substantial evidence. Indeed, this statement cannot be true because the Partial Master Plan Alternative involves the *exact same types* of housing as the Project, only the housing is shifted to the western portion of the Project site.

Further, shifting Project densities to the western portion of the site is consistent with both the Chico General Plan and the Project objectives themselves. As stated in the EIR, one of the Project objectives is: "To provide housing and commercial development at appropriate densities and intensities that are compatible with the natural character of the area. *This will be accomplished by providing increased densities and intensities on the westerly portions of the site and clustering and open space areas on the easterly portions of the Project site.*" (Emphasis added.) Recirculated EIR at 3-3. Moreover, the Chico General Plan encourages concentrating development on the western portion of the site. See LU-I-68 ("Encourage residential development in Humbolt Road-Foothills area to be clustered on the western portion of the site, and allow transfer of development rights from the eastern portion of the site to protect the foothills viewshed and sensitive biological habitat.") Thus, the Findings identify no valid reason why Alternative 3, which allows the Project applicant to develop the Project site at the identical densities as those currently set forth in the Conceptual Master Plan, is infeasible. Therefore, the Findings are inadequate and thus do not satisfy CEQA's requirements.

The Council's Findings regarding the infeasibility of the Reduced Density Alternative are identical to its findings regarding the Partial Master Plan Alternative. Thus, these Findings are inadequate for the same reasons identified above. The Findings must adequately explain why the proposed alternative is infeasible.

D. The Council's Findings Regarding Land Use Impacts Are Not Supported By Substantial Evidence in the Record.

The Council's Findings state that the imposition of Mitigation Measure 4.2-2, which requires that the building design for the Project be oriented to the street, will reduce the Project's significant land use impacts to "a less-than-significant level." However, this Finding is not supported by substantial evidence in the record. The EIR fails to analyze adequately the consistency of the Project with existing land use policies in the Chico General Plan and therefore cannot serve as a basis for the Project's Findings. Most fundamentally, even where the EIR does discuss land use impacts, the discussion is based on a review of the prior 1994 Chico General Plan, rather than the current 1999 version. A proper coordination of planning efforts requires a careful analysis of the consistency of the proposed project with current land use plans and zoning designations. The perfunctory and outdated analysis in the EIR undermines efforts at coordinated planning and informed decision-making and is not adequate under CEQA.

Indeed, as pointed out by several commenters (*see, e.g.*, Phil Johnson, City Council public hearing testimony, May 17, 2005; Jeananna McMillian, City Council public hearing testimony, May 17, 2005; Jon Luvaas, City Council public hearing testimony (May 17, 2005), the Project is inconsistent with numerous policies in the Chico General Plan and in the local Zoning Ordinance aimed at protecting the resources of the foothills. These policies include, but are not limited to, LU-I-63, LU-I-64, LU-I-67, and LU-I-68. *See Part II, infra*, for further discussion regarding the Project's inconsistencies with these policies. Although the EIR recognizes that the Project site is designated as a "Special Development Area" in the General Plan and is considered a "Resource Management Area" because it contains resources that require special protections, the EIR fails to analyze the Project's consistency with the above General Plan policies for this area. The EIR's mere assertion that the Project is consistent with the Chico County General Plan (*see* EIR at 4.2-6) is erroneous and cannot serve as a basis for the Council's Findings.

E. The Council's Findings Regarding Project Traffic And Air Quality Impacts Are Not Supported By Substantial Evidence in the Record.

The Project Findings include several findings regarding traffic and cumulative traffic impacts generated by the Project, two of which require the Council to adopt override findings. However, merely naming an impact significant and unavoidable and adopting override findings cannot serve as a substitute for the proper analysis in the EIR required to justify the Council's Findings. The EIR's analysis of traffic and circulation impacts is inadequate because it fails to provide an adequate description of existing traffic conditions and fails to support its conclusions regarding the Project's traffic impacts with adequate analysis.

The 2004 recirculated EIR utilizes traffic baseline conditions from 1997-1999. As CalTrans pointed out to the City (*see* letter dated June 7, 2004), the traffic conditions have significantly worsened in the area since that time. The use of this outdated traffic baseline improperly skews the analysis of traffic related impacts from the Project. *See* discussion, *supra*, re the importance of baseline conditions. Although the final EIR includes updated traffic data for some areas based on comments from CalTrans that the traffic data in the EIR was outdated, this new data cannot serve as the basis for the Council's Findings because: (1) it does not include updated figures for all traffic areas, and (2) this information has never been circulated to the public for comment, as required by CEQA. *See Save Our Peninsula Committee v. Monterey County Bd. of*

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Supervisors (2001) 87 Cal.App.4th 99, 130-31 (“The revised environmental document must be subjected to the same ‘critical evaluation that occurs in the draft stage’ . . .”).

The traffic analysis in the recirculated EIR is further inadequate because it utilizes outdated figures for the number of residential units. Although the EIR claims that the difference in units does not impact the traffic analysis, there is no evidence in the record to support this claim. The traffic analysis is also deficient because it fails to adequately describe and analyze the traffic generated by the Project’s commercial development; the EIR fails to include *any* discussion of the 109,000 sq. ft. of commercial retail space to be developed as part of this Project. Finally, the traffic analysis utilizes several flawed assumptions. For example, instead of utilizing actual a.m. peak flows to estimate future a.m. conditions, the EIR bases this estimate on the difference between existing p.m. peak hour traffic and future p.m. peak hour traffic volumes, without explaining why this would be an adequate surrogate for an a.m. analysis.

Additionally, the Council’s findings regarding air quality impacts are not supported by substantial evidence in the record. As demonstrated by the Butte County Air Quality Management District (“AQMD”) in its comments on the draft (letters dated May 25 and 30, 2000) and recirculated (letter dated June 14, 2004) EIRs, the analysis of air quality impacts in the EIR is inadequate. AQMD’s letters indicate that the EIR should have used the AQMD’s Indirect Source Review Guidelines and updated Urbemis 2002 model to calculate emissions. Although the City did conduct some updated air quality calculations that were provided in the final EIR, this information was never circulated to the public for comment, as required by CEQA. Further, the EIR failed to provide any quantitative data for emissions under the full build-out of the Conceptual Master Plan (other than the 43-acre parcel). Nor may the agency simply claim that such information is hard to calculate. As stated by the California Supreme Court in *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 399: “We find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be difficult.” Finally, the Council’s findings that there are three significant air quality impacts generated by the Project that are unavoidable is not supported by the record. Indeed, the AQMD identified a list of standard mitigation measures that could be adopted to lessen air quality impacts, as well as suggesting additional mitigation measures to the City. See AQMD letter, May 25, 2000 at 4. The EIR has failed to demonstrate that these mitigation measures are infeasible.

F. The Council's Findings Regarding Biological Impacts Are Not Supported By Substantial Evidence in the Record.

The Council's Findings regarding biological impacts are also not supported by substantial evidence in the record. For example, the Council finds that, with mitigation, the loss of seasonal wetlands and/or realignment of creek channels "can be reduced to less than significant." EIR Resol. at 32. However, the EIR analysis regarding wetlands is clearly inadequate. The draft EIR identified potentially significant impacts to portions of Dead Horse Slough located on the Project site. The final EIR, which has not been circulated for public comment, for the first time revealed that an additional 2.4 acres of Dead Horse Slough that were not identified in the draft EIR may be significantly impacted by the Project. See Final EIR at 3-7. This new information regarding the Project's potentially significant impacts to wetlands clearly merits further analysis and a recirculation of the EIR. When a public agency receives such significant new information on biological resources following the close of the comment period, it must recirculate the environmental document. See *Mira Monte Homeowners Assn. v. County of San Buenaventura* (1985) 165 Cal.App.3d 357, 363-65. While the final EIR and Findings claim that this impact will be mitigated to a less than significant level, and therefore need not be analyzed, this is in direct contravention of CEQA's requirements that an EIR must actually analyze the impacts to a project and the efficacy of the mitigation. See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130. For example, in *Mira Monte*, the court held that the agency, despite its adoption of mitigation measures, should have prepared a supplemental EIR in response to the discovery of an additional quarter acre of wetlands on the project site after preparation of the EIR. 165 Cal.App.3d at 363-65.

G. The Council's Findings Regarding the Aesthetic Impacts of the Project Are Not Supported by Substantial Evidence in the Record.

The Council's Findings conclude that the "alteration of views from surrounding areas is considered a significant and unavoidable impact." EIR Resol. at 38. However, as explained in detail above in Part I.C, the Council has not made adequate findings regarding the infeasibility of Alternative 3, the Partial Master Plan Alternative. This Alternative would lessen the viewshed impacts to a less than significant level by shifting the development to the western portion of the site. Imposition of Alternative 4 would also lessen the Project's visual impacts. Thus, until the Council makes adequate

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Findings regarding the infeasibility of these alternatives, the Council's findings regarding the significant and unavoidable impacts to the views from surrounding areas cannot be sustained.

H. The Council's Findings Regarding Human Health Hazards Are Not Supported by Substantial Evidence in the Record.

The Council's Findings state that human health hazards associated with contaminated soils on the Project site will be mitigated to "less than significant" with imposition of mitigation measures requiring compliance with RWQCB Cleanup and Abatement Order #R5-2003-0707. EIR Resol. at 41. However, this Order is currently being appealed due to its inability to protect human health and therefore cannot serve as a basis for the City's Findings. Nor does the EIR adequately analyze the efficacy of this mitigation. Further, the EIR and Findings fail to adequately address the human health impacts associated with the hazardous wastes that are present in the sewage system on the Project site and that have been released onto land by previous sewer breakages, as demonstrated by several commenters. *See, e.g.*, letter from Christy Strauch, June 2, 2000; letter from Romana Weil, June 2, 2000.

I. The Council Has Failed To Make Appropriate Findings Regarding Several Potentially Significant Environmental Impacts, Including Impacts to Historical/Cultural Resources, Water Quality Impacts, Impacts to Geology and Soils, Affordable and Employee Housing Impacts, Growth Inducing Impacts, and Impacts to Public Services.

In addition to making findings that are not supported by substantial evidence in the record, the Council has also failed to make findings that are required by CEQA. These include findings regarding the potentially significant impacts caused by the Project on historical/cultural resources, water quality, geology and soils, affordable and employee housing, growth inducement, and public services. For example, the Findings do not address the Project's potentially significant impacts on historical/cultural resources in the Project vicinity. Although the recirculated EIR contains some discussion of these impacts, its conclusion that the Project's impacts to cultural/historical resources as well as cumulative impacts to these resources will be less than significant is wholly unsupported by the record. As stated in comment letters by the Northeast Center of the California Historical Resources Information System (*see* letters dated March 14, 2002 and May 24, 2004) and others, the EIR fails to adequately evaluate the Project's direct *and*

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indirect effects on historical resources which are considered significant under CEQA, including effects on Old Humbolt Road, wagon ruts, the rock wall, and portions of SR 47 that have been listed as historical resources. Although the final EIR does add some analysis regarding indirect impacts, this analysis is also deficient and was in any event never circulated to the public for comment.

Further, the Council has not included findings regarding the Project's potentially significant water quality impacts. Nor is there any analysis in the EIR regarding water quality impacts to support such a finding, despite comments submitted on the draft EIR indicating that the Project could substantially impact water bodies in the vicinity of the Project that are already impaired from heavy metals and other contaminants. *See, e.g.*, letter from Barbara Vlamis, Butte Environmental Council, dated June 1, 2000. The EIR simply relies on the Initial Study for the Project to conclude that the Project will not generate any significant water quality impacts. This approach is flawed for several reasons. First, the Initial Study was prepared in March of 1998, over seven years ago. There is evidence that water quality in the Project vicinity could have changed in this time period. As discussed at length above, agencies may not rely on outdated data to justify their conclusions.

Second, even if the Initial Study were up to date, it relies on the Project applicant's implementation of conditions enforced by the State and regional water boards in connection with permits required for the Project to mitigate the Project's impacts on water quality to a less than significant level. The City may not rely on this statement of mitigation in the Initial Study as CEQA requires that an EIR actually analyze the efficacy of mitigation. *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130. Third, the City may not simply rely on mitigation measures that will be enforced by other agencies when it has concurrent jurisdiction to impose mitigation measures, such as requiring mitigation measures during construction of the Project that would lessen impacts to water quality. For example, in *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.3d 433, the city did not adopt any mitigation measures for the project's impacts on wetlands, finding that the necessary mitigation measures would be imposed by the U.S. Army Corps of Engineers in conjunction with a permit issued under the Clean Water Act. The court held that the City violated CEQA.

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The EIR should be recirculated with an appropriate analysis of the Project's impacts on water quality and feasible mitigation measures that can be imposed by the City to lessen those impacts so that the Council can make appropriate findings regarding this impact area. An adequate analysis of water quality should include adequate project setting information, including a description of the entire watershed in the area; complete water quality information for the study area, including historical and current data; a description of the total acres of impervious cover, total acres of graded cover, and total acres of land alteration due to grading and tree removal for the Project. The EIR should also include an analysis of the pollutant loads resulting from the construction or buildout of the Project. In the absence of some comparative or absolute calculation of the Project's discharges to watercourses, the EIR's analysis would be incomplete. Finally, the EIR must adequately describe the Project's cumulative impacts on water quality, and compare the water impacts generated by the Project with the water quality impacts of a reasonable range of alternatives to the Project, in order to satisfy CEQA's requirements.

The Council's Findings also fail to address the Project's potential impacts to geology and soils, affordable and employee housing, growth-inducement, and public services. Again, the Council appears to rely on statements in the outdated 1998 Initial Study to conclude that the Project will not generate significant environmental impacts for these issue areas. As discussed above, the Council may not rely on such outdated information. Moreover, the Project could potentially create significant environmental impacts in these issue areas. First, the Project could clearly have potentially significant impacts on geology and soils given the high elevations and steep slopes that characterize the Project site. CEQA requires much more analysis than the cursory discussion provided in the Initial Study, even assuming that analysis was up to date.

Second, while the EIR admits that the Project will generate employees, both during Project construction and as a result of the commercial development allowed by the Conceptual Master Plan, it fails to analyze the environmental impacts associated with this employee generation. In *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 369, the court established the minimum level of analysis required under CEQA for review of affordable housing impacts, explaining: "[I]n order to fulfill its purpose as an informational document, the [EIR] should, at a minimum," (1) "identify the number and type of housing units that persons working within the Project area can be anticipated to require," (2) "identify the probable location of those units," and (3) "consider whether the identified communities have sufficient housing units and sufficient services to accommodate the anticipated increase in

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population.” 91 Cal.App.4th at 370. These minimum requirements apply whether the impacts will occur within or outside the Project boundaries. *Id.* at 369. However, in the event the housing effects occur within the Project area, CEQA requires a more detailed analysis. *Id.* at 370.

Finally, the Council lacks adequate findings on the Project’s potential growth-inducing impacts and impacts to public services, such as emergency, fire services, and recreational services. The EIR is similarly lacking an adequate analysis of these Project impacts. While the EIR does contain a perfunctory analysis of growth-inducing impacts, it is not sufficient to justify a finding that there will be no significant growth-inducing impacts generated by the Project’s construction of significant new infrastructure, including new roads and new sewer and water supply facilities. For example, the CalTrans has commented that new accesses to SR32 associated with the Project will create a significant value enhancement to properties in the vicinity of the Project. *See* CalTrans letter, June 7, 2004 at p.2. The EIR must address such growth-inducing impacts.

II. THE FINDINGS DO NOT COMPLY WITH THE SUBDIVISION MAP ACT AND THE PLANNING AND ZONING LAW.

State planning and zoning law requires consistency between the applicable general plan – the constitution for all future development in a jurisdiction – and all other subordinate approvals, including individual development projects. *See Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531 (1990). Moreover, the Subdivision Map Act requires that the City Council find that the tentative map approvals are consistent with any applicable general or specific plans before executing such approvals. *See* Gov’t Code §§ 66473.5, 66474; *Woodland Hills Residents Ass’n, Inc. v. City Council* (1975) 44 Cal.App.3d 825.

The Project is not consistent with several general plan policies including, but not limited to, the following:

- LU-I-63:** “Ensure that development in the foothills is not intrusive and is in keeping with the natural character of the areas.”
- LU-I-64:** “Maintain a predominate sense of open land on the east by allowing development in the foothills to be clustered and ensuring that foothill views

are protected.”

- LU-I-67:** “Explore the feasibility of designating viewshed corridors and viewshed protection standards to protect views of the foothills from the valley floor.”
- LU-I-68:** “Encourage residential development in Humbolt Road-Foothills area to be clustered on the western portion of the site, and allow transfer of development rights from the eastern portion of the site to protect the foothills viewshed and sensitive biological habitat.”

Not only does the Project not protect the sensitive biological habitat and views in the eastern portion of the property, in accordance with these policies, but it actually plans for intensive development of this area. While the Project condition limiting development in Lot Q to 80 units partially addresses this issue, it does not go far enough to adequately protect this area. Additionally, the Findings have rejected as infeasible the one alternative to the Project that clusters development in the western portion of the site and that would be consistent with these General Plan policies.

Thus, the Council cannot make the findings required by state law unless and until the Project is modified to be consistent with these policies.

CONCLUSION

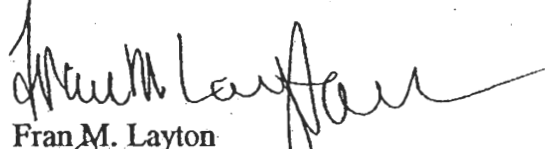
For all of the above-mentioned reasons, we respectfully request that the Council overturn the Planning Commission’s approval of the Project and take no further action to approve the Project until there is an EIR that complies with CEQA, the Project complies with state and local laws, and the Council is presented with Project Findings that are supported by substantial evidence and that contain an explanation supplying the logical step between the Council’s Findings and the facts in the record. In the alternative, Friends asks the Council to prohibit any development on the Project site to the east of the power lines by adopting the Partial Master Plan Alternative (*see* EIR Resol. at pp. 10-11). In conjunction with adopting the Partial Master Plan Alternative, we request that the Council approve Conditions 27 and 39 and all other conditions, as set forth in Exhibit I to the Project Resolution, that are consistent with this alternative.

Mayor Gruendl and
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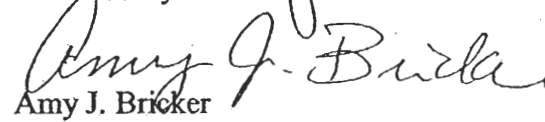
Please do not hesitate to contact either of the undersigned counsel if you wish to discuss these comments.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Fran M. Layton



Amy J. Bricker

cc: Tom Lando, City Manager
David R. Frank, City Attorney
Kim Seidler, Planning Director



June 6, 2005

David Frank, Esq.
City Attorney's Office
City Hall
P.O. Box 3420
Chico, CA 95927

**Re: Request for Continuance; Oak Valley Subdivision ("Project")
Approvals**

Dear Dave:

In response to your inquiry, this is to advise you that my clients, owners of the Project, respectfully request that the City Council continue further action on the land use approvals for the Project for a short interval, presumably 2-4 weeks.

The purpose of the continuance in our view is to allow refutation of the assertions contained in the June 3, 2005 letter appealing Project approval and apparently threatening to sue the City.

We are committed to defending the City Council's May 17th decision to approve the Project. Project approvals represent the culmination of eleven (11) years of careful, thorough work by the City and the Project owners to implement the General Plan and zoning regulations for the Oak Valley Subdivision. The City has enacted special overlay zoning for this property in order to ensure that it will provide an attractive range of housing resources for Chico residents, while respecting the environmental qualities of the site. Countless hours and many, many community meetings have been devoted to infrastructure planning, roads, schools, HRBD remediation, historical preservation, design review, environmental and planning analysis and political consensus-building. Every conceivable issue has been properly addressed and reconciled in service to the needs of the entire Chico community.

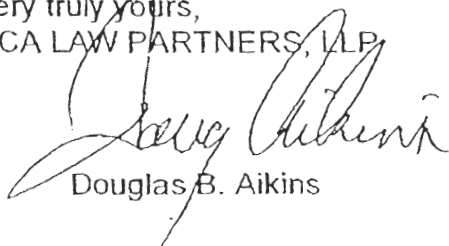
Litigation threats, however insubstantial, in our view must be vigorously defended, in order to protect (i) the integrity of Chico's planning process, and (ii)

David Frank, Esq.
June 6, 2005
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the enormous investment of planning, community-wide dialogue, thoughtful compromise and sensitive design embodied in the Project.

Please let me know of any additional questions. I look forward to working with you to defend the City Council's policy determinations.

Very truly yours,
GCA LAW PARTNERS, LLP



Douglas B. Aikins

Cc: Mr. Jim Mann; Rural Consulting Assoc.

**OFFICE OF HISTORIC PRESERVATION
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July 26, 2005

Patrick Murphy, Senior Planner
City of Chico
Planning Department
P. O. Box 3420
Chico, CA 97927

Dear Mr. Murphy:

Oak Valley Subdivision and Conceptual Master Plan Recirculated EIR # 1998032048

The State Office of Historic Preservation (OHP) has broad responsibility in the implementation of federal and state historic preservation programs in California. We have been contacted by Mr. Francis Farley regarding the above document and are offering the following comments for your consideration.

Reviewing the above document, we find that the *Cultural Resource Assessment* is inadequate. It fails to clearly identify the boundaries of the project, the existing historical resources in relation to the project, and therefore also fails in delineating the potential impacts to the existing historical resources and therefore cannot propose effective mitigation measures required by law to mitigate significant effects.

The document does not cite the appropriate regulatory framework, the California Environmental Quality Act (CEQA); it cites the Public Resources Code section 5020.1 q, in the *Assessment of Potential Change to Old Humboldt Road, Introduction*. This is incorrect. CEQA Sections 21000 et seq, which is part of the Public Resources Code (PRC) and the CEQA Guidelines, the regulations that govern the implementation of CEQA, are to be used. The CEQA Guidelines are codified in the California Code of Regulations (CCR), Title 14, Chapter 2, Sections 15000 et seq. and are binding on state and local public agencies.

The first step of any cultural resource analysis is to establish the existing conditions, the precise area of the project and whether historic resources exist in the described area or in its immediate surroundings. Once the existing conditions have been established, the next step is to determine the potential project-related impacts to historical resources as defined in CEQA Guidelines § 15064.5. Finally, mitigation measures for the project are discussed and proposed and the level of significance after mitigation is discussed. While an historical resource must be evaluated against the California Register of Historical Resources Criteria to establish the significance and integrity of a resource, the goal of CEQA is to make sure that informed decisions can be made by the city council regarding a planned project and the impacts this project will have on the environment.

Therefore, the *Introduction* of the above document should have stated, pursuant to CEQA Guidelines § 15064.5 (b) that "a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment." Subsection (1) clearly defines such effect on the environment as "substantial adverse change in the significance of an historical resource [meaning] the physical demolition, destruction, relocation, or alteration of the resource **or its immediate surroundings** such that the significance of an historical resource would be materially impaired." Pursuant to CEQA, the statutory definition of a "project" is an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Public Resources Code 21065; CEQA Guidelines § 15378) Furthermore CEQA says effects or impacts to be analyzed include "direct or primary" effects and "indirect or secondary" effects which are caused by the project and are related to physical change. (CEQA Guidelines § 15358)

The above cultural resource assessment fails to look at the whole of the resource and is focused on individual parts, almost like examining individual artifacts, rather than the resource in its entirety, its setting and its surrounding. The document refers to wagon ruts, rock walls and to the Old Humboldt Road among other things but is unclear, also in its documentation where the historical resources are in relationship to the planned project. The document does neither address the direct and indirect physical changes in the environment nor does it address the primary and secondary changes to the environment.

Therefore, the impact to the historical resource cannot be clearly determined. The document is leading with a conclusion without establishing proof, how it arrived at this conclusion. It states, "Change in setting will not result in Old Humboldt Road ceasing to be eligible for CRHR. As noted above, CEQA states that a substantial adverse change [to a historical resource] includes demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired. The proposed project will have none of those effects. However, it will involve a change in the setting to the resource."

However, change to the "immediate surroundings" of a resource does constitute an impact under CEQA and this impact needs to be adequately addressed, clearly established and mitigated, and any cumulative changes to a historical resource need to also be clearly established and addressed. "Loss or relocation of a few features usually does not affect overall historic integrity, but the repeated loss of buildings, or structures, or roadways, and small scale elements, as well as gradual changes to boundaries and land use, may cumulatively destroy integrity. New construction and incompatible land uses covering extensive acreage – such as residential subdivision, . . . refuse dumps and land fill, limited access highways and their interchanges – cause the greatest damage. Not only do they introduce mayor visual intrusions, and interrupt the continuity of a historic scene, but they reshape the land, disturb subsurface remains, and introduce a-historical characteristics." (National Register Bulletin # 30, Guidelines for Evaluating and Documenting Rural Historic Landscapes, page 24)

In summary, therefore we highly recommend that a separate, independent cultural resources study be commissioned either as part of a new EIR or as a separate document that thus becomes a supplement to the current EIR. This new, independent study should very carefully apply the regulatory framework of CEQA and examine **ALL** impacts on the historical

Mr. Patrick Murphy
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resources, direct and indirect changes, and design mitigations measures that **DO** mitigate all significant impacts below a level of significance. CEQA is quite clear that mitigation measures that do not truly reduce or avoid the impact to the significant historical resource are inadequate under CEQA. Mitigation measures must be made fully enforceable through permits, conditions, agreements and other measures. (CEQA Guidelines § 15064. 5 (b) (3-5) and have to be clearly spelled out. If mitigation cannot occur, if there are unavoidable significant impacts, this must be clearly stated in the EIR and then has to be adopted by a City Council as such when the final EIR is approved.

After all, the purpose of CEQA is to maintain a high-quality environment now and for the future and to provide the decision makers of local agencies with the appropriate facts to make informed decisions for their planned projects. The above document fails in this attempt.

If you have any further questions, please don't hesitate to contact Michelle C. Messinger, CEQA Coordinator Local Government Unit at (916) 653-5099 or at mmessinger@parks.ca.gov.

Sincerely,



Michelle C. Messinger
Historian II

CEQA Coordinator Local Government Unit

cc: Francis Farley

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August 25, 2005

Patrick Murphy, Senior Planner
City of Chico
Planning Department
P. O. Box 3420
Chico, CA 97927

Dear Mr. Murphy:

Oak Valley Subdivision (Chico) FEIR (SCH#1998032048)

Thank you for sending us the FEIR for the above project and the letter dated May 10, 2005 from your consultant, JRP Historical Consultants and for taking the time to discuss the project with us. We have reviewed the documents carefully and after further, additional deliberation, submit the following comments for your consideration.

Firstly, we want to acknowledge that, in general, assessments and evaluations of linear historical resources such as roads, tunnels, canals, ditches, etc., and any kind of circulation features, can be rather challenging because, by far, rather than seeing the resource(s) in its overall setting, often times it is viewed on the basis of feature(s), more as an object, and not in its surroundings, taken as a whole.

Secondly, while we agree that the project does neither demolish, destruct nor alter - therefore does not have a direct impact on the Old Humboldt Road - we disagree with the conclusion that the project will have no substantial adverse change to the historical resources because the Cultural Resource Assessment has not examined the impact of the project on the setting. Moreover, the Cultural Resource Assessment does not approach the evaluation of the resources in its overall context, but rather from an archeological perspective of individual sites thus failing to establish the overall perspective, the framework for the resources.

In general, adverse effect includes but is not limited to physical destruction, damage, or alteration of a landscape for instance, but also isolation from or alteration of the setting or introduction of intrusive elements. While change is often an inescapable part, especially to the continuing use of landscapes and linear transportation features, the effect of continuing use on the resource's integrity depends to a large degree on the overall historic context. A road that has been slightly widened may retain integrity, if its original features such as fences, retaining walls, bridges, etc., and overall alignment remain. But intrusions that can come from new construction or incompatible land use, or growth of residential subdivisions or other activities that reshape the land, introduce major visual intrusions, or disrupt a historic scene, can affect the integrity of the resource, its sense of feeling and place.

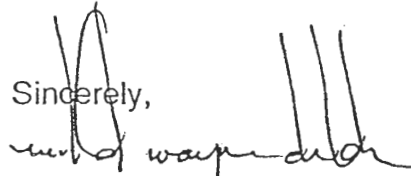
Mr. Murphy
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Therefore, we recommend that a third, independent historic resource assessment is conducted. This assessment might include an aerial view of the overall context of the Old Humboldt Road, of State Route 32, etc., in addition to clearly assessing the historical resources in the broader geographical context looking at the land and the natural setting. We believe that after a careful overall assessment of the historical resources and their setting (and as we said initially, that we are aware of the challenges of evaluating linear resources), the effects of the proposed project can also be more clearly determined and appropriate mitigation measures developed.

The National Register Bulletin # 30 *Guidelines for Evaluating and Documenting Rural Historic Landscapes* and Preservation Brief # 36 *Protecting Cultural Landscapes* provide valuable information in general and also for the identification and assessment of linear resources types.

If you have any further questions, please don't hesitate to contact Michelle C. Messinger, Historian II/CEQA Coordinator Local Government Unit at (916) 653-5099 or at mmessinger@parks.ca.gov.

Sincerely,



Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

Cc: Francis Farley