Call to Order
Roll Call

**ORAL COMMUNICATIONS**
This is the opportunity to address the Council on any matter scheduled for Closed Session.

**CLOSED SESSION:**
A. Closed Session Pursuant to:
   3. Government Code Section 54956.9(c) - Conference with Legal Counsel - Anticipated Litigation: One Case.

7:00 P.M. RECONVENE OPEN SESSION

**REPORT ON ANY ACTION TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led by Council Member Pete Martinez
Invocation

**PRESENTATIONS**
   Employee of the Month - Clyde Tillery
   Resolution Honoring Gilbert Ynigues

**ORAL COMMUNICATIONS**
This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time.

**CONSENT CALENDAR**
All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar.

1. Approval of City Council Minutes of September 6, 2005 and September 6, 2005

2. Request to File Late Claim - John Duran
   Re: Rejecting a Leave to Present a Late Claim for claim originally filed on April 12, 2005 for incident that occurred in January, 2004 and which was to have been filed by July, 2005.
3. **Budget Adjustment**
   Re: Authorizing staff to accept $2,000 grant from Wal-Mart Foundation to be used for the purchase of fire prevention materials, and authorizing budget adjustment in the Fire Department’s budget to account for funds.

4. **Authorization to Advertise for Bids - Heritage Center Tot Playground**
   Re: Approving estimated costs and project, and authorizing staff to advertise for bids for the installation of playground equipment, landscaping and irrigation, and related accouterments at an estimated probable cost of $77,962.07, to be funded by grant funds.

5. **Award of Contract - Well No. 29 Project**
   Re: Awarding the contract to Zim Industries, Inc. of Fresno in the amount of $358,275 for the first phase of project located on the north side of Henderson Ave. between Porter Slough and Westwood St.

6. **Sale of Property Located at the Southeast Corner of Main Street and Thurman Avenue**
   Re: Approving the sale of a 8,800 ± sq. ft. parcel of real property to the Redevelopment Agency in the amount of $110,000.

7. **Status Report -- Curbside Recycle Selection Committee**
   Re: Update by Selection Committee Member on status of selection process.

8. **Agreement with Burton School District**
   Re: Approving Agreement for the provision of special services for a student with a rare condition requiring special assistance in the City After-School Program.

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

**PUBLIC HEARINGS**

9. **Sewer User Surcharge Fees for Industrial Dischargers**
   Re: Considering adopting new sewer user surcharge rates for industrial dischargers.

10. **Conditional Use Permit 6-2005 - 102 Feet High Communications Tower (James Strachan)**
    Re: Considering C.U.P. to allow construction of communications tower and accessories on lease site located at 630 North Sunnyside Avenue.

11. **Conditional Use Permit 7-2005 - 100 Fee High Communications Tower (Ridge Communications)**
    Re: Considering C.U.P. to allow construction of communications tower and accessories on leased site located on Newcomb Street between Henderson Avenue and Morton Avenue.

12. **Conditional Use Permit 8-2005 (Mary McClure)**
    Re: Considering C.U.P. to allow construction of a 17-unit apartment complex (7 duplexes and 1 triplex) on a 62,876± sq. ft. vacant lot located on the east side of North Jaye Street, approximately 400 feet north of Henderson Avenue.
SECOND READINGS
13. Ordinance 1672, Zone Change 5-2005 (Annexation 455)
Re: Adopting the Ordinance changing the existing County AE-20, R-1, R-1-217, R-2 and C-1-SR Zones to City R-1, R-2, and OA for the 2 areas located south of North Grand Avenue, generally west of Prospect Street.

14. Ordinance 1673, Zone Change 6-2005 (Annexation 456)
Re: Adopting the Ordinance changing the existing County R-1, R-1-217, R-2, P-1, and C-2 to City R-1, R-2, C-3(D) and OA for the 3 areas located south of Olive Avenue and west of Jaye Street.

15. Ordinance 1682, Neglect of Real Property
Re: Adopting the Ordinance adding Section 18-16 to Chapter 18, Offenses-Miscellaneous, of the Porterville Municipal Code concerning neglect of real property.

SCHEDULED MATTERS
16. Request for a One (1) Year Extension of Time for a Temporary Use Permit for Remote Control Car Track
Re: Approving a one-year extension to allow operation of a remote control car track at the site located on the south side of Henderson Avenue, east of Fourth Street.

17. Consideration of Retaining a Consultant to Assist with State and Local Government Affairs
Re: Considering preparation and distribution of a Request for Qualifications or a Request for Proposal for Legislative Consulting Services.

18. Golf Course Management
Re: Considering course of action for golf course, including continued operation of the course, retaining Enterprise Fund, recruitment of Golf Pro, and direction for seasonal rates and qualifications for annual passes to be considered during the next golf fee analysis.

19. Adoption of Resolution Expressing Concern on River Flow and Release Issues
Re: Considering resolution express concern on river flow and release issues raised by a recent U.S. District Court ruling.

20. Cancellation of January 3, 2006 City Council Meeting
Re: Considering cancellation of the first regular meeting in January 2006.

21. Assemblymember Maze Request for Legislative Remedies Necessary for the City of Porterville
Re: Informational item to be further discussed at November 15, 2005 City Council Meeting.

22. Consideration of Two Hour Parking Along Thurman Avenue
Re: Considering of placing two-hour parking time limit along Thurman Avenue between Main Street and Second Street.

23. Authorization to Prepare and Execute Documents Related to the Refunding of Certificates of Participation
Re: Authorizing preparation and execution of documents to facilitate the refinancing of 1998 Street Improvement Certificates of Participation.
Adjourn to a Meeting of the Porterville Redevelopment Agency.

**PORTERVILLE REDEVELOPMENT AGENCY AGENDA**
November 1, 2005

Roll Call

**WRITTEN COMMUNICATIONS**

**ORAL COMMUNICATIONS**

**PUBLIC HEARING**
PRA-1. Sale of Property Located in Project Area #1
Re: Approving the sale of 8,800± sq. ft parcel of real property located at the southeast corner of Main Street and Thurman Avenue to Ennis Commercial Properties for $110,000, with development conditions.

Adjourn the Redevelopment Agency Meeting to a Meeting of the Porterville Public Financing Authority

**PORTERVILLE PUBLIC FINANCING AUTHORITY AGENDA**
November 1, 2005

Roll Call: Public Financing Authority Members

**WRITTEN COMMUNICATIONS**

**ORAL COMMUNICATIONS**

**SCHEDULED MATTER**
PFA-1 Authorization to Prepare and Execute Documents Related to the Refunding of Certificates of Participation
Re: Authorizing the preparation and execution of documents necessary to facilitate the refinancing of the 1998 Street Improvement Certificates of Participation.

Adjourn to a Meeting of the Porterville City Council.

**ORAL COMMUNICATIONS**

**OTHER MATTERS**

**CLOSED SESSION**
Any Closed Session Items not completed prior to 7:00 p.m. will be considered at this time.

**ADJOURNMENT** - to the meeting of November 15, 2005

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Deputy City Clerk at (559) 782-7442. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
Call to Order: 5:00 p.m.
Roll Call: Council Member Irish, Council Member Martinez (arrived late), Mayor Pro Tem Hamilton, Council Member Stadtherr, Mayor West

ORAL COMMUNICATIONS
None

SCHEDULED MATTER
1. FARM MANAGEMENT AGREEMENT

Recommendation: That City Council provide direction to staff.

The City Manager presented the agenda item and Public Works Director Baldo Rodriguez presented the staff report on the City’s Farm Management Agreement with Robert Nuckols. The staff report included the following options for Council’s consideration:

Option 1: Continue with the existing contract for the remaining years left on the contract;
Option 2: Contract with the current farm manager with modifications and/or adjustments to the present agreement;
Option 3: Prepare and distribute RFPs for a new contract after modifications/adjustments have been made to the present agreement;
Option 4: Prepare and distribute RFPs to lease the land under an alternative farm agreement which removes City managerial controls.

Concluding his presentation, Mr. Rodriguez informed everyone that John Baker, Superintendent of the Waste Water Treatment Facility, was present to answer any questions that the Council might have.

Mayor West requested comments from the Council Members prior to receiving public commentary.

Mayor Pro Tem Hamilton inquired as to why staff pulled the farming operations costs of $126,297 from the 05/06 Budget resulting in a projected $96,231 net loss, rather than a $222,528 net loss. Staff indicated that the “typical” farming costs were removed so as to identify those costs that were fixed. It was stated that the identified costs were a part of the Budget, but not a part of the farming contract. Mayor Pro Tem Hamilton noted that the $126,297 in fixed costs should have also been taken out of the overall farming costs figure of $512,578.
At Council’s request, Mr. Nuckols came forward and answered questions pertaining to the 05/06 Budget. Referring to the Budget Analysis, Mr. Nuckols noted that the figures provided for FY 04/05 were derived at the end of Fiscal Year 2005. He indicated that as of June 30, 2005, 21,000 bales of oat hay and 340 tons of alfalfa hay remained on site at the farm, and that he had already been paid for processing that hay. He pointed out that because the unsold hay was an asset, it should have been reflected as such in the Budget figures. He asserted that it was unfair to only include the expenditure of processing the hay but not include the value of the remaining inventory in stock. A discussion then ensued as to how processing costs were calculated, during which it was stated that a per-acre methodology was currently employed. Various alternative methods of tracking costs were discussed.

Mr. Nuckols indicated that in the past there had been some problem with the alfalfa bales being light, but that problem had been remedied, pursuant to the request of Mr. Baker. He stated that alfalfa bales were currently averaging 117 lbs versus the previous 106 lb average.

At Mayor Pro Tem Hamilton’s request, Mr. Baker proceeded to explain the various elements of the farming operations and compare Porterville’s operations to other cities. He stated that the only other realistic comparison for Porterville would be the City of Tulare in that they too were operating under a Cease and Desist Order. He indicated that Tulare’s waste water flows were somewhat commensurate with Porterville’s, which were slightly more than 5 million gallons per day. He elaborated that during the last two months, Porterville’s flows had been 5.1 million, noting that the Cease and Desist Order limited flow to no more than 5.3 million gallons. He predicted that in the near future, Porterville would violate the Cease and Desist Order, primarily attributing the increase in flow to growth. He emphasized the importance of moving forward quickly with the expansion of additional agricultural acreage. Mr. Baker then informed everyone of specific elements of the Cease and Desist Order to which the City was required to adhere. A discussion ensued as to the various nuances of that particular type of farming, such as soil amendments, like nitrogen, as well as crops and cultivation issues. With respect to the degree of management oversight, Mr. Baker indicated that while most cities had minimal oversight, Porterville’s was significant.

Mayor Pro Tem Hamilton confirmed with staff that Mr. Nuckols performed some of the operational elements itemized as Nos. 1 through 5 in the staff report at cost, while other tasks he did not. Mayor Pro Tem Hamilton also questioned whether the City might be able to perform operations cheaper than a private entity.

Mr. Baker noted that labor operations were generally billed at approximately $11 per hour, not $26 per hour, and the equipment was billed at the negotiated rate. He pointed out that the invoices submitted to the City by Mr. Nuckols were thoroughly itemized and routinely checked by him for accuracy.

A discussion of the expenses itemized in the Farming Operations Budget Analysis ensued. It was stated that the increase in the rent expense was attributed to contractual annual CPI increases. Staff noted an error in the Analysis with regard to Expense Item 26-Rent for the 2005/2006 Budget. It was stated that $56,861 should actually be $53,400. As to Expense Item No. 34, Mayor Pro Tem Hamilton inquired why the materials expense budgeted for 2005/2006 was less than the actual for 2004/2005 and requested clarification as to the significant variances. Mr. Baker responded that the variance in 2004/2005 was likely
the result of the increased cost for fuel. He then elaborated on the process by which the Budget was prepared, indicating that it was a joint process between City staff and the farm manager.

Expense Item No. 62 - Debt was discussed next, during which staff indicated the figure represented CIEDB debt. Bryan Styles, Field Services Manager, elaborated that the variances year to year in debt expense were attributed to the CIEDB payment schedule and earned interest in the amount of $90,000. In response to Mayor Pro Tem Hamilton’s question on where that $90,000 went, staff indicated that the money was placed in sewer revenue, so as not to skew the farming revenue figures.

Council Member Irish questioned why some of the $90,000 in earned interest had not been applied to offset some of the farming costs. Mr. Styles responded that the money remained in the same Fund, but was separated out so as to keep the revenue separated from the farming operations to allow for accurate analysis. He added that those funds were still available for use.

Council Member Stadtherr commented that if the $90,000 had been included in the farming revenue, the actual farming operation analysis would be clouded. He agreed that the $90,000 could be made a separate line item. He then noted the resourceful methods employed by Australian officials in managing water and sewer, as relayed by Council Member Irish, and inquired as to the viability of those same methods in solving some of Porterville’s water problems. He suggested other possible uses for “grey” water, including irrigation for schools or the golf course, or even for flushing toilets.

Mr. Baker again emphasized the significance of abiding by the Cease and Desist Order. He indicated that staff had been researching additional ways in which the City could pursue long term reclamation. He stated that the reclamation area had been established in 1987, and estimated the waste water flow to have been approximately 3.5 million gallons per day at that time. He added that the City’s discharge had grown at an average rate of over 3% per year. A discussion ensued regarding the potential for meeting the requirements of the Cease and Desist Order by expanding the City’s irrigable land.

Council Member Irish compared Porterville’s population in 1987 to its current population and commented on the importance of moving forward.

Council Member Martinez clarified with staff that the City of Porterville initiated farming operations so as to meet the requirements of the Cease and Desist Order. It was pointed out that if the City had not taken such action, a growth/building moratorium would have been placed on the City. A discussion ensued regarding the 23 monitor wells and the requirements of the Regional Water Board. Mr. Baker informed the Council that the wells monitored the quality, condition and elevations in the water, the results of which were then reported to the Regional Board on a quarterly basis. He then spoke of the Board’s disapproval of the City raising the water level under the existing Teapot Dome Land Fill and pointed out that through good management of the City’s percolation ponds and reclamation area, the level had been reduced to historic lows. He emphasized that a monumental effort had been required to achieve that result. Mr. Baker stated that the City was on the right track toward compliance, but indicated that the cost was excessive.

At Mayor Pro Tem Hamilton’s request, Mr. Baker then informed the Council of some prospective solutions for the water issues facing Porterville. He emphasized the importance of proper planning for water and transportation corridors in anticipation of growth. He spoke of the necessity for expanding the Waste Water Treatment Facility in the future and cautioned over expansion at the current location, instead
recommending that it be moved toward the reclamation area near the Airport. He discussed some of the benefits of relocating the Facility and suggested an incentive program for utilization of the grey water so as to expand its uses beyond only agriculture.

Mr. Nuckols came forward and requested that the Budget be revised so as to remove the infrastructure costs. He commented that as the Budget was currently structured, the farming operation appeared to incur severe losses, which was inaccurate. He then clarified for everyone that the $74,000 figure was not his net profit, but rather a gross figure from which approximately $40,000 in irrigation costs was deducted. He voiced concern over the public perception of that $74,000 being his net management fee, when in reality, he netted far less.

Mayor West confirmed with City Attorney Julia Lew that the Study Session could run over schedule and that the Closed Session portion of the Council Meeting that evening could begin a little late, if necessary.

Greg Shelton, 888 North Williford Drive, came forward and voiced concern with several facets of the current Farming Agreement, such as lack of control over the end use of the waste water and the lack of a cap on costs. He spoke in favor of opening up the Agreement to bid, and letting the market dictate the price.

At Mayor Pro Tem Hamilton’s request, Mr. Baker explained the restrictions placed on uses of undisinfected secondary effluent by the Department of Health Services (“DHS”). He clarified that DHS prohibited the use of the effluent in pastures used for grazing lactating cows so as to avoid exposure of the cows’ udders to the effluent, which ultimately might contaminate the milk. He noted that the prohibition did not relate to growing crops used as feed, which was what Porterville did.

Council Member Stadtherr pointed out that the primary purpose of the City’s farming operation was to discharge its waste water, and because of that circumstance, it placed extraordinary requirements on the farm manager. He commented that he believed both parties desired adjustments to the current contract and voiced support for removing some of the sewer operations out of the farming operations line item, so actual costs could be more accurately tracked.

Council Member Stadtherr then moved that the Council approve Option No. 2 and direct staff to work with Mr. Nuckols to increase the transparency in the budget.

Mayor Pro Tem Hamilton commented that it was Council’s responsibility to ensure that the farming operation ran as lean and efficiently as it could.

Council Member Irish voiced support for proceeding with an outside audit prior to making any decisions about the current agreement. It was pointed out that the audit conducted by Mr. Steve Presley would be completed in November 2005.

Mayor West confirmed with staff that the three-year period of the current contract would end in December 2005. He then voiced agreement with Council Member Stadtherr’s comments in that Option No. 2 would be the best way to proceed.
Mayor Pro Tem Hamilton commented that the contract term should be adjusted to fall in line with the Fiscal Year. A discussion ensued as to the timeline in the farming operations.

City Manager John Longley indicated that the contract allowed for the flexibility of changing the term to coincide with the fiscal year.

Mayor West commented that he favored that the Council approve the continuation of the current contract, and once the results of the independent audit were available, make modifications to the contract and offer it to Mr. Nuckols. In the event Mr. Nuckols did not agree to the new terms of the contract, staff would be automatically authorized to prepare and distribute RFPs for a new contract. Mayor West clarified that direction to staff would also include working with Mr. Nuckols to identify and separate farming costs from waste water costs, and also emphasized the importance of keeping the Council informed and involved in the process. He stated that the item should then return to the Council for approval.

Mayor Pro Tem Hamilton questioned how the Council would be assured that the terms of the agreement were competitive if the City did not proceed with an RFP. He voiced concern with simply dictating to Mr. Nuckols what the new terms of the contract would be and telling him to either take it or leave it.

Mr. Nuckols voiced support for the status quo until such time as the audit was completed.

Mr. Longley pointed out that the timeline for modifying the contract would be extended to July 1, 2006 if the term was adjusted to coincide with the fiscal year calendar. He suggested that the item could be brought back before the Council post-audit, with staff recommendations for contract modifications.

Council Member Stadtherr commented that extending the contract term to June 30th would be one of the modifications that the Council could make so as to provide the City enough time to digest the audit. He then clarified that he and Mayor West were basically moving in the same direction. He stated that he was not looking for a long-term contact, but did not believe a resolution could be achieved as early as December. He voiced support for keeping the contract with the current farm manager, extending the term to coincide with the fiscal year, and directing staff to work with Mr. Nuckols to address some of the issues with the current operational budget. He indicated that after the audit was completed, the City would be better informed so as to make the appropriate modifications.

Mayor Pro Tem Hamilton commented that he did not believe that the Council was authorizing the extension of the term of the contract that evening, especially before seeing the results of the audit. He indicated that the Council would be maintaining the contract until December, and considering a new contract, with the possibility of initiating an RFP.

Mayor West agreed with Mayor Pro Tem Hamilton’s synopsis of the discussion and Council Member Stadtherr’s motion.

Council Member Irish seconded Council Member Stadtherr’s motion, as restated by Mayor Pro Tem Hamilton.
City Attorney Julia Lew indicated that she understood the direction to be to withhold Council action until such time as the audit was completed in November, and then bring the item back to the Council for consideration.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Council Member Irish that the Council authorize that the current contract with Mr. Nuckols be maintained until December 2005; and direct staff to meet with Mr. Nuckols to discuss modifications to the contract, and upon completion of the audit, to bring the item back before the Council with recommendations for modifications.

AYES: Irish, Stadtherr, West
NOES: Martinez, Hamilton
ABSTAIN: None
ABSENT: None

Disposition: Direction provided to staff.

ADJOURNMENT

The Council adjourned at 6:17 p.m. to the Closed Session portion of the regular meeting of September 6, 2005.

Patrice Hildreth, Deputy City Clerk

ATTEST:

Kelly West, Mayor
Call to Order: 6:00 p.m.
Roll Call: Council Member Irish, Council Member Martinez, Mayor Pro Tem Hamilton, Council Member Stadtherr, Mayor West

ORAL COMMUNICATIONS
None

CLOSED SESSION:
A. Closed Session Pursuant to:
   1- Government Code Section 54956.9(b) - Conference with Legal Counsel - Anticipated Litigation: One Case.
   2- Government Code Section 54956.9(c) - Conference with Legal Counsel - Anticipated Litigation: One Case.
   3- Government Code Section 54956.9(a) - Conference with Legal Counsel - Existing Litigation: Patrick Greene v. City of Porterville.

7:04 P.M. RECONVENE OPEN SESSION

REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
The City Attorney reported no action was taken.

Pledge of Allegiance Led by Council Member Richard Stadtherr
Invocation - One Person Participated.

PRESENTATIONS
• Employee of the Month - Paul Sewell (not present)

• Richard Tree, Transit Manager for Sierra Management, 61 West Oak Avenue, came forward and briefly explained a little about the program they were putting their drivers through to better serve their passengers. Mr. Tree stated that security had been increased with GPS Tracking Systems being added to the vehicles, security cameras at the Transit Center, and now they were adding new communications system to connect police, fire, and communications directly to the transit drivers. He went on to explain the increased training given to the drivers regarding disabled passengers and how to deal with emergencies. Mr. Tree stated that the drivers would
be receiving hands on training in this area to sensitize them to the barriers faced by handicapped riders.

**ORAL COMMUNICATIONS**

- Greg Shelton, 888 North Williford Drive, stated that if the Council decided to do anything on the farming operation, June the worst time and he recommended making any changes in November or December of this year or next.

- Dick Eckhoff, Chairman of the Downtown Porterville Association, 180 North Main Street, came forward to address three items. He invited everyone to attend the Nuestro Pride Car Show, Item 11A, held downtown on September 25, 2005. Mr. Eckhoff spoke in favor of Item 22 as an asset to the Downtown. Mr. Eckhoff questioned whether the Council would be limited to a 70% registered voters/30% business owner ratio on appointees, no matter what, as stated in Item 23.

- Dot Broome, 863 South Crystal, questioned the Council on Item 9 and the location of the bicycle paths along the south side Morton Street to the College. Public Works Director Baldo Rodriguez stated that it would be the return trip as well, and they were looking at that as a corridor, so the streets may be slightly different.

- Peter Schalembier, 1591 South Salisbury, President of the Porterville Area Ministerial Association, invited the Mayor and Council to the October 13, 2005, Annual Mayor’s Prayer Breakfast at the Grand Avenue Methodist Church at 7:30 a.m. He stated that everyone in Porterville was invited. Pastor Schalembier also spoke regarding the Hurricane Katrina devastation in Louisiana, Mississippi and Alabama, and stated that they had started collecting food, clothing and hygiene products at their church to deliver to the victims of the Hurricane. He stated that they would appreciate everyone joining them to assist those people in need.

- Donette Silva-Carter, 97 North Main Street, Porterville Chamber of Commerce, stated that she was joining Pastor Schalembier to let the Council know what was happening. She stated that the Chamber, along with KTIP, the Porterville Recorder, and the Bank of the Sierra are joining in an event for drive-by donations on Monday, September 12, from 6:00 a.m. to 9:00 a.m. at the Longs Drug Store on Henderson. She stated that it would be in conjunction with the American Red Cross, and they had already received $3,500 to open the savings account.

**CONSENT CALENDAR**

Items 1, 5 and 9 were removed.

2.  **BUDGET ADJUSTMENTS FOR THE 2005/06 FISCAL YEAR**

Recommendation: That the Council approve the attached budget adjustments and authorize staff to modify revenue and expenditure estimates as described on the attached schedule.

Documentation: M.O. 02-090605

Disposition: Approved.
3. PROPOSAL FOR HERITAGE CENTER TOT LOT AND ASSOCIATED LANDSCAPING DESIGN

Recommendation: Approve the Service Agreement with Sierra Design, Inc. for the design of the Heritage Center Tot Lot and Landscape improvements.

Documentation: M.O. 03-090605
Disposition: Approved.

4. ACCEPTANCE OF PORTERVILLE CIVIC DEVELOPMENT FOUNDATION LOAN

Recommendation: That the City Council:
1. Adopt the Resolution approving the Loan Agreement and Unsecured Promissory Note in the amount not to exceed $65,000.000 from the Porterville Civic Development Foundation;
2. Authorize staff to continue negotiation for an interest rate not to exceed 7% per annum;
3. Authorize the Mayor to sign all documents to complete the transaction.

Documentation: Resolution No. 130-2005
Disposition: Approved.

6. PROPERTY LICENSE AGREEMENT AND AGREEMENT CONCERNING RIGHTS AND OBLIGATIONS WITH SENIOR CITIZEN AGENCIES

Recommendation: Approve the Agreement, authorizing and directing its signing and implementation.

Documentation: M.O. 04-090605
Disposition: Approved.

7. AIRPORT LEASE - LOT 32C

Recommendation: 1) That the City Council approve the assigning of the lease agreement between the City of Porterville and Mr. Wayne Ross to Mr. John Loomis, Jr.
2) Approval is also contingent upon Mr. Loomis, Jr. providing verification of insurance within ten (10) days of Council action.

Documentation: M.O. 05-090605
Disposition: Approved.

8. PORTERVILLE TRANSIT PROMOTIONS

Recommendation: That the City Council:
1. Approve the implementation of a “Free” Transit Day for students on September 21, 2005; and
2. Authorize Staff to utilize the “Free” Transit Day concept for additional targeted groups, as staff deems advisable and appropriate in promoting public transportation.

Documentation: M.O. 06-090605
Disposition: Approved.

10. AMENDMENT OF ADMINISTRATIVE POLICY II-E-1, TRAVEL AND CONFERENCE EXPENSES

Recommendation: Request Council approve the draft resolution amending Administrative Policy II-E-1, Travel and Conference Expenses, to include authorization for air travel, mileage reimbursement, and a stipend should on overnight stay be avoided, and include the requirement that conference and meeting attendees request room sales tax waivers when applicable.

Documentation: Resolution No. 131-2005
Disposition: Approved.

11. This item has been removed.

11a. APPROVAL FOR COMMUNITY CIVIC EVENT DOWNTOWN PORTERVILLE ASSOCIATION NUESTRO PRIDE SHOW, SEPTEMBER 25, 2005

Recommendation: That the Council approve the Community Civic Event Application and Agreement submitted by the Downtown Porterville Association, subject to the stated requirements contained in Exhibit “A”.

Documentation: M.O. 07-090605
Disposition: Approved.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that the Council approve Items 2 through 4, 6 through 8, 10 and 11a. The motion carried unanimously.

1. CITY COUNCIL MINUTES OF JULY 5, 2005 AND AUGUST 26, 2005

Recommendation: That the Council approve the City Council Minutes of July 5, 2005.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that the Council approve the City Council Minutes of July 5, 2005. The motion carried unanimously.
COUNCIL ACTION: MOVED by Council Member Irish, SECONDED by Mayor Pro Tem Hamilton that the Council approve the City Council Minutes of August 26, 2005.

M.O. 09-080205

AYES: Irish, Martinez, Hamilton, West
NOES: None
ABSTAIN: Stadtherr
ABSENT: None

Disposition: Approved.

5. REQUEST FOR A ONE (1) YEAR EXTENSION OF TIME FOR THREE (3) TEMPORARY MODULAR UNITS FOR THE PORTERVILLE EVANGELICAL FREE CHURCH

Recommendation: That the City Council adopt the draft resolution approving a one (1) year extension of time commencing on September 16, 2005 and terminating on September 16, 2006.

The Community Development Director stated that the resolution should extend the time for three units, but the rest of the resolution would remain the same.

COUNCIL ACTION: MOVED by Council Member Irish, SECONDED by Mayor Pro Tem Hamilton that the Council adopt the draft resolution approving a one (1) year extension of time commencing on September 16, 2005 and terminating Resolution 132-2005 on September 16, 2006, as amended. The motion carried unanimously.

Disposition: Approved.

9. APPROVAL OF THE REMOVE II PROGRAM - CLASS II BICYCLE LANE AGREEMENT

Recommendation: That City Council:
1. Approve the attached agreement; and
2. Authorize the Public Works Director to sign the agreement on behalf of the City of Porterville.

Mayor Pro Tem Hamilton asked for clarification on the question of getting to College Street.

Public Works Director Baldo Rodriguez stated that they were reviewing the routing and looking at the latitude and flexibility of staying along the corridors. He stated that they had been told that they could stay within 1/4 mile of the corridor and still be successful with the grant, and he was checking to see if that was still correct so they could be eligible for the grant. He stated that it was their intention to take the corridor from Westwood east to the college. Mr. Rodriguez stated that Council would have some flexibility on where the routes would go. He stated that the application for the grant was time sensitive. Mr. Rodriguez stated that if it was not possible to get along these corridors, and get them where they say, his question would be whether they could take the money and
utilize what they can and the rest given back to the San Joaquin Valley Unified Air Pollution Control District, or go to the larger grant match. He stated that information would be passed on to the Council.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that the Council approve the draft Agreement and authorize the Public Works Director to sign the agreement on behalf of the City of Porterville. The motion carried unanimously.

Disposition: Approved.

PUBLIC HEARINGS


Recommendation: Staff recommends that the City Council hold a public hearing and adopt the proposed Interim Urgency Ordinance defining a process and establishing criteria for hillside development as defined.

The City Manager presented the item and Brad Dunlap, Community Development Director, presented the staff report. Mr. Dunlap stated that there was also a third area on Main Street, north of Reid Avenue extending to the northerly City boundary, which was inadvertently overlooked and could be added, or staff could be directed to bring it back.

The City Attorney stated for clarification purposes that also included in the packet was a letter from the developer’s attorney, and since the developer was present in the audience, the Council had been advised that there are some issues with regard to the status of their application because it did appear that it had been deemed complete back in May. Ms. Lew stated that it was the advice of Counsel that this particular subdivision could be heard later, and would be considered notwithstanding whether or not the moratorium was adopted. She stated that it was the advice of Counsel that the subdivision would not be reviewed under the moratorium because the application has already been deemed complete.

Ms. Lew clarified that the public hearing could be held, and what the Community Development Director had mentioned was that there was a specific section of the hillside that he was suggesting should be added to this, and that certainly could be done and they would then follow, for the purposes of the interim ordinance and if the Council wished to add that particular area, and proceed under the moratorium process.

Mayor West opened the public hearing at 7:42 p.m. and asked those in favor to come forward.

Dick Eckhoff, 197 North Main Street, stated that they had very little hillside development at that time, and he didn’t recall any major developments going in on them any place. He stated that most of the hillside development had been large lots which could easily be landscaped to 5%, 10%, 15% grades. Mr. Eckhoff stated however, then they got down to small lots, 10,000 sf or less, and a 15%
grade would be difficult to landscape effectively, and terraced landscaping would be expensive when added to the cost of the lot. He stated that there was also the problem of accelerated drainage coming off the streets, sidewalks, roofs, patios, etc. which were all going to be impermeable and increase the amount of run-off. He stated that it might not be too much of a problem on 2%, but on 10% or 12% it was quite a problem. Mr. Eckhoff stated that the Council had something here that needed to be handled differently than had been handled in the past, and on that basis he was strongly in favor of the moratorium to get this worked out. He stated that especially with eastside development now, with Granite High going in over there, there would be a lot more development going up that direction.

Mayor West asked those in opposition to come forward.

Chris Hall, 5 River Park Place, Fresno, came forward appearing on behalf of Bill Abbott, attorney for Canyon Springs Estates. He stated that he did not have an opposition given the City Attorney’s comments, he just wanted to note their presence for the record and join in Ms. Lew’s analysis of whether or not the ordinance could be retroactively applied to the existing project.

Jim Winton, 150 West Morton Avenue, stated that he was there on behalf of the area shown as area two. He stated that his first comments relate to the public notice he saw in the Porterville Recorder on August 27, 2005. He stated that the description was totally inadequate, which he could understand after seeing the map and comparing it to the description. Mr. Winton stated that on Monday he attempted to get a copy of the map, or the ordinance, or something, and was told that it was not available. He stated that he didn’t get a copy until Thursday, so he thought in this particular case, even though as Counsel has suggested it was not required that Council hold a public hearing on this matter, the extensions of the ordinance did change based on whether they held a public hearing or not. Mr. Winton stated that in relation to area two, he had been involved in some development proposals for two of the properties lying between Scenic Heights, or Highland Hill, and Main Street. Those properties comprise about 60 acres, with one parcel of ten acres that he had not been involved in, which was pretty much 100% of the large parcels that lie between Scenic and Reid Avenue. He suggested that the fact that there were development proposals, at least on the two properties he was involved with, it shouldn’t be a surprise to the staff. The northerly forty acres, which presently have an application in process, or under discussion with staff, for Jerome Staley and Brent Grizzle, who were also present in the audience, presently has an approved subdivision map from February of 1994. He stated that a mobile home park application was submitted and the project was denied by a former Council in April of 2001. Mr. Winton stated that following the purchase of the property by Mr. Staley and Mr. Grizzle, they actually started discussions with the City in August of 2004. They had submitted two actual development proposals for the property—the first proposal submitted was the originally approved tentative map which they submitted for discussion purposes to determine what the present direction of thoughts for the City were in relation to the development of that property. In December of 2004 they actually prepared to submit a tentative map and it went to a Project Review Committee meeting, they got comments from staff and they went back and addressed those comments and resubmitted the map in May of 2005. They then went to the Project Review Committee and got some more comments, some not discussed the first time, and they revised that map and last week submitted a development proposal which they felt addressed the comments that the staff had made at both the December and May Project Review Committee considerations. Mr. Winton stated that in relation to the theme or part of what the urgency ordinance seemed to be asking for, they really didn’t have an issue with. He stated that they didn’t have an issue with the grading concerns or with the themes that they were trying to address in relation to grading on the hillsides. He stated that they were confused
as to why a conditional use permit would be required when the ordinance itself sets forth the items that the Council was wanting to consider and allowing the staff to ask for in relation to the additional information as it relates to hillside grading. Mr. Winton stated that on the first hand they would not disagree with the direction of staff as it relates to grading, and addressing the uniqueness of hillside grading in Porterville, but they did question the necessity for the conditional use permit process when it didn’t seem to have any relationship to the grading.

Greg Shelton 888 N. Williford Drive, stated that it seemed that this was something that was just brought up and came out of nowhere and rushed through. He stated that the law said 14 days and they couldn’t get it until four days before the hearing which didn’t give them much time. He stated that it looked to him that this was just directed toward a couple of pieces, almost like the other ones were just thrown in for fluff. He stated that he had some railroad property over there, now that whole map encompasses the whole hillside area, but ironically there were only two or three pieces, two of which Mr. Winton was dealing with right now, that were actually under the auspices of the City, the rest of it was County. Mr. Shelton stated that he didn’t understand what a hillside ordinance was going to do when the City had no jurisdiction over it. He stated that it almost looked like they were going to throw everything in the kitchen sink and try to look like they were not trying to stop one or two projects. He stated that it looked like they were trying to stop one or two projects, and so he had concerns with the whole thing all the way through. He stated that they needed to look at this before they did anything.

Jerome Staley, 32542 Aquaduct Road, Palmsville, owner of the property at Main and Reid came forward and reiterated that they had no problems with the grading and had been sensitive to staff’s concerns and tried to work with them on this. He stated that they were surprised to receive this or get notified by Mr. Winton that this was happening. Mr. Staley stated that he had some concerns because in the comments it talked about the recreational facilities, transportation, City schools and all of those necessities needed in a hillside ordinance, but then you get to the document it only talked about grading, so it seemed to him that the conditional use permit may be being used to circumvent the Subdivision Map Act or regulations the City already has in place to implement other conditions on anyone who has a little slope to their property. Mr. Staley stated that this would put them at unfair competition with people who have flat land, and would put more regulations on them when they think they have been sensitive to the grading. Mr. Staley stated that he didn’t have a problem with that, he just had a problem with the conditional use permit because it gives a wide open array of requirements staff could put on there—on their wish list. He stated that their project was sided by three public streets, and they were accessing two streets and improving three, which would be a big improvement—including improving and widening Main Street and Reid to the standards. Mr. Staley stated that they wanted to work with the City, but the conditional use permit might be to burdensome and unfair competition.

Brent Grizzel, 1036 Capra Way, Fallbrook, stated that he and Mr. Staley were partners on the project he just spoke about. He asked the Council that since Canyon Springs was so far through the pipeline that this may not apply to them, they had also been working with the staff for a whole year now and wonder if it could be possible for them to continue the track they were on. He stated that they had been complying with almost everything they City had asked for at this time, and was looking forward to more iterations. Since properties were being added tonight to this urgent moratorium, he wondered if their property could be pulled out so they could going with staff and giving the City what they wanted, but not be subject to a conditional use permit.
Julia Lew, City Attorney, stated that she was not know exactly where they were in the process. She stated that she didn’t think there was a legal obligation to do that unless there was a situation where the application was deemed complete, but she didn’t think that was the case. She stated that it was up to the Council to decide if it wants to create exceptions, however at a certain point they start creating so many exceptions that the remainder does become a discriminatory act, and that was what they were trying to avoid. She stated that they wanted this to apply to all future developments. She reiterated that it was a temporary measure to give the Council time to figure out what needs to happen up there so development could be what the City was foreseeing for the future. She stated that it was not meant to be a permanent occasion—the staff tried to come up with something that would also give further flexibility in that it would not be an outright, complete prohibition. Ms. Lew stated that in regard to the conditional use permit, the City would have to apply the conditional use permit process in a fashion that does not create a discriminatory situation, and staff was well aware of that.

Mayor West closed the public hearing at 7:57 p.m.

Council Member Irish asked if the Council utilized conditional use permits, could they be based on slope and elevation. The City Attorney stated that it could.

Brad Dunlap, Community Development Director, provided further elaboration on this issue as he had developed the regulations. He stated that the question seemed to be whether they could use the conditional use permit as a tool to address the development criteria as relates to the slope, loss of grading, etc. He stated that the answer was absolutely. He stated that the question was, or the concern may be at this point, why that and not just the map. He stated that there were some unforeseen issues here when they start working with people and the conditional use permit gives them flexibility to apply conditions to the public maps that works at integrating it into the surrounding lots, or those beside it. Mr. Dunlap stated that the idea was not to be ambiguous or arbitrary, the idea was to simply make sure they had the elements in place to make the maps fit the contour of the site itself as well the surrounding site.

Council Member Irish explained how he felt about the hillside and why it looked to be bogging down. He stated that the Council looks at the hillside as the jewel of Porterville. They are one of the few valley cities that have the hills to look up at. Council Member Irish stated that the Council didn’t envision the hillside like those of Southern California that were roof to roof, and a lot of people in Porterville didn’t want to see that, so they were proceeding gingerly. He stated that four years ago no one wanted to talk about building anything on the hill, and now its coming very fast and they were just proceeding with caution and were not trying to be discriminatory against particular development or any particular group. Council Member Irish stated that they just wanted to know that fifteen-twenty years from now they made the right decision.

Mayor Pro Tem Hamilton stated that the moratorium had come upon them pretty quick, but the hillside ordinance has been a three year process so far. He stated that concerned property owners on the hillside had come to the Council and asked them to slow the process down until the ordinance was passed. However with Canyon Springs, he did want to compliment Council Member Irish and Mayor West and the people from Canyon Springs who had come to compromise with each other, and the developer had added amenities the City had dearly wanted and they appreciated that. He stated that as far as the moratorium went, right now it was only a forty-five day moratorium.
Jim Winton stated that the initial period was forty-five days, but he did feel history would bear out that the hillside ordinance would be done in thirty-five days. He stated that the ordinance could actually be extended for twenty-two months and fifteen days beyond the forty-five day period, so they were really talking about two years. That was the maximum. He stated that they would not have a problem with this being over in forty-five days, but they did not think it would happen.

Mayor Pro Tem Hamilton clarified that they could kill this anytime the Council wanted.

Mayor Pro Tem Hamilton made a motion to approve the Interim Urgency Ordinance for the Protection of the Hillside Area of the Community. The City Attorney asked for clarification purposes whether the Council wished to add the third area.

Mr. Dunlap clarified that it would be east of Main Street, north of Reid Avenue.

Ms. Lew stated for clarification purposes that the ordinance as read would apply to the three areas, it was just that the third area was not in the public notice. She stated that if the motion passes, it would come back within forty-five days with a report that would have to be prepared as well, with another notice of public hearing, and at the time the Council would decide if it wanted to extend up to ten months and fifteen days. She further clarified that Council had to bring it back in forty-five days, and if extended, could set periodic checks or set a time up to ten months and fifteen.

Council Member Irish asked if he could add an amendment that if it was not done within 120 days they would cancel it. He stated that he didn’t want it to go more than 120 days.

Ms. Lew stated that it would be more appropriate to do that at the next stage where it would be easier to decide how long and what conditions would be placed. It was a little difficult to interpret now.

COUNCIL ACTION

MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that Council approve the proposed Interim Urgency Ordinance for Ordinance 1680 the Protection of the Hillside Area of the Community.

AYES: Irish, Hamilton, Stadtherr, West
NOES: None
ABSTAIN: Martinez
ABSENT: None

Disposition: Approved

The Council took a recess from 8:07 p.m. to 8:18 p.m.

13. CANYON SPRINGS ESTATES TENTATIVE SUBDIVISION MAP (CONTOUR DEVELOPMENT INC.)

RECOMMENDATION: That the City Council:

(1) Adopt the draft resolution approving the Negative Declaration for Canyon Springs Estates Tentative Subdivision Map; and
(2) If the Interim Urgency Ordinance is not adopted, adopt the draft resolution approving Canyon Springs Estates Tentative Subdivision Map; and

(3) If the Interim Urgency Ordinance is adopted, deny the draft resolution approving Canyon Springs Estates Tentative Subdivision Map without prejudice.

(4) Approve the draft resolution approving Canyon Springs Estates Tentative Subdivision Map without prejudice.

The City Manager presented the item and Brad Dunlap, Community Development Director, presented the staff report.

Mayor West opened the public hearing at 8:24 p.m. and asked those in favor to come forward.

David Store, with Contour Development, representing the subdivision, came forward. He thanked Mr. Dunlap for meeting with them, since their meeting of July 5, with the City Manager, and communicating with him today regarding some projects that had been approved that they were not able to get physically that evening to hand out for the record—the Northgate Estates Tentative Subdivision Map and the El Dorado Estates Tentative Subdivision Map, which were subdivisions approved in the hillside area. He stated that there were other applications pending before the City in the hillside area, including theirs, which resulted in the interim urgency measure adopted that evening, and he would like those added to the record, as they could not physically get them. Mr. Store gave the chronology of their application beginning on February 4, 2005, and the steps taken to conform to City requirements, requests from the Hillside Committee, and requests from Council. He stated that 46% of the lots in the Canyon Springs Subdivision were 10,000 sf. or more, with the average 9,590 sf. He stated that there were lots with a minimum size of 6,487 sf. with lots with a maximum of 19,000 to 20,000 sf. range. Mr. Store asked that the Council approve the Canyon Springs Tentative Subdivision Map that evening, and asked for clarification of approval without prejudice. He stated that he was present to answer any questions Council might have.

Mayor West then asked those in opposition to come forward.

Dick Eckhoff, 197 North Main Street, came forward stated that he wasn’t saying he was speaking in opposition, but he had some questions or concerns mainly with storm drainage and lot size. He stated that in the subdivision 14 acres were streets and 12 acres were developed areas, so 25 acres, or over 1/3, of the development was non-permeable with 100% runoff. He stated that heavy rains were not the real common here, but they did get an occasional gusher, and a half inch of rain could in a short time could generate a lot of water out of there—something in the neighborhood of 13 second feet. Mr. Eckhoff stated that there was a 18" storm drain that the subdivision would feed into, and that was a lot of water to put into one 18" line. Regarding sizes there, lots are up to 20,000 sf., the grading plan shows ten to fifteen feet usable in front and ten to fifteen to twenty feet usable in the back yard before it breaks into a 15%, or three to one, slope, which was pretty much limited to terracing. He questioned the problems and costs of landscaping on slopes, and he questioned the usable space on the 19,000 to 20,000 sf. lots. Mr. Eckhoff asked inquired about Condition 7, and the expansive soils item, and similar items which he feel would be higher. He asked what would happen if someone went in and removed landscaping which was originally done for mitigation purposes. Mr. Eckhoff stated that he was concerned that with the smaller lots like this that the landscaping, to take advantage of the slopes
would swipe out the area and be very expensive for the size home involved. He also questioned whether the 7% slope on the roads running up the hill was being covered.

Mayor West closed the public hearing at 8:35 p.m. when no one else came forward to speak.

Council Member Irish thanked Mr. Store for meeting with them and trying to reach some type of agreement, and doing the few extra things that they had asked. He stated that this was not exactly what he wanted, but it was more than he hoped for at the time. He asked Mr. Store how sensitive the project was to the elevation.

David Store stated that it was the most sensitive project he would ever see, and he deferred to staff on the grading as they went with the best engineering principles available. He stated that if there were things they could do post this meeting, and prior to the final map, they would do things better if possible. He stated that there was latitude beyond approval of the tentative subdivision map to work with the City Engineer and still come back with a determination that was in compliance with the Council’s approval that evening. Mr. Store stated that they were amenable to do that if there were things the Council could point out. He stated that was part of staff’s trouble, staff was trying to figure out Council’s direction and how they could implement that, not withstanding best engineering principles. Mr. Store stated that if there were things they could do to improve the design of the map, they’ve been sensitive to it. He also pointed out that as they got to the corner, their engineer stated that they had slopes less than 5%. Mr. Store stated that when they averaged in other areas, that was there the most sensitive slopes were. He state that if there were things they could do relative to the design of the streets to be more sensitive to the lotting out there, they were open to that.

Council Member Irish thanked them again for being straight forward when they meet with them earlier, and that they would still continue to work with them means a lot.

Council Member Stadtherr asked Mr. Winton, as a local expert, as all the streets ran on a north-south access, which meant most of the houses would also be on a north-south access. Mr. Winton clarified that it would be east-west. Council Member Stadtherr confirmed with Mr. Winton that it was possible for an east-west access house to consume 30% less energy than a house on a north-south access. Mr. Stadtherr calculated that $10,000 a month was draining out of the local economy because houses were being built north-south instead of east-west. He stated that in the future those interested in community development should take that into consideration.

Jim Winton stated that when they were discussing orientation it was based on information at one time in the City ordinances, or some recommendations to orient houses a certain way, but there had been such advances in technology for those heating and cooling innovations that he wasn’t too sure that they couldn’t achieve or address nearly the same thing irregardless of the orientation of the house. Mr. Winton stated that it would take more money to do that, but it was not necessarily a cut and dried 30% loss just because of the way the house faces.

Council Member Stadtherr stated that it just struck him on the north and south access, and some places were beginning to require east-west access.

Mr. Winton stated that with the grading sensitivity there might be a real conflict between those two ideas.
Mayor West stated that he had two concerns like Mr. Eckhoff— the drainage and the retaining walls. How unsightly would the retaining walls be, and drainage was a big concern where the lots were very steep. Those were his two concerns.

**COUNCIL ACTION**

MOVED by Council Member Stadtherr, SECONDED by Mayor Pro Tem Hamilton that Council adopt the draft resolution approving the Negative Resolution 133-2005 Declaration for Canyon Springs Estates Tentative Subdivision Map and approve the draft resolution approving Canyon Springs Estates Tentative Resolution 134-2005 Subdivision Map without prejudice. The motion carried unanimously.

Disposition: Approved

14. INTERIM URGENCY ORDINANCE PROHIBITING CONSTRUCTION, OPERATION AND MAINTENANCE OF WIRELESS COMMUNICATIONS TOWERS

Recommendation: The City Attorney and staff recommend that the City Council hold a public hearing and adopt the attached Interim Urgency Ordinance Prohibiting the Use of Land for Construction, Operation, and Maintenance of Towers for Wireless Communications.

The City Attorney, Julia Lew, presented the item and gave the staff report. She added one caveat that came up that day—the staff wanted to make sure that there was a provision included that if a tower was being used specifically for public safety purposes the ordinance would not apply.

Mayor West opened the public hearing at 8:45 p.m. and asked those in favor to come forward. No one came forward and those in opposition were asked to come forward.

Jamie Strachan, 6399 W. Shields Avenue, Fresno, representing UbiquiTel, Inc. the Sprint carrier in the area, came forward and stated that they had an application to renew a previously approved tower application which expired because of the time it took to process the application. He stated that their funding ran year to year, and when it was not used it was taken away, and took two years to get it back with additional funding to build the tower. He stated that they would be in the same position if the moratorium went into effect. He stated that the tower was located on Doris on Ethel Attebury’s property by the railroad tracks, and would host other companies as well. Mr. Strachan stated that the tower was in a commercial area.

Mayor West closed the public hearing at 8:48 p.m. and asked for comments by Council.

Mayor Pro Tem Hamilton asked for the definition of tower. The City Attorney first explained that the moratorium would apply to new construction, and Mr. Dunlap stated that the Sprint tower would be new construction. The City Attorney gave the definition of tower and spoke about the perimeters of this issues aside from the conditional use process.

The City Manager explained that towers were being proposed for residential areas, and use permit could put conditions but could not be used to disapprove the towers.
The Community Development Director stated that the moratorium was being proposed because of towers being proposed in residential areas, and this would allow the Council flexibility to consider what they ultimately wanted to adopt. He clarified that the Council could decide the zoning, and the standards when they went in those areas. Mr. Dunlap stated that depending on what the Council wanted to do they could approach it and exempt anything in a C-3 Zone or M-1 Zone at more than 500 feet away from residential. He stated that they could do something like that. Mr. Dunlap stated that they had purposely cast the net all the way across because he didn’t know what the Council wanted. He stated that if an antenna was 100 feet tall, and was 500 feet back from residential or open space, and in a C-3 or M-1 Zone, did it need to be in the initial interim urgency ordinance. He stated that they could still adopt standards for it, but was it a pressing matter that needed to be dealt with under a moratorium.

The item failed for the lack of a motion.

Council directed staff to go back and make this subject a C-3 zone with a few perimeters they came up with and bring it back in a couple of weeks.

Mr. Strachan stated that they were ready to build their tower right now, and they had the funding which they would lose again in January if its not complete. He stated that it was a $350,000 to $500,000 investment for the company. Mr. Strachan stated that this was a capacity tower because usage in Porterville required more coverage with access to wireless internet. It is a 90 foot tower that allows for three carriers at 70, 80 and 90 feet. He stated that the tower must be complete by January 1, 2006. Mr. Strachan spoke regarding the process of designing and planning for their tower and its grid pattern.

Disposition: No action taken.

15. VACATION OF PORTIONS OF SCRANTON AVENUE AND HOLCOMB STREET WITHIN THE PORTERVILLE DEVELOPMENTAL CENTER (STATE OF CALIFORNIA)

Recommendation: That City Council:
1. Adopt the Resolution of Vacation, excluding reservations, for portions of Scranton Avenue and Holcomb Street; and
2. Authorize the City Clerk to record the Resolution of Vacation with the County Recorder;
3. Authorize the Mayor to execute a Quitclaim Deed, relinquishing all rights, title and interests in and to those portions of Scranton Avenue and Holcomb Street.

The City Manager presented the item and Public Works Director Baldo Rodriguez gave the staff report.

Mayor West opened the public hearing at 9:03 p.m. and closed the hearing at 9:04 p.m. when no one came forward.
COUNCIL ACTION  

RESOLUTION 135-2005  
MOVED by Council Member Stadtherr, SECONDED by Mayor Pro Tem Hamilton that Council adopt the Resolution of Vacation, excluding reservations, for portions of Scranton Avenue and Holcomb Street and authorize the City Clerk to record the Resolution of Vacation with the County Recorder; and, authorize the Mayor to execute a Quitclaim Deed, relinquishing all rights, title and interests in and to those portions of Scranton Avenue and Holcomb Street. The motion carried unanimously.

Resolution 136-2005  

Disposition: Approved

The Council took a recess from 9:06 p.m. to 9:15 p.m.

16. CONSIDERATION OF MODIFICATIONS TO THE FEE SCHEDULE AS IT PERTAINS TO PLANNING SERVICES

Recommendation:  
(1) That the Council open the Public Hearing to take testimony regarding the proposed modifications to the fee schedule as it pertains to Planning services, and 
(2) Adopt the attached draft resolution implementing the proposed fees for Planning services.

The City Manager presented the item and Darrel Pyle, Deputy City Manager, gave the staff report.

Mayor West opened the public hearing at 9:17 p.m. and asked those in favor to come forward. No one came forward and those in opposition were asked to come forward.

Dennis Townsend, Townsend Architectural Group, 633 N. Westwood, came forward and spoke in opposition due to large increases aimed at the development community. He stated that these fees were put on the backs of the developers, but they would be passed on to the consumers. He suggested that cities get together and go to Sacramento to ask to get their property tax monies. Mr. Townsend strongly urged the Council to take back the fee schedule and take a closer look at the schedule and lighten it.

Greg Shelton, 888 North Williford, came forward and spoke in opposition. He stated that he had not been able to ascertain exactly how the fees were estimated. He spoke about the fee for a lot line adjustment which was proposed to go from $125 to $1338. He also spoke about the fees for certificates of compliance and zone variance. Mr. Shelton went on to state that if the Council wanted to help development on the east side, don’t put another burden on them.

Jim Winton, 150 West Morton, came forward and stated that he was not opposed to the City adjusting outdated fees. He stated that he was confused in several areas of the Maximus report—they were looking at lot line adjustments in Planning, but there was also lot line adjustments in Public Works, so was that a separate fee? Secondly there were areas in processing applications—why were conditional use permits less money than a design overlay? The application fee for a tentative map for a 20 lot subdivision would be $330 per lot, 40 lots was $229, up to 100 lots at $168 per lot. Recently the City had an agreement to check final maps and improvement drawings for $95 a lot—it was difficult
to comprehend that the City would spend more time reviewing a tentative map than the details of the results of the approval. The other area was the cost for annexation—he stated that the City would have given up $15 million dollars in fees by doing the island annexations now. Mr. Winton stated in summary that his request was that the Council continue this to allow the development community further opportunity to study the report and meet with staff.

Bob Keenan, Executive Vice President of the Building Industry Association of Tulare and Kings Counties, 315 West Oak, Visalia, stated that he was amazed at the fees which had gone through a Council study session with no changes. He stated that he got the document but others did not, and it was difficult to find the information he needed. Mr. Keenan stated that State Law allows for a charge for the reasonable cost of the service, and that brought them to the reasonable cost. He questioned the control on the numbers. He stated that this was the first time the City, Maximus and the BIA met, whereas in other cities they had dialog on fees. Mr. Keenan expressed his concern about 100% cost recovery. He stated that they wanted to meet with staff, Maximus, and the Council to review this and get down to the nitty, gritty, and get explanations on overhead and what was fair and just. He stated that Council had to appreciate the fact that anything that they paid in advance of permit would quadruple to the buyer, and anything paid at permit would double to the buyer. Mr. Keenan stated that he was not sure this was right and fair.

Greg Woodard, Woodard Homes, 1055 West Morton, came forward in opposition and asked the Council to continue this to give them more time to review. Mr. Woodard spoke about the burden being placed on the building community.

Mayor West closed the hearing at 9:39 p.m.

Council Member Irish stated that just because they hadn’t done an increase fees in 17 years didn’t mean they had to hit everybody all at once. Council Member Irish then handed out a copy of some figures he had generated. He stated that if they took the current fee of $400 and changed it to the recommended fee of $3376—if they had increased that fee by 3% for the last 17 years it would only be $656 per the CPI. He stated that had gone through and done this to all the fees. Council Member Irish then reviewed some of the fees for the Council. He stated that they needed to be reasonable about this. He suggested even going back and raising the fees by 1.5% for the 15 years and starting now put a CPI on it to change 3% per year. He asked the Council to consider raising the fees by half the CPI for the last 17 years, and start from next year increasing it by 3% a year. Council Member Irish stated that might go for all the fees and taxes they charge.

Mayor Pro Tem Hamilton stated that what Council Member Irish said was true, and on the CPI 4% or 5% would be more like it.

Council Member Stadtherr stated that besides regulatory increases, there are longer forms and more paperwork to process, and more unfunded mandates from the State. He stated that it was not just the inflation factor it was also the time to complete factor.

The City Manager stated that conversation on the fees with the building industry was necessary, but the issue on the fees was the cost of the processing is reflected in the right column and that was what Maximus did. It is something to go through and issues resolved, and he did think they could get to some numbers. He stated that there was a certain amount of cost associated with the processing of
applications, part of that being the review cost of getting it to Council for their review. The City Manager stated that part of it was as Council Member Stadtherr stated—the cost of regulation. He stated that when they sat down they could pull out the numbers for review and be pretty accurate. The Manager stated that the balance here was that anything not carried by fees over time was essentially carried by the taxpayers, and in the end it had impacts on other service levels. The decision made in the end was where was money going to be spend and where were they going to derive it from—and that becomes a balancing act. He suggested that they sit down and engage in some review and consideration.

Mr. Pyle asked about analyses done by the BIA on fees by various government agencies and he asked if that report was near completion. Mr. Pyle stated that if there were instances where some of the fees looked substantially out of line, the fees adopted in 1988 were not implemented as proposed and were cut in half therefore under-funding since 1988. He stated that they could meet Building Industry Association people and any other interested parties and go through a similar meeting and go through the fees.

Mr. Keenan stated that the analysis was an impact fee comparison.

Mayor West stated that costs had gone up and he agreed with Council Member Irish that the fees needed to be adjusted.

Mayor Pro Tem Hamilton made a motion to postpone any action that night until after they met with the BIA.

They City Attorney stated that no motion was necessary, but they should continue the public hearing which needed a motion.

COUNCIL ACTION MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that Council postpone action on the fees for sixty days. The motion carried unanimously.

Disposition: Hearing continued to November 1, 2005 to allow planning community & BIA to meet with staff and consultant to review fees and methodology.

17. SUNRISE VILLA PHASE 2 & 3 TENTATIVE SUBDIVISION MAP

Recommendation: That the Mayor open the Public Hearing and continue it until the Council Meeting of September 20, 2005.

Council Member Stadtherr stated he lived within 300 feet of the project and left the room.

The City Manager presented the item and Mr. Dunlap gave the staff report.

Council Member Irish asked if this could be done at the first meeting in October as he would be absent September 20.

The Mayor opened the hearing and continued it until October 4, 2005.
SECOND READINGS

18. ORDINANCE 1678, ZONING ORDINANCE AMENDMENT 1-2005

Recommendation: That Council give Second Reading to Ordinance No. 1678 and waiving further reading, and adopt said ordinance.

The City Manager presented the staff report and read the ordinance by title only,

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that the Council give second reading to Ordinance 1678, waive further reading, and adopt the ordinance, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING THE
Ordinance 1678 ZONING ORDINANCE PERTAINING TO BLOCK WALL REQUIREMENTS SEPARATING RESIDENTIAL AND NON-RESIDENTIAL USES. The motion carried unanimously.

The City Manager read the ordinance by title only,

Disposition: Approved.

19. ORDINANCE 1679, ZONING ORDINANCE AMENDMENT 2-2005

Recommendation: That Council give Second Reading to Ordinance No. 1679 and waiving further reading, and adopt said ordinance.

The City Manager presented the staff report.

COUNCIL ACTION: MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that the Council give second reading to Ordinance 1679, waive further reading, and adopt the ordinance, being AN ORDINANCE OF THE
Ordinance 1679 CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING THE ZONING ORDINANCE PERTAINING TO C-2 USES IN THE CENTRAL COMMERCIAL DISTRICT. The motion carried unanimously.

The City Manager read the ordinance by title only,

Disposition: Approved.

SCHEDULED MATTERS

20. RESOLUTION OF NECESSITY PERTAINING TO THE ACQUISITION OF A PORTION OF PROPERTY (APPROXIMATELY 85 SQUARE FEET OF PROPERTY) LOCATED AT THE NORTHWEST CORNER OF MULBERRY AVENUE AND PLANO STREET (APN #248-010-005) FOR THE PROPOSED TRAFFIC SIGNAL NO. 8 PROJECT

Recommendation: That the City Council open and continue the hearing until September 20, 2005.
The City Manager presented the item and Public Works Director Baldo Rodriguez gave the staff report.

Mr. Rodriguez stated that this matter would be going to the Board of Supervisors on September 20 and asked that it be continued to the October 4 Council Meeting.

Mayor West opened the hearing at 10:00 p.m. and continued it to October 4, 2005.

Disposition:  Item Continued to October 4, 2005.

21. CONSIDERATION OF DRAFT REGULATIONS LIMITING CONTINUOUS AND CUMULATIVE OCCUPANCY OF HOTELS, MOTELS AND MOTOR HOTELS

Recommendation: The City Attorney and staff recommend that the City Council review these draft regulations and provide additional input, and set a public hearing October 4, 2005, for consideration and first reading of an ordinance adding new regulation limiting continuous and cumulative occupancy of hotels, motels and motor hotels.

The City Manager presented the item and the City Attorney gave the staff report.

Council briefly reviewed the draft regulations and questioned its application to ‘bed and breakfast’ establishments.

Community Development Director Brad Dunlap stated that prior to the hearing they would look at the number of units, and look at existing facilities.

COUNCIL ACTION MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Irish that Council approve the proposed ordinance and set a public hearing October 4, 2005, for consideration and first reading of an ordinance adding new regulation limiting continuous and cumulative occupancy of hotels, motels and motor hotels. The motion carried unanimously.

Disposition: Approved

22. REQUEST FOR RESOLUTION OF AMBIGUITY REGARDING SALONS AND SPAS IN THE PROFESSIONAL OFFICE (PO) ZONE

Recommendation: That the City Council adopt the proposed resolution of ambiguity.

The City Manager presented the item and Community Development Director Brad Dunlap gave the staff report.

Dana Ramirez, 347 North D Street, Dana’s Skin Radiance, came forward with a letter of approval from surrounding tenants and asked the Council to approve the request for her business.
MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that Council adopt the proposed resolution of ambiguity. The new regulation limiting continuous and cumulative occupancy of hotels, motels and motor hotels. The motion carried unanimously.

Disposition: Approved

23. RESOLUTION REQUIRING RESIDENCY OR BUSINESS OWNERSHIP NEXUS WITH REGARD TO MEMBERS OF COMMISSIONS, LEGISLATIVE COMMITTEES AND OTHER BOARDS OR COMMISSIONS UPON WHICH THE CITY COUNCIL HAS APPOINTIVE AUTHORITY

Recommendation: The City Attorney recommends that the City Council consider adoption of the Resolution Requiring Residency or Business Ownership Nexus with regard to Members of Commissions, Legislative Committees, and Other Boards or Commissions Upon Which the City Council has Appointive Authority.

The City Manager presented the item and the City Attorney gave the staff report. She stated that No. 2 of the resolution could be amended to read “The remaining members, up to thirty percent of all members of any commission, committee or other board, upon which the City Council has appointive authority, shall be required to own a business (or a substantial portion thereof), within the City of Porterville”.

Council Member Irish made a motion to adopt the resolution with the changes stated by Ms. Lew. Mayor Pro Tem Hamilton seconded the motion.

Council Member Stadtherr questioned someone not owning the business being excluded.

The City Attorney stated that the resolution could always be amended by resolution as desired by Council. She stated No. 2 could be amended to “shall be required to own a business (or a substantial portion thereof), or operate a business,“.

MOVED by Council Member Stadtherr, SECONDED by Council Member Irish that Council amend the motion to add the operator of a business with business owners. The motion carried unanimously.

MOVED by Council Member Irish, SECONDED by Mayor Pro Tem Hamilton that Council adopt the resolution with the proposed changes and amendment.

Resolution 138-2005

AYES: Irish, Hamilton, Stadtherr, West
NOES: Martinez
ABSTAIN: None
ABSENT: None

Disposition: Approved
24. CONSIDERATION OF SURPLUSING CITY WATER TENDER AND MAKING IT AVAILABLE TO LA BARCA, JALISCO, MEXICO

Recommendation: Surplus the 1955 Diamond Rio 6 x 6 water tender with the 1,000 gallon water and the 35 horse power tank, and make it available to La Barca, Jalisco, Mexico subject to their transportation of the vehicle from Porterville to Mexico.

The City Manager presented the staff report.

COUNCIL ACTION MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that Council amend the motion to add the operator of a business with business owners. The motion carried unanimously.

Disposition: Approved

25. CONSIDERATION OF RETAINING A CONSULTANT TO ASSIST WITH STATE LOCAL GOVERNMENTAL AFFAIRS

Recommendation: Consider retaining a Legislative representative. Conduct appropriate background and research.

The City Manager presented the staff report.

Mayor Pro Tem Hamilton introduced Steve Samuelian, 1530 E. Shaw, Suite 114, who came forward and spoke on his qualifications to the Council.

Council Member Irish asked that this matter be continued until November 1, 2005, to allow him an opportunity to check out the information and Council Member Stadtherr concurred. He stated that this might very well be what they wanted to do.

Council stated that they would leave this matter open until the first meeting in November.

Disposition: Continued to November 1, 2005.

26. CONSIDERATION OF SUPPORT FOR THE PORTERVILLE POW WOW

Recommendation: Adopt the resolution of support as presented, and provide direction to the staff regarding other activities in support of the Pow Wow.

Council Member Martinez abstained on this matter.

The City Manager presented the staff report.

COUNCIL ACTION MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Stadtherr that Council adopt the resolution of support as presented, and provide direction to the staff regarding other activities in support of the Pow Wow.
Resolution 139-2005  AYES: Irish, Hamilton, Stadtherr, West
NOES: None
ABSTAIN: Martinez
ABSENT: None

Disposition: Approved

27. CONSIDERATION OF DESIGNATING AN AREA COMMEMORATING CITY COUNCILS

Recommendation: To be determined by Council.

The City Manager presented the staff report.

Council Member Irish stated that the idea was to have a large plaque with small plates on it with names with the dates they were on Council starting in 1926. He stated that his thoughts were putting them on the far wall in the back of the Chambers between the two doorways. He stated that they could look into the cost and he would be glad to help lay it out and work with staff.

There was a consensus of the Council and the City Manager stated that staff would bring this back for a budget adjustment.

28. CONSIDERATION OF WIRELESS COMPUTER ACCESS FOR THE CITY COUNCIL

Recommendation: That the Council authorize staff to establish the program outlined in the report.

The City Manager presented the staff report.

Mayor West stated that this was not money well spent, and Council Member Stadtherr questioned the cost.

COUNCIL ACTION  MOVED by Mayor Pro Tem Hamilton, SECONDED by Council Member Martinez that Council amend the motion to add the operator of a business with business owners.

M.O. 14-090605

AYES: Irish, Martinez, Hamilton
NOES: Stadtherr, West
ABSTAIN: None
ABSENT: None

Disposition: Approved

29. CONSIDERATION OF REIMBURSEMENT OF ADMINISTRATIVE EXPENSE TO COUNCIL MEMBERS

Recommendation: To be determined by Council.
The City Manager presented the staff report.

Council discussed the implementation of a policy. Mayor Pro Tem Hamilton stated that tonight this was to reimburse a Council Member for a $64 expenditure for aerial maps. Council Member Irish suggested that the Council Members should get permission in the future before spending money as he had a problem with cart blanc.

Council Member Stadtherr stated that in that instance there should be a stipend or allowance for the Council Members.

The Council concurred that the $64 should be paid to Council Member Stadtherr, and Mayor Pro Tem Hamilton stated that if Council wanted a policy, to be implemented with the next Council, that could be done.

Council Member Martinez stated that they should come up with a system so Council could invest in educational materials for themselves. Council concurred that there should be a policy.

The City Manager clarified that the direction was to staff was to pay the $64 and put together a draft policy for the Council to consider to become effective June 2006.

Council so directed.

The Council adjourned to a Meeting of the Porterville Redevelopment Agency at 10:56 p.m.

PORTERVILLE REDEVELOPMENT AGENCY AGENDA
September 6, 2005

Roll Call

WRITTEN COMMUNICATIONS
None

ORAL COMMUNICATIONS
Jim Cone, 118 North Second Street, came forward and spoke regarding the 8th Annual Nuestro Pride Car Show and invited everyone to attend.

SCHEDULED MATTER
PRA-1. Approval for Community Civic Event Downtown Porterville Association Nuestro Pride Show, September 25, 2005

Recommendation: That the Agency approve the use of the parking lot on Second Street, from Garden to Olive, in conjunction with the attached Community Civic Event Application and Agreement from Downtown Porterville Association, subject to the stated requirements contained in Exhibit “A”.

AGENCY ACTION MOVED by Agency Member Stadtherr, SECONDED by Agency Member Hamilton that Council approve the use of the parking lot on Second Street,
from Garden to Olive, in conjunction with the attached Community Civic Event Application and Agreement from Downtown Porterville Association, subject to the stated requirements contained in Exhibit “A”. The motion carried unanimously.

Disposition: Approved

The Redevelopment Agency Meeting adjourned at 10:58 p.m.

**ORAL COMMUNICATIONS**

- Chuck VanVliet, Essential Day Spa, 216 West Putnam, came forward and spoke regarding Dana Ramirez and her actions and statements which were unethical.
- Dick Eckhoff, 197 North Main, came forward regarding the Council and the proposed policy for reimbursements. He stated that he hoped that they would come up with something that would help future Council Members to serve.
- Joe Guerrero, 332 South F Street, commended Council on the job they did. He invited the Council to attend the Nuestro Pride Car Show.

**OTHER MATTERS**

None

**ADJOURNMENT**

The Council adjourned at 11:03 p.m. to the meeting of September 20, 2005

________________________________________
Georgia Hawley, Chief Deputy City Clerk

SEAL

__________________________________
Kelly West, Mayor
COUNCIL AGENDA - NOVEMBER 1, 2005

SUBJECT: REQUEST TO FILE LATE CLAIM - JOHN DURAN

SOURCE: Administration

COMMENT: John Duran has submitted a Leave to Present a Late Claim for the claim he originally filed on April 12, 2005 with the City Clerk. Mr. Duran’s claim occurred in January of 2004, and was required to be filed by July of 2004.

RECOMMENDATION: That the Council reject said request and direct the City Clerk to give the claimant proper notification.

Attachment: Letter of Request
             Government Code Sections 911.4-912.2
             Government Code Section 946.6

Item No. 2

Dpt. Appro./Funded Acting CM
October 12, 2005

TO: CITY OF PORTERVILLE
   291 North Main Street
   Porterville, California 93257

LEAVE TO PRESENT A LATE CLAIM
(Government Code Sections: 911.4-912.2
and Section 911.6)

The attached claim for damages is hereby being presented
under the above entitled sections for your review and re-
consideration. Due to the element of time restraints the
wronged party can allow minimal time for a response. The
city is encouraged to consider all the details of this re-
quest to avoid litigation. Any litigation will perhaps
cost the taxpayers a great expense not to mention the fact
that it could tarnish the city's reputation as an "All
American City".

Respectfully Submitted,

John Duran
1279 West Henderson Avenue
#236
Porterville, California 93257
CITY OF PORTERVILLE
CLAIM FORM

FORM B
(Please Type Or Print)

CLAIM AGAINST CITY OF PORTERVILLE

Claimant's name: JOHN DURAN SS#: N/A
Claimant's Telephone No.: 559-788-0800 DOB: N/A
Claimant's address: 476 N. E. ST. PORTERVILLE CA 93257.
Address where notices about claim are to be sent, if different from above: 1279 WEST HENDERSON AVENUE, M 236, PORTERVILLE, CA 93257.

Date of incident/accident: Jan 04
Date injuries, damages, or losses were discovered: Jan 04
Location of incident/accident: 476 N. E. ST. PORTERVILLE CA 93257.

(Use back of this form or attach Diagram if necessary to answer this question in detail.)

What did entity or employee do to cause this loss, damage, or injury? City of Porterville is in violation of fair debt collection practices, City of Porterville (see reasons).

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What are the names of the entity's employees who caused this injury, damage, or loss (if known)?

City of Porterville

What specific injuries, damages, or losses did claimant receive? Emotional anguish, pain, construction.

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What amount of money is claimant seeking or, if the amount is in excess of $10,000, which is the appropriate court of jurisdiction. Note: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)] which civil case.

In the amount $85,000

How was this amount calculated (please itemize)? $15,000 for repairs, $35,000 mental anguish.

(Use back of this form or separate sheet if necessary to answer this question in detail.)

Date Signed: 4/8/05 Signature: 

If signed by representative:

Representative's Name

Address

Telephone #

Relationship to Claimant

4/8/05
MADE REPAIRS TO SIDEWALK AT 470 N. "E" ST. THE SIDEWALK WAS CAUSE TWO OR THREE SEPARATE INJURIES TO PEDESTRIANS WALKING ON THE SIDEWALK. THE DAMAGE TO THE SIDEWALK WAS A DIRECT RESULT OF TREE DAMAGE AND POOR GRADE COMPACTION.

UPON REPLACEMENT THE CITY HIRED A CONTRACTOR TO DO THE WORK. THE WORK WAS VERY POORLY DONE WITH FALICITY NOT TO MEET CONSTRUCTION CODE. SIDEWALK WAS AGAIN NOT TO MEET GRADE COMPACTED AND THE GRADE IS FAILING TOWARDS THE COMPACTED AND THE GRADE IS FAILING TOWARDS THE COMPACTED. THE CITY IS PRESENTLY SENDING LETTERS TO PROPERTY OWNERS INDICATING THAT THE PROPERTY OWNER IS RESPONSIBLE TO PAY. OWNER HAS CONTACTED THE CITY ORDERS OFFICE AND THE CITY COUNCIL TO NO AVAIL.

THE CITY'S POSITION HAS INFlicted INTENTIONAL EMOTIONAL ANGUISH, BY NOT RESPONDING IN "GOOD FAITH" AND CONTINUING TO BILL OWNER FOR DEFECTIVE WORK.

PLEASE BE ADVISED THAT DENIAL OF THIS CLAIM WILL BE CHALLENGED IN A COURT OF LAW. PLEASE CONSIDER THE COST TO CITY TAXPAYERS AS I WILL PROCEED IN PROPER.
CITY OF PORTERVILLE

NOTICE OF RETURN, WITHOUT ACTION, OF A CLAIM REQUIRED TO BE FILED WITHIN SIX (6) MONTHS

FORM D

Date: June 20, 2005

To: John Duran
1279 W. Henderson Ave., #236,
Porterville, CA 93257

Dear Mr. Duran:

The Claim you presented to the City of Porterville on April 12, 2005 is being returned to you because it was not presented within six (6) months after the incident/accident as required by law. (See Sections 901 and 911.2 of the Government Code.) Because the Claim was not presented within the time allowed by law, no action was taken on the Claim.

Your only recourse at this time is to apply, without delay, to the City of Porterville for leave to present a late claim. (See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code.) Under some circumstances, leave to present a late claim will be granted. (See Section 911.6 of the Government Code.)

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately. If you dispute the (Entity's) conclusion that your claim was untimely, the following warning may apply.

WARNING: Subject to certain exceptions, you only have six (6) months from the date this notice was personally delivered or deposited into the mail to file a court action on this claim. (See Government Code Section 945.6.)

PROOF OF SERVICE

On June 20, 2005, I served the within NOTICE OF RETURN, WITHOUT ACTION, OF A CLAIM REQUIRED TO BE FILED WITHIN SIX (6) MONTHS on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Porterville, California on June 20, 2005.

Georgia Hawley, Chief Deputy City Clerk
(Type or Print Name)

(Signature)

6/20/05
December 7, 2004

John Duran
476 North E Street
Porterville, CA 93257

Subject: Concrete Sidewalk Repair at 476 North E Street

Dear Mr. Duran:

In accordance with Municipal Code, Chapter 20, Section 20-3, "Repair of sidewalks and curbs—Work to be performed by contract with city upon failure to proceed after notice; certificate of completion; lien." the City of Porterville has repaired the concrete sidewalk at 476 North E Street due to failure of the owner to proceed after notice.

The City contracted through the bid process for 370 sf of concrete sidewalk at $5.50 per square foot. Total cost to you, the property owner, is $2,035.

Likewise, in accordance with Municipal Code, Chapter 20, Section 20-4, "Repair of sidewalks and curbs—Collection of costs." an invoice for this repair is enclosed as an attachment to this letter.

Please call me at 782-7462 if you have any questions regarding this issue.

Sincerely,

[Signature]

Baldomero S. Rodriguez
Public Works Director

BSR: vs

cc: John Longley, City Manager
Darrel Payle, Deputy City Manager
Susan Slayton, Chief Financial Officer
Michael K. Reed, City Engineer

[Handwritten note: This was provided by City Clerk on 12/27/04 by Georgia]
John Duran  
476 North E. Street  
Porterville, CA 93257  

Subject: Sidewalk Repairs @ 476 North E. Street  

Dear Mr. Duran:  

I am in receipt of your letter of October 5, 2004 regarding the repair of sidewalk and responsibility for said repairs at 476 North E. Street.  

The City is unable to substantiate your chronology of events with regard to complaints from area pedestrians and contacts made to City staff going back to the year 2000. However, I can substantiate the following:  

1. Your letter of August 6, 2004, informing the City of the poor condition of the sidewalk at 476 North E. Street.  

2. Your conversation with the City Engineer on September 21, 2004 regarding the poor condition of the sidewalk and verbal notification by the City that repairs to the sidewalk are the property owner's responsibility.  

3. Certified letter dated September 21, 2004 from the City reiterating the City's position that the sidewalk repairs are the property owner's responsibility along with a thirty day notice to complete said repairs.  

4. On or about September 22, 2004 staff field marked limits of sidewalk repair requiring your attention and field marked the limits of sidewalk damaged by a tree in City right of way thereby requiring City repairs.  

5. On or about September 27, 2004, City staff marked additional concrete that you felt had to be removed and replaced.  

6. Telephone conversation between you and I on October 1, 2004 establishing an 8:00 a.m., October 1, 2004 meeting to discuss the limits of sidewalk to repair.  

7. Received a Monday (10/01/04) morning telephone call from you inquiring as to my whereabouts.
8. Return call by me to you on Monday (10/01/04) morning informing you that I forgot about the meeting. No one home but, left message on your answering machine. Two additional messages left on your answering machine stating that I would meet with you at any time, any place to discuss the project specifics.

9. Letter from you dated October 5, 2004, presenting an unsubstantiated chronology and informing the City of your decision to pass on responsibility for the repair of sidewalk to the City. Letter concluded by demanding repair of the sidewalk to avoid legal action. Legal action by whom is not clear.

In closing, the City can appreciate your position regarding the condition of the sidewalk and the associated costs to make the necessary repairs. I apologize for missing our prior scheduled meeting and I remain willing and able to reschedule to discuss these issues with you further.

Nevertheless, City Code Section 20-2 makes it very clear that repair of sidewalks that may endanger persons passing thereon is the property owner’s responsibility. A copy of this section is enclosed for your review and file. Therefore, please accept this letter as your 2nd notice to make the necessary sidewalk repairs by November 12, 2004. Failure to make the repairs by the stated date will force the City to make the repairs and bill you for all contractor and City costs.

Sincerely,

[Signature]

Baldomero Rodriguez
Public Works Director

cc: John Longley
    Julia Lew
    Mike Reed
    Y:\Engineering\Project Files\Baldo Rodriguez\Misc Project File\Concrete Repairs \@ 476 E St wpd
August 6, 2004

TO: John Longly, City Manager
    Bob Oats, Superintendent, Building Department
    City of Porterville
    291 North Main Street
    Porterville, California 93257

RE: Sidewalk damage, 476 North "E" Street

Dear Sirs:

There is considerable damage to the sidewalk at the corner of North "E" Street and Belview Avenue which has resulted in minor injuries to pedestrians walking in the area. The sidewalk is used by children being escorted to and from Belview school by their parents and I am afraid that it could result in a more serious injury to anyone else. I understand that the city has special funding to repair some of these damages within the city limits. The damage seems to be as a result of poor soil compact upon construction.

I would appreciate it if the building department would take some interest in correcting the problem to reduce any future injury liability.

Sincerely,

John Duran
476 North "E" Street
Porterville, CA. 93257

Mailing Address:

PMB# 236, 1279 West Henderson Avenue
Porterville, California (93257)
GOVERNMENT CODE SECTIONS 911.4-912.2

911.4. (a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim.

(b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.

(c) In computing the one-year period under subdivision (b), the following shall apply:

(1) The time during which the person who sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which he or she is mentally incapacitated and does not have a guardian or conservator of his or her person shall not be counted.

(2) The time shall not be counted during which the person is detained or adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if both of the following conditions exist:

(A) The person is in the custody and control of an agency of the public entity to which a claim is to be presented.

(B) The public entity or its agency having custody and control of the minor is required by statute or other law to make a report of injury, abuse, or neglect to either the juvenile court or the minor’s attorney, and that entity or its agency fails to make this report within the time required by the statute or other enactment, with this time period to commence on the date on which the public entity or its agency becomes aware of the injury, neglect, or abuse. In circumstances where the public entity or its agency makes a late report, the claim period shall be tolled for the period of the delay caused by the failure to make a timely report.

(3) The time shall not be counted during which a minor is adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.
911.6. (a) The board shall grant or deny the application within 45 days after it is presented to the board. The claimant and the board may extend the period within which the board is required to act on the application by written agreement made before the expiration of the period.

(b) The board shall grant the application where one or more of the following is applicable:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2.

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim.

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time.

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(c) If the board fails or refuses to act on an application within the time prescribed by this section, the application shall be deemed to have been denied on the 45th day or, if the period within which the board is required to act is extended by agreement pursuant to this section, the last day of the period specified in the agreement. 911.8.

(a) Written notice of the board's action upon the application shall be given in the manner prescribed by Section 915.4.

(b) If the application is denied, the notice shall include a warning in substantially the following form: "WARNING "If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (claims presentation requirement). See Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied. "You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately." 912.2. If an application for leave to present a claim is granted by the board pursuant to Section 911.6, the claim shall be deemed to have been presented to the board upon the day that leave to present the claim is granted.
911.8. (a) Written notice of the board's action upon the application shall be given in the manner prescribed by Section 915.4.

(b) If the application is denied, the notice shall include a warning in substantially the following form: "WARNING "If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (claims presentation requirement). See Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied. "You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately." 912.2. If an application for leave to present a claim is granted by the board pursuant to Section 911.6, the claim shall be deemed to have been presented to the board upon the day that leave to present the claim is granted.

912.2. If an application for leave to present a claim is granted by the board pursuant to Section 911.6, the claim shall be deemed to have been presented to the board upon the day that leave to present the claim is granted.
GOVERNMENT CODE SECTION 946.6

946.6. (a) If an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a superior court that would be a proper court for the trial of an action on the cause of action to which the claim relates. If the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court. If an action on the cause of action to which the claim relates would be a limited civil case, a proceeding pursuant to this section is a limited civil case.

(b) The petition shall show each of the following:

(1) That application was made to the board under Section 911.4 and was denied or deemed denied.

(2) The reason for failure to present the claim within the time limit specified in Section 911.2.

(3) The information required by Section 910. The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6. (c) The court shall relieve the petitioner from the requirements of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable:

(1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4.

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim.

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time.

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) A copy of the petition and a written notice of the time and place of hearing shall be served before the hearing as prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the Attorney General, if the respondent is the state. If the petition involves a claim arising out of alleged actions or inactions of the Department of Transportation, service of the petition and notice of the hearing shall be made on the
Attorney General or the Director of Transportation. Service on the Attorney General may be accomplished at any of the Attorney General’s offices in Los Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of Transportation may be accomplished only at the Department of Transportation’s headquarters office in Sacramento. If the petition involves a claim arising out of alleged actions or inactions of a judicial branch entity, service of the petition and notice of the hearing shall be made in accordance with the following:

(1) If the petition involves a claim arising out of alleged actions or inactions of a superior court or a judge, court executive officer, or trial court employee, as defined in Section 811.9, of the court, service shall be made on the court executive officer.

(2) If the petition involves a claim arising out of alleged actions or inactions of a court of appeals or a judge thereof, service shall be made on the Clerk/Administrator of the court of appeals.

(3) If the petition involves a claim arising out of alleged actions or inactions of the Supreme Court or a judge thereof, service shall be made on the Clerk of the Supreme Court.

(4) If the petition involves a claim arising out of alleged actions or inactions of the Judicial Council or the Administrative Office of the Courts, service shall be made on the secretariat of the Judicial Council.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order reliving the petitioner from Section 945.4, suit on the cause of action to which the claim relates shall be filed with the court within 30 days thereafter.
SUBJECT: BUDGET ADJUSTMENT

SOURCE: FIRE DEPARTMENT

COMMENT: The Wal-Mart Foundation has awarded the City of Porterville Fire Department a $2,000 dollar grant which will be used to purchase fire prevention materials.

RECOMMENDATION: That the City Council:

1) Authorize staff to accept the grant funds.

2) Authorize a budget adjustment to the Fire Department in the amount of $2,000.

ATTACHMENTS: None

Dir. xf Funded □ C/M □ Approp. Item No. 3
SUBJECT: AUTHORIZATION TO ADVERTISE FOR BIDS – HERITAGE CENTER TOT PLAYGROUND

SOURCE: Parks & Leisure Services Department

COMMENT: Sierra Design, Inc. has prepared a final cost estimate and design for the Heritage Center Tot Playground Project. The project consists of the installation of the playground equipment, landscaping and irrigation, re-installment of the playground and Plaza area gates with panic hardware, and grading for an estimated cost of $50,722.28.

Add Alternate “A” consists of landscaping the planters in the Plaza area between the Center and the Multi Purpose Room for an estimated cost of $13,530.21. Add Alternate “B” includes construction of a trash enclosure for an estimated cost of $13,709.58.

Total estimate of probable cost for the project is $77,962.07. Funding for this project will come from the Community Development Block Grant, Section 108 Loan.

RECOMMENDATION: That the City Council:
1. Approve the estimated costs and project; and
2. Authorize staff to advertise for bids on the project.

ATTACHMENTS: Engineer’s Estimate
# Engineer's Estimate

**Porterville Heritage Center**  
**Tiny Tots Playground**  
**Project No. 89-9474-88**  

**October 26, 2005**

## Base Bid (Plus 10% Contingency *)

<table>
<thead>
<tr>
<th>Item</th>
<th>QTY.</th>
<th>Unit</th>
<th>Description</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>LS</td>
<td>Project Start-Up, Mobilization and Demobilization</td>
<td>$1,335.00</td>
<td>$1,468.50</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>LS</td>
<td>Rough Grade</td>
<td>$2,625.00</td>
<td>$2,887.50</td>
</tr>
<tr>
<td>3</td>
<td>640</td>
<td>SF</td>
<td>Concrete Trike Paths and Flatwork</td>
<td>$7.03</td>
<td>$4,949.12</td>
</tr>
<tr>
<td>4</td>
<td>109</td>
<td>LF</td>
<td>8&quot; x 12&quot; Footings Under Trike Path Adjacent to Playground and 8&quot; x 12&quot; Mow Edge Adjacent to Playground</td>
<td>$28.26</td>
<td>$3,388.37</td>
</tr>
<tr>
<td>5</td>
<td>157</td>
<td>LF</td>
<td>8&quot; x 12&quot; Curb Under Fence</td>
<td>$25.00</td>
<td>$4,317.50</td>
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<tr>
<td>6</td>
<td>22</td>
<td>LF</td>
<td>Conventional Mow Curb</td>
<td>$25.00</td>
<td>$605.00</td>
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<tr>
<td>7</td>
<td>1</td>
<td>EA</td>
<td>Furnish and Install Catch Basin and Tie to Existing Storm Drain</td>
<td>$499.00</td>
<td>$548.90</td>
</tr>
<tr>
<td>8</td>
<td>40</td>
<td>LF</td>
<td>4&quot; Drain Line and Fittings</td>
<td>$24.05</td>
<td>$1,058.20</td>
</tr>
<tr>
<td>9</td>
<td>1</td>
<td>LS</td>
<td>Install Playground Equipment</td>
<td>$2,150.00</td>
<td>$2,365.00</td>
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<tr>
<td>10</td>
<td>1</td>
<td>EA</td>
<td>Add Panic Hardware and Rehang One Single Gate</td>
<td>$3,010.00</td>
<td>$3,311.00</td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>EA</td>
<td>Add Panic Hardware and Rehang One Double Gate</td>
<td>$3,968.00</td>
<td>$4,364.80</td>
</tr>
<tr>
<td>12</td>
<td>1</td>
<td>EA</td>
<td>Furnish and Install One Double Gate with Panic Hardware</td>
<td>$6,238.00</td>
<td>$6,861.80</td>
</tr>
<tr>
<td>13</td>
<td>1040</td>
<td>SF</td>
<td>Furnish and Install Fiber Cushioning Surface</td>
<td>$3.29</td>
<td>$3,763.76</td>
</tr>
<tr>
<td>14</td>
<td>225</td>
<td>SF</td>
<td>Furnish and Install Pea Gravel Cushioning Surface</td>
<td>$2.64</td>
<td>$653.40</td>
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<tr>
<td>15</td>
<td>1</td>
<td>SF</td>
<td>Furnish and Install Irrigation Mainline, Valves and Quick Coupler</td>
<td>$619.00</td>
<td>$680.90</td>
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<tr>
<td>16</td>
<td>400</td>
<td>LF</td>
<td>Furnish and Install Irrigation Laterals and Fittings</td>
<td>$4.24</td>
<td>$1,865.60</td>
</tr>
<tr>
<td>17</td>
<td>49</td>
<td>EA</td>
<td>Furnish and Install Irrigation Heads</td>
<td>$15.80</td>
<td>$851.62</td>
</tr>
<tr>
<td>18</td>
<td>1</td>
<td>LS</td>
<td>Furnish and Install Irrigation Low-Voltage Wire and Controller,</td>
<td>$1,200.00</td>
<td>$1,320.00</td>
</tr>
</tbody>
</table>
INCLUDING ELECTRICAL CONNECTION

19. 623 SF SHRUB BED FINE GRADING AND SOIL AMENDMENTS $0.61 $418.03

20. 2 EA FURNISH AND INSTALL TREES, INCLUDING STAKING AND ROOT BARRIERS $672.50 $1,479.50

21. 39 EA FURNISH AND INSTALL 1 AND 5 GAL SHRUBS $17.18 $737.02

22. 640 SF FURNISH AND INSTALL TURF $1.09 $767.36

23. 623 SF FURNISH AND INSTALL WALK ON BARK AND PRE-EMERGENT $0.79 $541.39

24. 1 LS 90-DAY MAINTENANCE $1,380.00 $1,518.00

TOTAL BASE BID $50,722.28

ALTERNATE 'A': CONCRETE FLATWORK, SOIL PREP, IRRIGATION, AND PLANTING IN 'PLAZA' AREA (PLUS 10% CONTINGENCY *)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QTY.</th>
<th>UNIT</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1.</td>
<td>1</td>
<td>LS</td>
<td>ADDITIONAL PROJECT START-UP AND MOBILIZATION</td>
<td>$990.00</td>
<td>$1,089.00</td>
</tr>
<tr>
<td>A2.</td>
<td>147</td>
<td>SF</td>
<td>CONCRETE FLATWORK AT BUILDING EXIT AND ADJACENT TO H/C RAMP</td>
<td>$7.65</td>
<td>$1,237.01</td>
</tr>
<tr>
<td>A3.</td>
<td>1</td>
<td>LS</td>
<td>INVESTIGATE LOCATION FOR POC</td>
<td>$456.00</td>
<td>$501.60</td>
</tr>
<tr>
<td>A4.</td>
<td>1</td>
<td>LS</td>
<td>FURNISH AND INSTALL VALVES AND WIRE</td>
<td>$544.00</td>
<td>$598.40</td>
</tr>
<tr>
<td>A5.</td>
<td>452</td>
<td>LF</td>
<td>FURNISH AND INSTALL IRRIGATION LATERAL LINES</td>
<td>$4.65</td>
<td>$2,311.98</td>
</tr>
<tr>
<td>A6.</td>
<td>50</td>
<td>EA</td>
<td>FURNISH AND INSTALL IRRIGATION HEADS</td>
<td>$20.54</td>
<td>$1,129.70</td>
</tr>
<tr>
<td>A7.</td>
<td>2500</td>
<td>SF</td>
<td>FINISH GRADING AND SOIL AMENDMENTS</td>
<td>$0.17</td>
<td>$467.50</td>
</tr>
<tr>
<td>A8.</td>
<td>3</td>
<td>EA</td>
<td>FURNISH AND INSTALL TREES, INCLUDING STAKING</td>
<td>$326.00</td>
<td>$1,075.80</td>
</tr>
<tr>
<td>A9.</td>
<td>67</td>
<td>EA</td>
<td>FURNISH AND INSTALL SHRUBS</td>
<td>$23.37</td>
<td>$1,722.37</td>
</tr>
<tr>
<td>A10.</td>
<td>15</td>
<td>EA</td>
<td>FURNISH AND INSTALL FLATS</td>
<td>$107.67</td>
<td>$1,776.56</td>
</tr>
<tr>
<td>A11.</td>
<td>2300</td>
<td>SF</td>
<td>WALK ON BARK AND PRE-EMERGENT</td>
<td>$0.46</td>
<td>$1,163.80</td>
</tr>
<tr>
<td>A12.</td>
<td>1</td>
<td>LS</td>
<td>90-DAY MAINTENANCE ON ADDITIONAL AREA</td>
<td>$415.00</td>
<td>$456.50</td>
</tr>
</tbody>
</table>

TOTAL ALTERNATE 'A' BID $13,530.21

ALTERNATE 'B': CONSTRUCT TRASH ENCLOSURE AND ASSOCIATED DRIVE APPROACH (PLUS 10% CONTINGENCY *)

Received Time Oct. 26, 4:57PM
<table>
<thead>
<tr>
<th>ITEM</th>
<th>QTY.</th>
<th>UNIT</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1.</td>
<td>1</td>
<td>LS</td>
<td>ADDITIONAL PROJECT START-UP, MOBILIZATION AND DEMOBILIZATION</td>
<td>$785.00</td>
<td>$863.50</td>
</tr>
<tr>
<td>B2.</td>
<td>1</td>
<td>LS</td>
<td>CONSTRUCT TRASH ENCLOSURE</td>
<td>$5,086.00</td>
<td>$5,594.60</td>
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<tr>
<td>B3.</td>
<td>75</td>
<td>SF</td>
<td>CONSTRUCT DRIVE APPROACH AND PATCH ASPHALT</td>
<td>$22.23</td>
<td>$1,833.98</td>
</tr>
<tr>
<td>B4.</td>
<td>1</td>
<td>LS</td>
<td>FURNISH AND INSTALL STEEL GATES ON TRASH ENCLOSURE</td>
<td>$4,925.00</td>
<td>$5,417.50</td>
</tr>
</tbody>
</table>

**TOTAL ALTERNATE ‘B’ BID**

| FIGURES | $13,709.58 * |

---

**GRAND TOTAL OF BASE, ALTERNATE ‘A’ & ‘B’ BIDS**

$77,962.07

---

CERTIFIED BY:

Preparer: Kay Humacher, Sierra Designs, Inc.

Reviewed by: Milt Stowe, Project Manager

Reviewed by: Jim Perrine, Parks & Leisure Services Director

Reviewed by: John Longley, City Manager

Date: 10/26/05

Received Time Oct. 26, 4:57PM
SUBJECT: AWARD OF CONTRACT - WELL NO. 29 PROJECT

SOURCE: Public Works Department - Engineering Division

COMMENT: On October 20, 2005, staff received one (1) bid for the Well No. 29 Project. This is the first phase of the well project and consists of drilling a 32" diameter bore hole about 700 feet deep, installation of steel casing and gravel envelop (gravel pack). The well is located on the north side of Henderson Avenue between Porter Slough and Westwood Street.

The estimated probable cost is $353,177. Funding is provided by developer impact fees and was approved in the 05/06 Annual Budget.

The bid received is as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zim Industries, Inc.</td>
<td>$358,275</td>
</tr>
<tr>
<td>Fresno, CA</td>
<td></td>
</tr>
</tbody>
</table>

The bid is 1.5% over the Engineer's Estimate. Zim Industries, Inc. was the contractor for Well No. 28 and Staff found their work satisfactory. Staff has found the low bid acceptable.

RECOMMENDATION: That City Council:

1. Award the Well No. 29 Project to Zim Industries, Inc. in the amount of $358,275;

2. Authorize progress payments up to 90% of the contract amount; and

3. Authorize a 10% contingency to cover unforeseen construction costs.

ATTACHMENT: Locator Map
COUNCIL AGENDA: NOVEMBER 1, 2005

SUBJECT: SALE OF PROPERTY LOCATED AT THE SOUTHEAST CORNER OF MAIN STREET AND THURMAN AVENUE

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: During the March 4, 2003 City Council meeting, City Council approved the demolition of all structures on the parcel located at 296 N. Main Street and a portion of the site to be developed into a park or a plaza. On June 17, 2003, the City Council authorized Staff to negotiate the sale of the northerly one-third of the property located at 296 N. Main Street.

To facilitate the development of the property, the City is proposing to sell the approximately 8,800 square foot parcel to the Porterville Redevelopment Agency with the understanding that the Agency’s negotiations with the Developer are to include a Disposition and Development Agreement (DDA) which would provide for certain physical elements of the development in keeping with the historic characteristics of downtown and being sensitive to the adjacent park.

The Cooperation, Purchase and Sale Agreement for the sale of property by the City to Redevelopment Agency specifies the following terms and conditions:

- The City is the owner of the property located at the southwest corner of Main Street and Thurman Avenue.

- The Agency proposes to acquire the property from the City.

- Concurrently with the Cooperation, Purchase, and Sale Agreement, the Agency is considering the approval of a Disposition and Development Agreement (the “DDA”) with Ennis Commercial Properties, LLC for the development of a commercial/professional office complex.

- The purchase price for the Property payable by the Agency to the City is One Hundred Ten Thousand Dollars, less the usual and customary escrow charges for this transaction and the transaction related to the DDA, as well as reimbursement for professional services related to this transaction (i.e., attorney fees).

- The City shall utilize the proceeds from the sale of this property for the provision of an audio system in Centennial Park and along Main Street, with the remainder of the proceeds to be allocated to the building maintenance fund.
A copy of the Cooperation, Purchase, and Sale Agreement is attached (Attachment 2).

RECOMMENDATION: That the Porterville City Council approve the sale of the approximately 8,800 square foot parcel located at the southeast corner of Main Street and Thurman Avenue to the Porterville Redevelopment Agency and authorize the Mayor to sign all necessary documents to complete the transaction.

Attachments: 1) Resolution
2) Cooperation, Purchase and Sale Agreement
RESOLUTION ______

A RESOLUTION OF THE PORTERVILLE CITY COUNCIL
AUTHORIZING THE SALE OF PROPERTY TO
THE PORTERVILLE REDEVELOPMENT AGENCY

WHEREAS, the City Council of the City of Porterville has approved the Redevelopment Plan for the Porterville Redevelopment Project; and

WHEREAS, one of the goals of the Redevelopment Plan is to eliminate the blighting influence of underutilized or vacant lots; and

WHEREAS, the City proposes to enter into a Cooperation, Purchase, and Sale Agreement for the sale of the approximately 8,800 square feet of real property located at the southeast corner of Main Street and Thurman Avenue to the Porterville Redevelopment Agency for the ultimate sale and development of the parcel; and,

WHEREAS, the City has recognized the benefits of allowing the Agency to negotiate a Development and Disposition Agreement with a Developer for the development to adhere to the guidelines in the Redevelopment Plan.

NOW THEREFORE, THE PORTERVILLE REDEVELOPMENT CITY OF PORTERVILLE DOES RESOLVE AS FOLLOWS:

1) The City finds and determines that the development is of benefit to the Porterville Redevelopment Project.

2) The City finds and determines that the Porterville Redevelopment Agency will be beneficial in negotiating an agreement that will assist in the elimination of the blighting influence of underutilized or vacant lots.

3) The City approves the sale of property owned by the City that is located at the southeast corner of Main Street and Thurman Avenue in the City of Porterville pursuant to the terms and conditions of the Cooperation, Purchase, and Sale Agreement.

Passed, approved, and adopted this 1st day of November 2005.

AYES:

NOES:

ABSTAIN:

ABSENT:  

Attachment 1
Kelly West, Mayor

ATTEST: John Longley, City Clerk
COOPERATION, PURCHASE AND SALE AGREEMENT

THIS COOPERATION, PURCHASE AND SALE AGREEMENT (the “Agreement”) is entered into as of __________ by and between the CITY OF PORTERVILLE, a California municipal corporation (the “City”), and the PORTERVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”).

RECITALS

A. The City is the owner of parcel of real property which is unimproved and which is located within the block bounded by Main Street, Thurman Avenue, alley between Main Street and Second Avenue, and Centennial Park (the “Site”). The Sites are more particularly described in the Legal Description of Site, which is attached hereto as Exhibit “A,” and are depicted on the Site Map, which is attached hereto as Exhibit “B.” Both exhibits are incorporated herein.

B. The Agency proposes to acquire the Site from the City and to convey the Site to Ennis Commercial Properties, LLC and Smith Commercial Properties, LLC (the “ Developers”) pursuant to a Development and Disposition Agreement (“DDA”) to be entered into between the Agency and the Developers. The DDA requires the Agency to convey the Site to the Developers. As set forth in the DDA, the Developers would be required to construct a commercial/professional office complex, related landscaping, and other improvements thereon (the “Improvements”).

C. The City is authorized to convey its real property to the Agency pursuant to Section 33220 of the Health and Safety Code.

D. In order to facilitate the Agency’s obligations under the DDA, the City desires herein to convey title to the Site to the Agency in accordance with the terms of this Agreement, upon the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto agree as follows:

1. Conveyance of Site. The City shall convey the Site to the Agency, and the Agency shall acquire the Site from the City, concurrently with the Agency’s conveyance of the Agency Parcel to the Developer pursuant to the DDA. No consideration shall be due upon the conveyance of the Site to the Agency. In the event that the DDA is terminated, the parties’ obligations under this Agreement shall also be terminated.

2. Escrow. The City shall submit into the escrow which is established for the conveyance of the Sites pursuant to the Section 202 of the DDA (the “Escrow”) a duly executed grant deed to the Sites in the form customarily used by the City for the conveyance of real property (the “Grant Deed”). The parties shall submit any additional documents into Escrow as may be required for the closing of escrow.

Attachment 2
3. **Condition of the Site.**

   a. **No City Knowledge of Hazardous Substances.** The City has no actual knowledge, without duty of investigation, of the presence of “Hazardous Substances” (as the term is defined in the DDA) on the Sites. The City has no actual knowledge, without duty of investigation, of any claim, lawsuit, agency proceeding or other legal, quasi-legal or administrative challenge concerning the presence of Hazardous Substances on the Sites. The “actual knowledge” of the City, for purposes of this Section 3, shall include only the actual knowledge of those City employees who have actually worked on the transaction contemplated by this Agreement, and documents, records and reports in the City files.

   b. **“As-Is” Conveyance.** The City hereby represents that to its actual knowledge it is not aware of and has not received any notice or communication from any government agency having jurisdiction over the Site notifying the City of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Sites, or any portion thereof. “Actual knowledge,” as used herein, shall not impose a duty of investigation, and shall be limited to the best knowledge of City employees and agents who manage the Site or have participated in the preparation of this Agreement, and all documents and materials in the possession of Agency and City. The Agency expressly understands and agrees that the Agency shall acquire the Site in an “AS IS” condition on the closing date. Except as provided in subparagraph (a) above, the City specifically disclaims the making of any representations or warranties, express or implied, regarding the Sites or matters affecting the Site, including without limitation, the physical and environmental condition of the Site.

   c. **Environmental Investigation of Site.** The Agency and the Developer shall have the right, at their sole cost and expense, pursuant to Section 208.2 of the DDA, to engage their own environmental consultants to make such investigations as to the environmental condition of the Site as the Agency and/or Developer deem necessary, and the City shall promptly be provided a copy of all reports and test results provided by such consultants. In the event that the Agency or the Developer elects to remediate the Site pursuant to Section 208.3 of the DDA, the Agency or the Developer and their environmental consultants shall be permitted to enter upon the Site for the purpose of performing the remediation.

4. **General Provisions.**

   4.1 **Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, the time for performance by either party hereunder may be extended pursuant to Section 602 of the DDA.

   4.2 **Approvals and Actions.** The Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Agency Executive Director (or his duly authorized representative). The Agency Executive Director shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Agency so long as such actions do not add to the costs incurred or to be incurred by the Agency as specified herein, and such approvals, interpretations, waivers and/or amendments may include
extensions of time to perform. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager (or his duly authorized representative). The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not add to the costs incurred or to be incurred by the City as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

4.3 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

4.4 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

4.5 Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

4.6 Conflicts of Interest. No member, official or employee of the Agency or of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

4.7 Assignment. This Agreement shall be binding upon and shall inure to the benefit of City and Agency and their respective successors and assigns. Agency shall have the right to assign this Agreement or any interest or right under this Agreement or under the Escrow without obtaining the prior written consent of the City.

IN WITNESS WHEREOF, the City and the Agency have executed this Agreement as of the date set forth above.

AGENCY:

PORTERVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic
Kelly West, Executive Director

ATTEST:

______________________________
John Longley, Agency Secretary

APPROVED AS TO FORM

______________________________
Stradling Yocca Carlson & Rauth
Agency Special Counsel

CITY:

CITY OF PORTERVILLE, a California
municipal corporation

______________________________
John Longley, City Manager

ATTEST:

By:____________________________
Georgia Hawley, Deputy City Clerk

APPROVED AS TO FORM:

By:____________________________
Julia M. Lew, City Attorney
EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

[To Be Inserted]
EXHIBIT "B"

SITE MAP

[To Be Inserted]
SUBJECT: STATUS REPORT -- CURBSIDE RECYCLE SELECTION COMMITTEE

SOURCE: CITY ATTORNEY (COMMITTEE MEMBER)

COMMENT: On August 2, 2005, the City Council appointed the City Attorney and the City’s Independent Auditor to the Curbside Recycle Selection Committee. The proposals for the processing of recyclables were due to the City on September 22 and were delivered to the City Attorney on September 28. The materials have been delivered to the City Auditor and the Committee has had two teleconferences to discuss any questions concerning proposals as well as to schedule additional meetings to conduct reference checks and compile the information needed for delivery of its conclusions to the Council. The Committee intends to present its final conclusions to the Council on November 15, 2005, for consideration by the Council in conjunction with its consideration of the award of the processing contract.

RECOMMENDATION: This item is presented for information purposes, and no action is requested.
COUNCIL AGENDA: NOVEMBER 1, 2005

SUBJECT: AGREEMENT WITH BURTON SCHOOL DISTRICT

SOURCE: Parks and Leisure Services Department

COMMENT: A student of the Burton School District has a rare condition, and therefore requires assistance with his personal care. The City provides an after-school program that is available to this student, and desires to the extent possible that the student be able to participate. The City does not have qualified staff to provide the assistance this student needs with regards to personal care. The Burton School District has indicated that they do have personnel on staff, which are qualified to provide the care and assistance needed.

An Agreement has been prepared to allow the City to retain the services of Burton School District for providing this student with the required personal care. The Agreement provides for the District to assume all responsibility with regards to the determination of the level of care required, and the provision of the care and assistance. The City is to reimburse the District for the actual services provided.

Staff has conducted research to determine if alternate programs are available for the student, or for another means of obtaining the special care and assistance required by this student. The research did not result in other options being identified. No other participant in the after-school program, or other Parks & Leisure activities, receives this assistance.

RECOMMENDATION: Approve the Agreement between City of Porterville and Burton School District for provision of special services for the City After-School Program.

ATTACHMENT: Agreement

ITEM NO.: 8
AGREEMENT BETWEEN CITY OF PORTERVILLE
AND BURTON SCHOOL DISTRICT FOR PROVISION OF
SPECIAL SERVICES FOR CITY AFTER-SCHOOL PROGRAM

THIS AGREEMENT is entered into on _____________, 2005, by and between
the CITY OF PORTERVILLE, a charter law city ("City") and BURTON SCHOOL
DISTRICT, a School District ("District").

WHEREAS, the City, through its Parks and Leisure Services Department, offers
an after-school program, Monday through Friday, from 2:30 PM to 5:45 PM;

WHEREAS, a seven year old student in the Burton School District has been
diagnosed with a rare condition and has special needs, and therefore requires
assistance with his personal care, in particular direct assistance with using the toilet
facilities, during his participation in the after-school program;

WHEREAS, the City does not have staff qualified to provide the assistance the
student needs with regard to his personal care, but notwithstanding that the City is not
required to provide this assistance, the City desires that the student be able to the
extent possible to participate in the after-school program; and

WHEREAS, the District, in light of the care given to the student by the District
during school hours, does have personnel on staff that are qualified to provide the care
and assistance needed;

NOW, THEREFORE, in consideration of the mutual agreements hereto, as
hereinafter set forth, it is agreed as follows:

1. The City agrees to reimburse the District for the costs to the District of
actual services and assistance provided to the student, during his participation with the after-school program, pursuant to this Agreement. The method of calculation and time and other requirements for reimbursement are attached to this Agreement as Attachment "1."

3. The District agrees that it will be solely responsible for providing any and all assistance required by the student in using the toilet facilities during his participation in the City’s after-school program. The District warrants that it has determined the level and specificity of the care and assistance needed, that it will provide fully qualified personnel to provide those services to the student, and will provide such services in accordance with any and all applicable laws.

4. The District agrees to the fullest extent permitted by law, to indemnify, defend (at District’s sole cost and expense and with legal counsel approved by the City), and hold harmless the City and all of the City’s representatives, officers, directors, employees, consultants, agents, successors and assigns, from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, attorneys fees, disbursements and court costs, and all other expert/consultants' fees and City’s administrative expenses) of every kind and nature whatsoever which may arise from or in any manner related to the District’s performance of its obligations pursuant to this Agreement. The District understands that the indemnification obligation extends to and includes claims arising from the active and passive
negligence of indemnified parties. Notwithstanding the foregoing, nothing herein shall be construed to require the District to indemnify the indemnified parties from any claim arising from the sole negligence or willful misconduct of the indemnified parties.

5. The duty to defend is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of the City. Such defense obligation shall arise immediately upon presentation of a claim or claims by any party and written notice of such claim being provided to the City. Payment to the District by any indemnified party or the payment or advance of defense costs by any indemnified party shall not be a condition precedent to enforcing such indemnified party’s rights to indemnification hereunder. The District’s indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against the indemnified parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations or statute of repose. The District’s liability for indemnification is in addition to any liability provision of this Agreement and allowed by law. Under no circumstances shall any insurance requirements and limits be construed to limit the indemnification obligation or other liability hereunder.

6. The District warrants that it has currently secured, and will continue to secure and maintain and its own cost, sufficient insurance with regard to its activities pursuant to this Agreement.

7. This Agreement pertains only to the student described.

8. This Agreement may be modified by mutual written agreement between
the parties.

9. This Agreement may be terminated with 15 days written notice, by either party for any reason.

DATED this ______ day of ____________, 2005.

CITY OF PORTERVILLE
A Municipal Corporation

By ______________________
    Kelly E. West, Mayor

BURTON SCHOOL DISTRICT

By
ATTACHMENT 1

The City shall reimburse the District for its costs for actual services provided to City as follows:
PUBLIC HEARING

SUBJECT: SEWER USER SURCHARGE FEES FOR INDUSTRIAL DISCHARGERS

SOURCE: Public Works Department - Field Services Division

COMMENT: Chapter 25 of the City of Porterville Municipal Code deals with water, sewer, and sewage disposal. Article IV of Chapter 25 is the section involving the requirements and surcharges for sewage discharges. In accordance with Section 25-60 and 25-62, sewage discharges above the normal concentrations of 175 mg/L for Total Suspended Solids (TSS) and 250 mg/L for Biochemical Oxygen Demand (BOD) are considered industrial discharges. These discharges are subject to a surcharge in addition to other sewer service fees.

As part of the sewer user fee review by the City’s consultant, Bartle Wells Associates, in 2003, it was determined that the Sewer User Surcharge Rate for Industrial Dischargers should be increased in line with other sewer user fees. On February 3, 2004, the council approved the Sewer User Surcharge Rate increase for the 2003/2004 and 2004/2005 fiscal years (10% and 6% respectively) with the third year to be considered later.

At the City Council meeting of June 7, 2005, the Council approved the third year rate increase for sewer rate and treatment plant fees. The Sewer User Surcharge Fees For Industrial Dischargers were omitted from the resolution and need to be increased to remain consistent with other sewer user fees.

RECOMMENDATION: That the City Council:

1. Open the Public Hearing and accept public comments; and

2. Adopt the resolution setting new sewer user surcharge rates for industrial dischargers.

ATTACHMENT: Resolution

P:\pubworks\Engineering\Council Items\Public Hearing Sewer User Surcharge Fees for Industrial Dischargers 11-1-05.wpd

Dir ☑ Appropriated/Funded ☑ CM ☑ Item No. 9
RESOLUTION NO. ______
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PORTERVILLE
SETTING SEWER USER SURCHARGE FEES
FOR INDUSTRIAL DISCHARGERS

WHEREAS, in accordance with provisions of Chapter 25, Section 25-60(a) and
Section 25-62(a) of the Code of the City of Porterville, Total Suspended Solids (TSS)
exceeding 175 mg/L and Biochemical Oxygen Demand (BOD) exceeding 250 mg/L are
subject to a surcharge, and

WHEREAS, the City wishes to provide an incentive for industries to pretreat their
discharges, and

WHEREAS, the City of Porterville needs to recover reasonable costs, as
determined by the City’s consultant, Bartle Wells Associates, for the treatment and
disposal of high strength industrial wastes.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of
Porterville adopts the following surcharge rates effective December 1, 2005:

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Average Monthly Load Levels</th>
<th>2005/06 Rate per pound</th>
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<tr>
<td>BOD</td>
<td>250 to 1200 mg/L</td>
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<td>BOD</td>
<td>above 1200 mg/L</td>
<td>$1.65</td>
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<tr>
<td>TSS</td>
<td>175 to 500 mg/L</td>
<td>$0.43</td>
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<tr>
<td>TSS</td>
<td>above 500 mg/L</td>
<td>$2.15</td>
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</table>

PASSED AND ADOPTED, this ___ day of __________, 2005.

________________________________________
Kelly E. West, Mayor

ATTEST:
John Longley, City Clerk

By: Georgia Hawley, Chief Deputy City Clerk
CITY COUNCIL AGENDA: NOVEMBER 1, 2005

PUBLIC HEARING

SUBJECT: CONDITIONAL USE PERMIT 6-2005 - 102 FEET HIGH COMMUNICATIONS TOWER (JAMES STRACHAN)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: Conditional Use Permit 6-2005 proposes to allow the construction of a communications tower and accessories related to operation. The tower would stand approximately 102 feet tall with a diameter ranging from roughly three feet (3') at the base to approximately one foot (1') at the highest point. The tower would be placed in a four feet by four feet (4' x 4') concrete base which in turn would be placed in a nine feet by fifteen feet (9' x 15') concrete pad. Adjacent to the tower, on the larger concrete pad, would be four (4) small cabinets to house the electrical system. The subject lease site is roughly 900 square feet (approximately 30' x 30') and will be enclosed by a six feet (6') high cyclone fence around the perimeter.

Existing conditions on the site permit commercial uses. The site is paved in asphalt. The proposed project area lies at the northeast corner of an existing lot presently utilized for the storage of vehicles in need of repair for the automotive business located to the south.

Section 2103 A-9 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit.

RECOMMENDATION: That the City Council:

1. Adopt the Draft Resolution approving the Negative Declaration prepared for Conditional Use Permit 6-2005; and

2. Adopt the Draft Resolution conditionally approving Conditional Use Permit 6-2005 subject to conditions of approval.

ATTACHMENT:

1. Complete Staff Report

DD 50 Appropriated/Funded [Signature] CM [Signature] ITEM NO. 10

Acting
Acting
CITY COUNCIL AGENDA: NOVEMBER 1, 2005

PUBLIC HEARING - STAFF REPORT

TITLE: CONDITIONAL USE PERMIT 6-2005

APPLICANT: Mr. James Strachan
63699 W. Shields Avenue
Fresno, CA 93722

SPECIFIC REQUEST: Conditional Use Permit 6-2005 proposes to allow the construction of a 102 feet high communications tower.

PROJECT DETAILS: Conditional Use Permit 6-2005 proposes to allow the construction of a communications tower and accessories related to operation. The tower would stand approximately 102 feet tall with a diameter ranging from roughly three feet (3’) at the base to approximately one foot (1’) at the highest point. The tower would be placed in a four feet by four feet (4’ x 4’) concrete base which in turn would be placed in a nine feet by fifteen feet (9’ x 15’) concrete pad. Adjacent to the tower, on the larger concrete pad, would be four (4) small cabinets to house the electrical system. The subject lease site is roughly 900 square feet (approximately 30’ x 30’) and will be enclosed by a six feet (6’) high cyclone fence around the perimeter.

Existing conditions on the site permit commercial uses. The site is paved in asphalt. The proposed project area lies at the northeast corner of an existing lot presently utilized for the storage of vehicles in need of repair for the automotive business located to the south.

GENERAL PLAN AND ZONING: The General Plan designates the site as Heavy Commercial. The subject site is zoned City C-3 (Heavy Commercial).

SURROUNDING ZONING AND LAND USE:
North: City C-3- Auto sales and service building and Danner Avenue.
South: City C-3- Automotive repair and Doris Avenue.
East: City C-3- New and used car sale lot and North Main Street.
West: City C-3- Sunnyside Street and heavy commercial uses.

STAFF ANALYSIS: Due to the existing structures throughout the City and surrounding the project area, visibility of the tower should be partially obscured from public view. The electrical cabinets will be enclosed behind a cyclone fence and will not be visible to public view. Slats or other approved view obscuring material will be incorporated with the fence. Additionally, the tower is located in a heavy commercial zone, and the placement of the tower is less obtrusive than it would be if it were placed in a residentially zoned area. The pole and all associated antennas shall be non-reflective, with a treatment color designed to diminish the visual impact on the skyline.
Staff and the developer/applicant discussed the height of the proposed tower at some length. The 70 foot tower would provide substantially diminished service, leaving gaps throughout the City. If the tower were limited to 70 feet, it is quite likely that additional towers will be required in areas west and south of the proposed location. If the 102 feet tower is used, adequate coverage appears possible from a single new tower.

Section 2103 A-8 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. No project. Denial of the proposed use permit would not allow the applicant to construct the tower at this location.

2. Approve the project. Approval of the request would result in the applicant being conditionally allowed to construct the tower and associated equipment on this site.

ENVIRONMENTAL: On September 29, 2005, the Environmental Coordinator made a preliminary determination that a Negative Declaration would be appropriate for the proposed project. The Initial Study and have been transmitted to interested agencies, groups, and individuals for a twenty (20) day review period from September 30, 2005 to October 20, 2005. The only agency that responded was the San Joaquin Valley Air Pollution Control District. Those comments have been addressed in the Initial Study. An additional letter was received from Truman Clevenger, President of Clevenger Ford Lincoln-Mercury, whose business is located adjacent to the proposed communications tower.

DATE FILED FOR PROJECT REVIEW COMMITTEE PROCESSING: August 17, 2005

DATE ACCEPTED AS COMPLETE: September 29, 2005

RECOMMENDATION: That the City Council:

1. Adopt the Draft Resolution approving the Negative Declaration prepared for Conditional Use Permit 6-2005; and

2. Adopt the Draft Resolution conditionally approving Conditional Use Permit 6-2005 subject to conditions of approval.

ATTACHMENTS:

1. Site Plan, locator map, tower layout and elevation plan (Exhibit "A")
2. Application
3. Environmental Initial Study
4. Letter from the San Joaquin Valley Air Pollution Control District
5. Letter from Truman Clevenger, President of Clevenger Ford Lincoln-Mercury
6. Draft Resolution approving the Negative Declaration
7. Draft Resolution conditionally approving Conditional Use Permit 6-2005
APPLICATION FOR CONDITIONAL USE PERMIT

(See Page 3 of this form for information on preparing and filing this application)

The Applicant(s) ___________ is/are the owner(s) or tenant(s) of property situated at 1301 N. SAVOY ST., AUGUST 2003.

between ___________ and ________ Street/Avenue.

Exact legal description of said property being (Use separate sheet if necessary)

TULARE CO. A PN 252-140-975-00

As applicable, a Plot Plan and 300' radius property owners map, and corresponding mailing list are hereto attached and made a part of this application (See detailed instructions on Page 3 of this form).

(A) Above described property is owned by Ethel E. Appelby

Date acquired ____________________________

(B) If applicant is the lessee, give date property was leased:

7/17/02

(C) List below the original deed restrictions, if any, that were placed on the property which pertain to the type of improvements permitted.

Give date said restrictions expire ____________________________

(You may attach copy of original printed restrictions in answer to this question after property underlining those features controlling the type and class of uses permitted thereby).

N/A

(D) REQUEST: The applicant requests a Conditional Use Permit to USE the above described property for the following purposes:

(Use this space ONLY to state exactly what is intended to be done, on or, with the property).

SEE ATTACHED OPERATIONAL STATEMENT.

WIRELESS COMMUNICATIONS FACILITY WITHIN A 30' X 30' LEASED AREA WITH 100' MONO POLE.

ATTACHMENT
ITEM NO. 2

V15-272/ O.T. PORTERVILLE
1. State how the proposed use will not be materially detrimental to the public welfare or injurious to property or improvements located.

See attached operational statement.

2. Principal requirements of intended use (Please answer the following statements, if applicable):

(a) Total number of people that the building (or grounds if the use is not conducted in a building) can accommodate at one time (Seating Capacity).

N/A

(b) Total number of employees that will work on the property.

N/A

(c) Total number of off-street parking spaces provided or planned.

N/A

(d) Maximum height of buildings or structures.

100'

(e) If the application is not intended to be for a permanent conditional use, state the length of time for which it is requested.

N/A
We, the undersigned "OWNERS of ADJACENT PROPERTY" as shown upon the map attached to the application, hereby certify that we have read the foregoing petition and agree that the facts stated correctly and completely present the conditions surrounding the property involved in the application, and believe the application SHOULD BE GRANTED (Add additional sheets where necessary. These signatures are desirable but not required).

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<th>No. on Map</th>
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**APPLICANT'S DECLARATION**

STATE OF CALIFORNIA  
COUNTY OF TULARE  

I (WE), ________________, being duly sworn, declare and say that I am (we are) the owner (lessee or agent) of property involved in this application and that I (we) have completed this application and all other documents and maps required hereby to the best of my (our) ability and that the statements and information above referred to are, in all respects, true and correct, except, as to the matters stated to be on my information and belief.

I declare under penalty of perjury that the foregoing is true and correct, executed at ______________, this __________ day of ______________, 19__

Telephone No. ________________________________

Signature ________________________________

Mailing Address 6399 W. SHIELDS AVE., 72550, CALIFORNIA 93212

This is to certify that the foregoing application has been inspected by me and has been found to be thorough and complete in every particular and to conform to the rules and regulations of the City of Porterville governing the filing of such application.

By ________________________________

Date Received ________________________________
City of Porterville

Environmental Checklist Form

1. Project title: Conditional Use Permit 6-2005

2. Lead agency name and address: City of Porterville
   291 N. Main Street
   Porterville, CA 93257

3. Contact person and phone number: Bradley D. Dunlap, Community Development Director
   (559) 782-7460

4. Project location: East side of Sunnyside Street, 120+ feet north of Doris Avenue (SEE PAGE 3A)

5. Project sponsor's name and address: James Strachan
   6399 W. Shields Ave.
   Fresno, CA 93722

6. General plan designation: Heavy Commercial

7. Zoning: C-3 (Heavy Commercial) Zone

8. Description of project: (SEE ATTACHED LOCATOR MAP 3A)

   Conditional Use Permit 6-2005 proposes to allow the construction of a communications tower and
   accessories related to operation. The tower would stand approximately 102 feet tall with a
   diameter ranging from roughly three feet (3') at the base to approximately one foot (1') at the
   highest point. The tower would be placed in a four feet by four feet (4' x 4') concrete base which
   in turn would be placed in a nine feet by fifteen feet (9' x 15') concrete pad. Adjacent to the
   tower, on the larger concrete pad, would be four (4) small cabinets to house the electrical system.
   The subject lease site is roughly 900 square feet (approximately 30' x 30') and will be enclosed
   by a six feet (6') high cyclone fence around the perimeter.

   Existing conditions on the site permit commercial uses. The site is paved in asphalt. The
   proposed project area lies at the northeast corner of an existing lot presently utilized for the
   storage of vehicles in need of repair for the automotive business located to the south.

   There are no known environmental aspects peculiar to the proposed project area.

9. Surrounding land uses and setting:
   North: City C-3 – Ford sales and service building and Danner Avenue.
   South: City C-3 – Automotive repair and Doris Avenue.
   East: City C-3 – New and used car sale lot and North Main Street.
   West: City C-3 – Sunnyside Street and heavy commercial uses.

   The FIRM Flood Insurance Map 060407 0010D, Dated October 15, 1985 indicates the site is in
   Flood Zone AH (areas of 100 shallow flooding where depths are between one (1) and three (3)
   feet).

10. Other public agencies whose approval is required (e.g., permits, financing approval, or
    participation agreement.)

    None

ATTACHMENT
ITEM NO. 3
ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

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

☒ Aesthetics ☐ Agriculture Resources ☐ Air Quality
☐ Biological Resources ☐ Cultural Resources ☐ Geology/Soils
☐ Hazards & Hazardous Materials ☐ Hydrology/Water Quality ☐ Land Use / Planning
☐ Mineral Resources ☐ Noise ☐ Population/Housing
☐ Public Services ☐ Recreation ☐ Transportation/Traffic
☐ Utilities / Service Systems ☐ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

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

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

Signature: [Signature]
Date: 9-29-05

ACTING CD DIRECTOR

Bradley D. Dunlap, AICP
Printed name

City of Porterville
EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:

a) the significance criteria or threshold, if any, used to evaluate each question; and

b) the mitigation measure identified, if any, to reduce the impact to less than significance
EARLIER ANALYSIS

Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or Negative Declaration. Section 15063 (C) (3) (D). In this case a discussion should identify the following items:

a) **Earlier analysis used.** Identify earlier analyses and state where they are available for review.

b) **Impacts adequately addressed.** Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) **Mitigation measures.** For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions of the project.

**Authority:** Public Resources Code Sections 21083 and 21087.


**SOURCE REFERENCES**

1. Land Use Element of the Porterville General Plan (1998)
2. Circulation Element of the Porterville General Plan (1999)
3. Housing Element of the Porterville General Plan (1992)
5. Open Space Element of the Porterville General Plan (1998)
7. Safety Element of the Tulare County General Plan (1998)
9. Airport Master Plan (1990)
10. Porterville Strategic Plan (1992)
15. Porterville Urban Area Boundary Biotic Survey (Hansen 1988)
16. Porterville Redevelopment Housing Strategic Plan (1994)
17. City of Porterville Storm Drainage Master Plan (2001)
20. City of Porterville Sewer Master Plan (2001)
21. City of Porterville Water Master Plan (2001)
23. San Joaquin Valley Air Pollution Control District Attainment Plan
24. San Joaquin Valley Air Pollution Control District Regulation VII
25. Aerial photo records - City of Porterville
27. 1990 Census Data/Tract and Block Group Maps
28. Existing Infrastructure and Facilities Capacity
30. On-site field inspection
31. City of Porterville Transit Development Plan
32. Emergency Services Plan - Tulare County Operational Area
33. City of Porterville Urban Water Management Plan
35. Project Description
Issues:

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<th>Potentially Significant Impact</th>
<th>Less than Significant Impact</th>
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</table>

I. AESTHETICS -- Would the project:

a) Have a substantial adverse effect on a scenic vista? □ □ □ ☒

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

c) Substantially degrade the existing visual character or quality of the site and its surroundings? □ □ ☒ □

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

Responses:

a), b), d): No Impact. The project is not a part of or adjacent to a scenic vista, and would have no impact on a designated or eligible state scenic highway. As the tower will not be lighted, and the ground level cabinets will be lighted only as needed in emergencies, operation of the project will not create a new source of light or glare that would adversely affect day or nighttime views in the area. Sources: 1, 5, & 35.

c): Less Than Significant Impact. The communications tower will change the existing visual character of the site, resulting in only a minor degradation of visual quality. Currently, all the commercial uses adjacent to the project area meet the City’s 50-foot height requirement. Section 2602.C of the Porterville Zoning Ordinance allows antennas to exceed the height limits of any zone, which would include the proposed construction of a 102-foot tower. The tower will thus comply with City standards, and the impact would be less than significant. Sources: 1 & 5.
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. **Would the project:**

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

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? ☐ ☐ ☐ ☒

c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? ☐ ☐ ☐ ☒

**Responses:**

a), b), c): No Impact. The project area is within the limits of the City of Porterville and is not being farmed. It is zoned for commercial development and will not result in any indirect impact which could result in conversion of farmland to non-agricultural use. Sources: 1 & 35.
III. **AIR QUALITY** -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. **Would the project:**

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Conflict with or obstruct implementation of the applicable air quality plan?</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?</td>
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<tr>
<td>c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?</td>
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<tr>
<td>d) Expose sensitive receptors to substantial pollutant concentrations?</td>
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<tr>
<td>e) Create objectionable odors affecting a substantial number of people?</td>
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</table>

**Response:**

a), c), d), e): **No Impact.** The project as proposed would not conflict with any applicable air quality plans, nor would it create a cumulatively considerable net increase in criteria pollutants or expose sensitive receptors to substantial concentrations of pollutants. The project would not create any scents or odors. Sources: 4 & 24.

b): **Less Than Significant Impact.** During the construction stage of the project, crew vehicle trips and construction related activities could potentially generate PM$_{10}$. As the project does not require unusual grading practices and does not violate the thresholds of significance for other vehicle related operations emissions, the project may be determined to have a less than significant effect from operations. Construction related impacts to PM10 are controlled through the enforcement of San Joaquin Valley Air Pollution Control District Regulation VIII, which establishes a number of mandatory construction practices. Compliance with Regulation VIII is sufficient to reduce the potential impact of development of the subject site to less than significant levels. Sources: 24.
IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? ☑

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? ☑

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? ☑

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? ☑

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? ☑

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? ☑

Response:

a), b), c), d), e), f): No Impact. The project site is currently paved with asphalt and surrounded by urban uses. A field survey by City staff identified no sensitive species and no habitat located on site. Approval of the project would not result in a conflict with local ordinances, policies, or habitat conservation plans. Sources: 4, 5, 15, & 30.
V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? □ □ □ ☒

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? □ □ □ ☒

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? □ □ □ ☒

d) Disturb any human remains, including those interred outside of formal cemeteries? □ □ □ ☒

Response:

a), b), c), d): No Impact. The project area is currently a disturbed, paved lot, and ground disturbance will consist of minor grading necessary to anchor the base. No known historic, archaeological, or paleontological resources exist on site. Sources: 4 & 30.
VI. GEOLOGY AND SOILS -- Would the project:

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
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<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</td>
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<tr>
<td>i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</td>
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<tr>
<td>ii) Strong seismic ground shaking?</td>
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<tr>
<td>iii) Seismic-related ground failure, including liquefaction?</td>
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<tr>
<td>iv) Landslides?</td>
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<tr>
<td>b) Result in substantial soil erosion or the loss of topsoil?</td>
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<tr>
<td>c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?</td>
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<tr>
<td>d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?</td>
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<tr>
<td>e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?</td>
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</table>

Response:

a), c), d), e): No Impact. According to the California Geological Survey, there are no established or recognized earthquake fault zones in Tulare County. The project is not at risk, nor will it create a risk of fault rupture, seismic ground shaking, seismic related ground failure, liquefaction, or landslides. The project area is located on stable, medium to coarse textured soils with a high infiltration rate, which are not subject to landslide, lateral spreading, subsidence, liquefaction, collapse or expansion. No septic tanks or alternate wastewater disposal will be constructed as part of the project. Sources: 4, 7, 29, & 30.

b): Less Than Significant Impact. Development of the site as proposed will result in ground disturbance through leveling, grading, etc. and could contribute to minor soil erosion during construction. However, the San Emigdio loam soils on which the project would be built has a flat slope and hazard of erosion is slight. Normal project procedures, including the enforcement of a site development plan and other development related conditions of approval will maintain a less than significant impact in regards to erosion. In addition, conformance with the City Storm Drain Master Plan, and requirements relative to grading, the California Building Code, etc., will be required. Sources: 29.
VII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

<table>
<thead>
<tr>
<th>Would the project:</th>
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<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</td>
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<tr>
<td>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</td>
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<tr>
<td>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</td>
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<tr>
<td>d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</td>
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<td>☐</td>
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<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?</td>
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</tr>
<tr>
<td>f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</td>
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<td>☐</td>
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<tr>
<td>g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</td>
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<tr>
<td>h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</td>
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</table>

Response:

a), b), c), d): No Impact. The project as proposed will not involve hazardous materials, and the project site is not contaminated. Sources: 7.

e), f), g), h): No Impact. The project is not within the vicinity of an airport or an airstrip. The project will not result in any change or interference with an adopted emergency response plan or evacuation plan. Mandatory conformance with the Porterville Zoning Ordinance and the Porterville weed abatement program will ensure that the project will not expose people or structures to a significant risk of loss due to wildfire. Sources: 7 & 12.
VIII. HYDROLOGY AND WATER QUALITY -- Would the project:

a) Violate any water quality standards or waste discharge requirements? ☐ ☐ ☐ ☒

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? ☐ ☐ ☐ ☒

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? ☐ ☐ ☐ ☒

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? ☐ ☐ ☐ ☒

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? ☐ ☐ ☐ ☒

f) Otherwise substantially degrade water quality? ☐ ☐ ☐ ☒

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? ☐ ☐ ☐ ☒

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? ☐ ☐ ☐ ☒

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? ☐ ☐ ☐ ☒

j) Inundation by seiche, tsunami, or mudflow? ☐ ☐ ☐ ☒

Response:

a), f): No Impact. Development of the site as proposed would not require any excavation other than minor grading. No uses are proposed which could cause the discharge of pollutants into the groundwater or surface water. Sources: 4.
b): **No Impact.** The proposed project will not draw water from any source. Sources: 35.

c), d), e): **No Impact.** The project site is currently paved with asphalt, and the proposed development will create only a minor change in the gradient of the area with the addition of a 9 by 15 foot concrete pad. No substantial change in runoff will occur. Sources: 35.

g), h), i), j): **No Impact.** The project does not propose to construct housing or any other type of structure that encourages regular occupation. The FEMA Flood Insurance Rate Map 060407 0010 D (1985) indicates the site is in Flood Zone AH, which is an area of 100 year flooding between one and three feet. The proposed structure would not impede flood flows, nor would it expose people or structures to a significant risk due to flooding. The project area is not within an area subject to inundation by seiche, tsunamis, or mudflows. Sources: 1, 4, 26, & 35.
IX. LAND USE AND PLANNING - Would the project:

a) Physically divide an established community? □ □ □ ☒

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? □ □ □ ☒

c) Conflict with any applicable habitat conservation plan or natural community conservation plan? □ □ □ ☒

Response:

a), b), c): No Impact. Porterville’s General Plan designates the subject area for Heavy Commercial uses and the site is located within the C-3 (Heavy Commercial) Zone. The proposed project will not disrupt or divide the physical arrangement of the established community in this area. The project as proposed is consistent with the polices and guidelines set forth in the Land Use Element and Circulation Element of the General Plan and the Zoning Ordinance. The project as proposed will not violate any of the existing polices, nor will it conflict with any applicable environmental plans or policies adopted by agencies with jurisdiction over the project. Therefore, no impact will occur. Sources: 1, 2, 3, 4, 12, & 30.
X. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? ☑

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? ☑

**Response:**

a), b): No Impact. There are no known mineral resources on the proposed project area. Sources: 4.
XI. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?   ☑  ☑  ☐  ☐

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?   ☐  ☑  ☐  ☐

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?   ☐  ☑  ☐  ☐

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?   ☐  ☑  ☐  ☐

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?   ☐  ☑  ☑  ☐

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?   ☐  ☑  ☑  ☐

Response:

a), b), c), d): Less Than Significant Impact. Development of the site as proposed will result in short-term increases in noise associated with construction equipment that may exceed the City's noise level standards. As these activities will be restricted to daytime hours and will be short-term in nature, the impact will be less than significant. Sources: 6.

e), f): No Impact. The project is not within the vicinity of an airport or private airstrip. Sources: 6.
XII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

  □ □ □ ☒

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

  □ □ □ ☒

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

  □ □ □ ☒

Response:

a), b), c): No Impact. Based on the historical growth pattern, it is expected that Porterville’s population will continue to grow at about 2.5% annually. The project as proposed will not cause any substantial increase in local population projections. Infrastructure exists in the project area near Sunnyside Street and Doris Avenue. The proposed project will facilitate development envisioned by the General Plan and will not induce substantial growth in this area. Further, the project as proposed will not require the removal of any existing housing. Sources: 1, 3 & 30.
XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

- Fire protection? □ □ □ ☒
- Police protection? □ □ □ ☒
- Schools? □ □ □ ☒
- Parks? □ □ □ ☒
- Other public facilities? □ □ □ ☒

**Response:**

a) No Impact. The subject site is within the service area of the Porterville Fire and Police Departments. The project as proposed does not have potential to increase enrollment within the Porterville Unified School District, nor will it affect park usage or other public facilities. Sources: 1, 2, 3, 5, 7 & 8.
XIV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? □ □ □ ☒

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? □ □ □ ☒

Response:

a), b): No Impact. The project would not result in increased usage of recreational facilities, nor would it create a need for new recreational facilities. Sources: 5 & 8.
XV. TRANSPORTATION/TRAFFIC -- Would the project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?

b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

e) Result in inadequate emergency access?

f) Result in inadequate parking capacity?

g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

Response:

a), b), c), d), e), f), g): No Impact. Installation of the transmission tower as proposed will only require access for periodical maintenance and inspections. Therefore, no increase in traffic or affect to Levels of Service will occur. The project as proposed will not affect air traffic patterns as the project area is not within the flight path at a height to encroach traveled air space. The project will not affect already existing roadways in any way resulting in a hazard, changing emergency access, or reducing parking capacity. The project does not conflict with any adopted alternative transportation policies. Sources: 1, 2, 34, & 35.
XVI. UTILITIES AND SERVICE SYSTEMS --
Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

g) Comply with federal, state, and local statutes and regulations related to solid waste?

Response:

a), b), c), d), e): No Impact. The project will not create a need for water usage, treatment, or drainage. The project will not increase the amount of storm water runoff as the project area is currently paved. Sources: 30 & 35.

f), g): No Impact. Operation of the project will not generate solid waste. Construction of the project will generate only minor amounts of waste materials, and disposal of such materials is within the capacity of Porterville’s refuse service capacity. Sources: 28 & 35.
XVII. MANDATORY FINDINGS OF SIGNIFICANCE --

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Response:

a), b), c): No Impact. The project as proposed will have no impact on the quality of the natural environment, individually or cumulatively, and will not have substantial adverse effects on humans either directly or indirectly.
October 6, 2005

Bradley Dunlap
Community Development Director
City of Porterville
291 N. Main Street
Porterville, CA 93257

Subject: CUP 7-2005 (APN: 251-010-001) Verizon Wireless (Ridge Communications)

Dear Mr. Dunlap:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above and determined that the air quality impact is less than significant. Regarding the air quality resource, we believe a Negative Declaration would be appropriate. However, we have not analyzed the cumulative impacts to water, cultural, biological, or other resources, as the air quality resource is our area of expertise. We also offer the following comments:

Based on the information provided, the proposed project will be subject to the following District rules. The following items are rules that have been adopted by the District to reduce emissions throughout the San Joaquin Valley, and are required. This project may be subject to additional District Rules. To identify additional rules or regulations that apply to this project, or for further information, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules can be found at http://www.valleyair.org/rules/1ruleslist.htm.

Regulation VIII (Fugitive PM10 Prohibitions)- Regulation VIII (Rules 8011-8081) is a series of rules designed to reduce PM10 emissions (predominantly dust/dirt) generated by human activity, including construction. If a non-residential site is 1.0 to less than 5.0 acres, an owner/operator must provide written notification to the District at least 48 hours prior to his/her intent to begin any earthmoving activities (see section 6.4.2).

A compliance assistance bulletin for construction sites can be found at: http://www.valleyair.org/busind/comply/PM10/Reg%20VIII%20CAB.pdf

Rule 4102 (Nuisance) applies to any source operation that emits or may emit air contaminants or other materials. In the event that the project or construction of the project creates a public nuisance, it could be in violation and be subject to District enforcement action.

Rule 4601 (Architectural Coatings) limits volatile organic compounds from architectural coatings. This rules specifies architectural coatings storage, clean up and labeling requirements.

Rule 4702 (Internal Combustion Engines – Phase 2) This rule applies to any internal combustion engine with a rated brake horsepower greater than 50 horsepower (for example, a standby generator fueled by diesel).

If a generator of 50-brake hp or more is installed, this project will be subject to the permitting requirements of the District. Any equipment subject to the District's Permit to Operate requirements must obtain an Authority to Construct (ATC) from the District. Construction of equipment that requires an ATC, and intimately related appurtenances such foundations and utility hookups for the equipment, cannot begin until an ATC is obtained. Construction of equipment not requiring a District permit is not subject to this ATC requirement. Depending upon the nature and complexity of the application and...
staff workload, ATC approval can take several months. For further information, the applicant should contact the District's Small Business Assistance Office at (559) 230-5888, or our Permit Services Section at (559) 230-5900. To avoid unnecessary delays in the project, applications should be submitted to the District as soon as the project developer has determined the scope of the project.

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call me at (559) 230-5800 or Mr. Hector R. Guerra, Senior Air Quality Planner, at (559) 230-5820 and provide the reference number at the top of this letter.

Sincerely,

Georgia Stewart
Air Quality Specialist
Central Region

C: File
October 20, 2005

City of Porterville
Community Development Department
Planning Division
291 N. Main Street
Porterville, CA 93257

RE: CUP 6-2005 Communication Tower at Doris and Sunnyside

Gentlemen:

I wish to formally object to the construction of the 102± foot high communications tower, with appurtenant structures to be located on the east side of Sunnyside Street, approximately 120± feet north of Doris Avenue Ave.

The proposed tower would be adjacent to the property line of Clevenger Ford and we feel would have a great environment impact on our business. Not only would this tower destroy the appearance of the property it will impair our ability to carry on business at the location that the Ford dealership has been located for more than 35 years. We believe that the proposed tower will impair the use of the airways interfering with the operation of our business as we use satellite airways to communicate with Ford in Michigan and with our body shop.

Thank you for your consideration in this matter.

Sincerely,

CLEVENGER FORD LINCOLN MERCURY

[Signature]
Truman Clevenger
President

RECEIVED
OCT 20 2005
San Joaquin Valley
Air Pollution Control District

October 6, 2005

Bradley Dunlap
Community Development Director
City of Porterville
291 N. Main Street
Porterville, CA 93257

Subject: CUP 7-2005 (APN: 251-010-001) Verizon Wireless (Ridge Communications)

Dear Mr. Dunlap:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above and determined that the air quality impact is less than significant. Regarding the air quality resource, we believe a Negative Declaration would be appropriate. However, we have not analyzed the cumulative impacts to water, cultural, biological, or other resources, as the air quality resource is our area of expertise. We also offer the following comments:

Based on the information provided, the proposed project will be subject to the following District rules. The following items are rules that have been adopted by the District to reduce emissions throughout the San Joaquin Valley, and are required. This project may be subject to additional District Rules. To identify additional rules or regulations that apply to this project, or for further information, the applicant is strongly encouraged to contact the District’s Small Business Assistance Office at (559) 230-5888. Current District rules can be found at http://www.valleyair.org/rules/1ruleslist.htm.

**Regulation VIII** (Fugitive PM10 Prohibitions)- Regulation VIII (Rules 8011-8081) is a series of rules designed to reduce PM10 emissions (predominantly dust/dirt) generated by human activity, including construction. If a non-residential site is 1.0 to less than 5.0 acres, an owner/operator must provide written notification to the District at least 48 hours prior to his/her intent to begin any earthmoving activities (see section 6.4.2).

A compliance assistance bulletin for construction sites can be found at:
http://www.valleyair.org/busind/comply/PM10/Reg%20VIII%20CAB.pdf

**Rule 4102** (Nuisance) applies to any source operation that emits or may emit air contaminants or other materials. In the event that the project or construction of the project creates a public nuisance, it could be in violation and be subject to District enforcement action.

**Rule 4601** (Architectural Coatings) limits volatile organic compounds from architectural coatings. This rule specifies architectural coatings storage, clean up and labeling requirements.

**Rule 4702** (Internal Combustion Engines – Phase 2) This rule applies to any internal combustion engine with a rated brake horsepower greater than 50 horsepower (for example, a standby generator fueled by diesel).

If a generator of 50-brake hp or more is installed, this project will be subject to the permitting requirements of the District. Any equipment subject to the District’s Permit to Operate requirements must obtain an Authority to Construct (ATC) from the District. Construction of equipment that requires an ATC, and intimately related appurtenances such foundations and utility hookups for the equipment, cannot begin until an ATC is obtained. Construction of equipment not requiring a District permit is not subject to this ATC requirement. Depending upon the nature and complexity of the application and
staff workload, ATC approval can take several months. For further information, the applicant should contact the District's Small Business Assistance Office at (559) 230-5888, or our Permit Services Section at (559) 230-5900. To avoid unnecessary delays in the project, applications should be submitted to the District as soon as the project developer has determined the scope of the project.

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call me at (559) 230-5800 or Mr. Hector R. Guerra, Senior Air Quality Planner, at (559) 230-5820 and provide the reference number at the top of this letter.

Sincerely,

Georgia Stewart
Air Quality Specialist
Central Region

C. File
October 20, 2005

City of Porterville
Community Development Department
Planning Division
291 N. Main Street
Porterville, CA 93257

RE: CUP 6-2005 Communication Tower at Doris and Sunnyside

Gentlemen:

I wish to formally object to the construction of the 102± foot high communications tower, with appurtenant structures to be located on the east side of Sunnyside Street, approximately 120± feet north of Doris Avenue Ave.

The proposed tower would be adjacent to the property line of Clevenger Ford and we feel would have a great environment impact on our business. Not only would this tower destroy the appearance of the property it will impair our ability to carry on business at the location that the Ford dealership has been located for more than 35 years. We believe that the proposed tower will impair the use of the airways interfering with the operation of our business as we use satellite airways to communicate with Ford in Michigan and with our body shop.

Thank you for your consideration in this matter.

Sincerely,

CLEVENGER FORD LINCOLN MERCURY

Truman Clevenger
President

ATTACHMENT ITEM NO. 5
RESOLUTION NO._________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT FOR CONDITIONAL USE PERMIT 6-2005 TO ALLOW THE CONSTRUCTION OF A 102 FEET HIGH COMMUNICATIONS TOWER AND RELATED EQUIPMENT IN THE C-3 (HEAVY COMMERCIAL) ZONE FOR THAT SITE LOCATED ON THE EAST SIDE OF SUNNYSIDE STREET, 120± FEET NORTH OF DORIS AVENUE.

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of November 1, 2005, conducted a public hearing to consider Conditional Use Permit 6-2005, being a request to allow the construction of a 102 feet high communications tower and related equipment as indicated on the approved plan on a 30'x30' lease site in the C-3 (Heavy Commercial) Zone for that site located on the east side of Sunnyside Street, 120± feet north of Doris Avenue.

WHEREAS: On September 29, 2005, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate for the proposed project; and

WHEREAS: The City Council considered the following findings in its review of the environmental circumstances for this project:

1. That a Negative Declaration was prepared for the project in accordance with the California Environmental Quality Act.

2. That the Negative Declaration prepared for this project was made available for public review and comment. The 20 day review period was from September 30, 2005 to October 20, 2005. At the end of that period, the only agency that responded was from the San Joaquin Valley Air Pollution Control District. Those comments have been addressed in the Initial Study. An additional letter was received from Truman Clevenger, President of Clevenger Ford Lincoln-Mercury, whose business is located adjacent to the proposed communications tower.

3. That the proposed project will not create adverse environmental impacts.

The proposed Negative Declaration was evaluated in light of the prepared environmental initial study, comments from interested parties and the public, as well as responses to written comments received during the review period. It was determined that potential impacts associated with the proposed project could be mitigated to a less than significant level through the implementation of the attached mitigation measures.
4. That the City Council is the decision-making body for the project.

5. That review of the environmental circumstances regarding this project indicates that no adverse impacts would accrue to wildlife resources from implementation of the project.

City staff conducted an on-site inspection. The subject site has existing asphalt and is surrounded by commercial uses on all sides. No natural habitat was observed. As such, no endangered, threatened or rare species or habitats exist and no impact will occur.

6. That the project may proceed subsequent to approval and/or conditional approval of the State Department of Fish and Game relative to said State Department’s consideration of a “de minimis impact” pursuant to Section 711.2 et. seq. of the Fish and Game Code.

7. That the environmental assessment and analysis prepared for this project supporting the Negative Declaration reflects the independent judgement of the City of Porterville.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Negative Declaration for Conditional Use Permit 6-2005 as described herein.

________________________
Kelly West, Mayor

ATTEST:

John Longley, City Clerk

By ______________________
Georgia Hawley, Chief Deputy City Clerk
RESOLUTION NO.__________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS IN SUPPORT OF CONDITIONAL USE PERMIT
6-2005 TO ALLOW THE CONSTRUCTION OF A OF A 102 FEET HIGH
COMMUNICATIONS TOWER AND RELATED EQUIPMENT IN THE C-3 (HEAVY
COMMERCIAL) ZONE FOR THAT SITE LOCATED ON THE EAST SIDE OF SUNNYSIDE
STREET, 120± FEET NORTH OF DORIS AVENUE.

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting
of November 1, 2005, conducted a public hearing to consider Conditional Use Permit 6-2005, being
a request to allow the construction of a 102 feet high communications tower and related equipment
as indicated on the approved plan on a 30'x30' lease site in the C-3 (Heavy Commercial) Zone for
that site located on the east side of Sunnyside Street, 120± feet north of Doris Avenue.

WHEREAS: The City Council made the following findings with respect to the subject
project:

1. That the proposed project is consistent with the site’s General Plan land use
designation and zoning.

2. That the site is physically suitable for the type of development proposed.

3. That the design of the project or the proposed improvements are not likely to cause
substantial environmental damage.

4. That a Negative Declaration was prepared for this project indicating that such will
not have a significant effect on the environment.

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

6. That the standard of population density, site area dimensions, site coverage, yard
spaces, height of structures, distance between structures, off-street parking facilities,
and landscaped areas will produce an environment of stable and desirable character
consistent with the objectives of the Zoning Ordinance.

7. Section 2103 A-8 of the Porterville Zoning Ordinance allows for radio or television
transmitters and receivers subject to a Conditional Use Permit.
NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 6-2005, subject to the following conditions:

1. Upon submittal of a building permit the following will be required:
   a. Submit three (3) complete sets of plans, signed by a licensed Architect or Engineer, to include structural calculations.
   b. Compliance with all applicable codes is required.
   c. Plan check fees are required at the time of building permit issuance.
   d. Pay all other fees at time of permit issuance.

2. The electrical cabinets will be required to be enclosed behind a view obscuring cyclone fence and may not be visible to public view.

3. That the pole and all associated antennas shall be non-reflective, with a treatment color designed to diminish the visual impact on the skyline.

4. That an FAA clearance form will be required to be submitted at the time of building permit submittal.

5. That a signed letter by the property owner authorizing the placement and location of the proposed structure will be required at time of building permit submittal.

6. The developer/applicant shall pay all applicable fees in accordance with the Municipal Code and State law. Fees are subject to change annually. The developer/applicant is hereby notified that you have the right to pay fees, dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

7. The developer/applicant shall comply with the City Flood Damage Prevention Ordinance. The property is within a Flood Hazard Zone AH with a Base Flood Elevation of 447.0 feet. A licensed Civil Engineer or Land Surveyor shall confirm that the finished floor will be constructed at or above the Base Flood Elevation in letter form or by providing a Preliminary Elevation Certificate. The same professional shall confirm that the finished floor is at or above the Base Flood Elevation by submitting an Elevation Certificate to the City Engineer or approval prior to the issuance of a certificate of occupancy. Preliminary Elevation Certificates and Elevation Certificates are available within the Engineering Division upon request.
8. The developer/applicant shall provide an easement for access to the proposed lease parcel.

9. The development of the proposed antenna and related improvements shall conform to the approved plans.

10. At all times, the facility shall be operated and maintained to comply with State Law, the City of Porterville Zoning Ordinance, adopted Building Codes and all other applicable laws and ordinances.

11. The Conditional Use Permit shall become null and void at the expiration of the term thereof, or if not undertaken and actively and continuously pursued within the time specified in the permit or within one (1) year if no time is specified therein.

________________________________________
Kelly West, Mayor

ATTEST:

John Longley, City Clerk

By ______________________
Georgia Hawley, Chief Deputy City Clerk
SUBJECT: CONDITIONAL USE PERMIT 7-2005 - 100 FEET HIGH COMMUNICATIONS TOWER (RIDGE COMMUNICATIONS)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: Conditional Use Permit 7-2005 proposes to allow the construction of a communications tower and operation. The tower would stand approximately 100 feet tall with a diameter ranging from roughly three feet (3') at the base to approximately one foot (1') at the highest point. The tower would be placed in a concrete base. Adjacent to the tower would sit a 12 foot by 20 foot (12' x 20') equipment shelter placed on a new concrete pad of the same dimensions. In addition, a 210 gallon, 60 kw diesel generator will be mounted on a five foot by ten foot (5' x 10') concrete pad. The subject lease site (approximately 30' x 50') will be enclosed by an eight foot (8') high cyclone fence around the perimeter.

An optional co-location site plan is proposed to allow for two (2) additional carrier locations with a perimeter of 12’ x 20’ adjacent to and east of the proposed site. An additional co-location site adjacent to and south of the proposed location was eliminated from consideration due to its proximity to a blue elderberry shrub that is south of the project area.

Currently, the site is a disked lot surrounded by Porterville Fire Station #2 and Veteran’s Park to the north, the City corporation yard and the wastewater treatment plant to the east, Porter Slough and Veteran’s Park to the south, and single family residential dwellings beyond Newcomb Avenue to the west. The proposed project area lies at the southeast corner of Fire Station #2.

On September 8, 2005, City Staff made an on-site inspection to further analyze the surrounding uses for processing data required in the staff report for the Conditional Use Permit 7-2005. As a result of this inspection, Staff observed an elderberry shrub on the outside of the west fence line adjacent to the oleanders of the fire station. The bush was approximately eight feet (8') in height. One of the stems was an inch in diameter. No bore holes were observed.

The approximate location of the shrub is 20 feet north of the southwest corner of the six foot (6') chainlink fence surrounding the fire station property. The location of the eight foot (8') chainlink fence proposed around the perimeter of the proposed tower is 30 feet. The placement of the concrete slab will be 35 feet north of the shrub. The site survey map (C-1) in the environmental initial study indicates the location of the shrub in relation to the proposed site.
Mitigation measures will require that the additional co-location site adjacent to and south of the proposed project not be allowed. Additionally, the developer/applicant will be required to adhere to the Conservation Guidelines for the Valley Elderberry Longhorn Beetle dated July 9, 1999.

On September 29, 2005, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate for the proposed project. The Initial Study and proposed Mitigation Measures have been transmitted to interested agencies, groups, and individuals for a twenty (20) day review period from September 30, 2005 to October 20, 2005. As of this date, no comments have been received.

Section 2103 A-9 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit.

RECOMMENDATION: That the City Council:

1. Adopt the Draft Resolution approving the Negative Declaration prepared for Conditional Use Permit 7-2005; and
2. Adopt the Draft Resolution conditionally approving Conditional Use Permit 7-2005 subject to conditions of approval.

ATTACHMENT:

1. Complete Staff Report
CONDITIONAL USE PERMIT 7-2005

Ridge Communications Inc.
12667 Alcosta Blvd., Ste 175
San Ramon, CA 94583

Conditional Use Permit 7-2005 proposes to allow the construction of a 100 feet high communications tower to be located on the east side of Newcomb Street, just north of the Porter Slough at the rear of Fire Station No. 2 in the OA (Open Area) Zone.

The tower would stand approximately 100 feet tall with a diameter ranging from roughly three feet (3') at the base to approximately one foot (1') at the highest point. The tower would be placed in a concrete base. Adjacent to the tower would sit a 12 foot by 20 foot (12' x 20') equipment shelter placed on a new concrete pad of the same dimensions. In addition, a 210 gallon, 60 kw diesel generator will be mounted on a five foot by ten foot (5' x 10') concrete pad. The subject lease site (approximately 30' x 50') will be enclosed by an eight foot (8') high cyclone fence around the perimeter.

An optional co-location site plan is proposed to allow for two (2) additional carrier locations with a perimeter of 12' x 20' adjacent to and east of the proposed site. An additional co-location site adjacent to and south of the proposed location was eliminated from consideration due to its proximity to a blue elderberry shrub that is south of the project area.

Currently, the site is a disked lot surrounded by Porterville Fire Station #2 and Veteran’s Park to the north, the City corporation yard and the wastewater treatment plant to the east, Porter Slough and Veteran’s Park to the south, and single family residential dwellings beyond Newcomb Avenue to the west. The proposed project area lies at the southeast corner of Fire Station #2.

The General Plan designates the site as Public & Quasi Public. The subject site is zoned City OA (Open Area).

North: City OA - Veterans Park.
South: City OA - Porter Slough, Veterans Park, and Morton Avenue.
East: City OA - Waste Water Treatment Plant, City Corporation yard.
West: City OA - Veterans Park, Newcomb Street, and single family residential dwellings.
STAFF ANALYSIS: Due to the existing trees throughout the City, visibility of the tower should be partially obscured from public view. Additional trees are located along Porter Slough and the west side of the fire station. Slates or other approved view obscuring material will be incorporated with the fence. Additionally, the tower is located in a OA Zone, and the placement of the tower is less obtrusive than it would be if it were placed in a residentially zoned area. The pole and all associated antennas shall be non-reflective, with a treatment color designed to diminish the visual impact on the skyline.

On September 8, 2005, City Staff made an on-site inspection to further analyze the surrounding uses for processing data required in the staff report for the Conditional Use Permit 7-2005. As a result of this inspection, Staff observed an elderberry shrub on the outside of the west fence line adjacent to the oleanders of the fire station. The bush was approximately eight (8) feet in height. One of the stems was an inch in diameter. No bore holes were observed.

The approximate location of the shrub is 20 feet north of the southwest corner of the six foot (6') chainlink fence surrounding the fire station property. The location of the eight foot (8') chainlink fence proposed around the perimeter of the proposed tower is 30 feet. The placement of the concrete slab will be 35 feet north of the shrub. The site survey map (C-1) in the environmental initial study indicates the location of the shrub in relation to the proposed site.

Mitigation measures will require that the additional co-location site adjacent to and south of the proposed will not be allowed. Additionally, the developer/applicant will be required to adhere to the Conservation Guidelines for the Valley Elderberry Longhorn Beetle dated July 9, 1999.

Section 2103 A-8 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. No project. Denial of the proposed use permit would not allow the applicant to construct the tower at this location.

2. Approve the project. Approval of the request would result in the applicant being conditionally allowed to construct the tower and associated equipment on this site.

ENVIRONMENTAL: On September 29, 2005, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration would be appropriate for the proposed project. The Initial Study and proposed Mitigation Measures have been transmitted to interested agencies, groups, and individuals for a twenty (20) day review period from September 30, 2005 to October 20, 2005. As of this date, no comments have been received.

DATE FILED FOR PROJECT REVIEW COMMITTEE PROCESSING: October 6, 2004

DATE ACCEPTED AS COMPLETE: September 7, 2005
RECOMMENDATION: That the City Council:

1. Adopt the Draft Resolution approving the Negative Declaration prepared for Conditional Use Permit 7-2005; and

2. Adopt the Draft Resolution conditionally approving Conditional Use Permit 7-2005 subject to conditions of approval.

ATTACHMENTS:
1. Site Plan, locator map, tower layout and elevation plan (Exhibit “A”) 
2. Application 
3. Environmental Initial Study 
4. Draft Resolution approving the Negative Declaration 
5. Draft Resolution conditionally approving Conditional Use Permit 7-2005
APPLICATION FOR CONDITIONAL USE PERMIT

(See Page 3 of this form for information on preparing and filing this application)

The Applicant(s) Verizon Wireless is/are the owner(s) or tenant(s) of property situated at 500 Newcomb Street

between W. Morton Avenue Street/Avenue and E. Henderson Avenue Street/Avenue. Exact legal
description of said property being (Use separate sheet if necessary)

See Attached Legal Description of Verizon Wireless Demised Premises.

As applicable, a Plot Plan and 300' radius property owners map, and corresponding mailing list are hereto attached and made a part of this application (See detailed instructions on Page 3 of this form).

(A) Above described property is owned by City of Porterville

Date acquired 1954

(B) If applicant is the lessee, give date property was leased:

Pending Land Lease between Verizon Wireless and the City of Porterville

(C) List below the original deed restrictions, if any, that were placed on the property which pertain to the type of improvements permitted.

Give date said restrictions expire Not Applicable

(You may attach copy of original printed restrictions in answer to this question after property underlining those features controlling the type and class of uses permitted thereby).

(D) REQUEST: The applicant requests a Conditional Use Permit to USE the above described property for the following purposes:

(Use this space ONLY to state exactly what is intended to be done, on or, with the property).

Verizon Wireless is proposing to construct a Wireless Telecommunication Facility which will include the following improvements; A New 12' x 20' Equipment Shelter, A New 60 KW-210 gallon Diesel Generator, A New 100 ft. high Steel Monopole, which will include 12 New 8 ft. long Panel Antennas at an Antenna centerline of 95 ft. AGL. There will also be 2 small GPS Antennas installed on the proposed Equipment Shelter. All of the improvements mentioned above will be built inside of a New 8ft. high Chain Link Fence.

This proposed Wireless Telecommunication Facility is being proposed to improve the demanding increase for higher quality wireless telecommunication coverage and capacity in the City of Porterville.
1. State how the proposed use will not be materially detrimental to the public welfare or injurious to property or improvements in such vicinity and zone in which the use is proposed to be located.

Verizon Wireless' proposed Project is classified as a Public Utility Collocation Facility and is within the existing City of Porterville Fire Dept. Station Facility located at 500 Newcomb Street.

This proposed Project is located within an existing developed Fire Station Complex and will be compatible with all surrounding property and is consistent with City's Gen.

2. Principal requirements of intended use (Please answer the following Plan. statements, if applicable):

(a) Total number of people that the building (or grounds if the use is not conducted in a building) can accommodate at one time (Seating Capacity).

Not Applicable

(b) Total number of employees that will work on the property. 1 or 2 Service Technicians will visit this site to conduct routine maintenance 3 to 4 times a month.

(c) Total number of off-street parking spaces provided or planned.

Two Spaces provided in the proposed Compound.

(d) Maximum height of buildings or structures.

Proposed Monopole will be 100 ft. AGL.

Proposed Equipment Shelter will be 12 ft. AGL.

(e) If the application is not intended to be for a permanent conditional use, state the length of time for which it is requested.

Not Applicable
We, the undersigned OWNERS of ADJACENT PROPERTY as shown upon the map attached to the application, hereby certify that we have read the foregoing petition and agree that the facts stated correctly and completely present the conditions surrounding the property involved in the application, and believe the application SHOULD BE GRANTED (Add additional sheets where necessary. These signatures are desirable but not required).

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<th>Name</th>
<th>Address</th>
<th>Lot</th>
<th>APNs Block</th>
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<td>291 N. Main Street Porterville, Ca. 93257</td>
<td>251-</td>
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<td>Raymond &amp; Sondra Vigil</td>
<td>P.O. Box 988 Porterville, Ca. 93258</td>
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<td>092-</td>
<td>005</td>
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<td>3</td>
<td>Ruben and Obdulia Alvarado</td>
<td>475 N. Newcomb Street Porterville, Ca. 93257</td>
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<td>Juan E Guerrero</td>
<td>493 N. Newcomb Dr Porterville, Ca. 93257</td>
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<td>Joseph III &amp; Holly Oliveira</td>
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<td>251-</td>
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APPLICANT'S DECLARATION

STATE OF CALIFORNIA )
COUNTY OF TULARE ) ss.

Verizon Wireless (Mark J. Noack-Agent)

I (WE), being duly sworn, declare and say that I am (we are) the owner (lessee or agent) of property involved in this application and that I (we) have completed this application and all other documents and maps required hereby to the best of my (our) ability and that the statements and information above referred to are, in all respects, true and correct, except, as to the matters stated to be on my information and belief.

I declare under penalty of perjury that the foregoing is true and correct, executed at PORTERVILLE, CA 19 APRIL 2005, this 16 day of ____________.

Telephone No. (559) 999-5800

Signature (Mark J. Noack-Agent)

2785 Mitchell Drive Mailing Address 8135 N. Yorktown Dr.
Walnut Creek, Ca 94598 Fresno, Ca. 93720

This is to certify that the foregoing application has been inspected by me and has been found to be thorough and complete in every particular and to conform to the rules and regulations of the City of Porterville governing the filing of such application.

By ________________________________

Date Received ____________________________
City of Porterville

Environmental Checklist Form

1. Project title: Conditional Use Permit 7-2005

2. Lead agency name and address: City of Porterville
   291 N. Main Street
   Porterville, CA 93257

3. Contact person and phone number: Bradley D. Dunlap, Community Development Director
   (559) 782-7460

4. Project location: North east of the intersection of Newcomb and Morton, south of Porterville Fire Station #2

5. Project sponsor’s name and address: Ridge Communications Inc.
   12667 Alcosta Blvd., Ste 175
   San Ramon, CA 94583

6. General plan designation: Public & Quasi-Public

7. Zoning: OA (Open Area) Zone

8. Description of project: (SEE ATTACHED LOCATOR MAP C-1 & A-2A)

   Conditional Use Permit 7-2005 proposes to allow the construction of a communications tower and operation. The tower would stand approximately 100 feet tall with a diameter ranging from roughly three feet (3') at the base to approximately one foot (1') at the highest point. The tower would be placed in a concrete base. Adjacent to the tower would sit a 12 foot by 20 foot (12' x 20') equipment shelter placed on a new concrete pad of the same dimensions. In addition, a 210 gallon, 60 kw diesel generator will be mounted on a five foot by ten foot (5' x 10') concrete pad. The subject lease site (approximately 30' x 50') will be enclosed by an eight foot (8') high cyclone fence around the perimeter.

   An optional co-location site plan is proposed to allow for two (2) additional carrier locations with a perimeter of 12' x 20' adjacent to and east of the proposed site. An additional co-location site adjacent to and south of the proposed location was eliminated from consideration due to its proximity to a blue elderberry shrub that is south of the project area.

   Currently, the site is a disked lot surrounded by Porterville Fire Station #2 and Veteran's Park to the north, the City corporation yard and the wastewater treatment plant to the east, Porter Slough and Veteran's Park to the south, and single family residential dwellings beyond Newcomb Avenue to the west. The proposed project area lies at the southeast corner of Fire Station #2.

9. Surrounding land uses and setting:
   North: City OA – Veterans Park.
   South: City OA – Porter Slough, Veterans Park, and Morton Avenue.
   East: City OA – Waste Water Treatment Plant, City Corporation yard.
   West: City OA – Veterans Park, Newcomb Avenue, and single family residential dwellings.

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)

   None
ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

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

☐ Aesthetics    ☐ Agriculture Resources    ☐ Air Quality
☒ Biological Resources    ☐ Cultural Resources    ☐ Geology/Soils
☐ Hazards & Hazardous Materials    ☐ Hydrology/Water Quality    ☐ Land Use / Planning
☐ Mineral Resources    ☐ Noise    ☐ Population/Housing
☐ Public Services    ☐ Recreation    ☐ Transportation/Traffic
☐ Utilities / Service Systems    ☐ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

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

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

Signature: [Signature]
Date: 9-29-05

ACTING CD DIRECTOR

Bradley D. Dunlap, AICP

City of Porterville

Printed name
EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

   a) Earlier Analysis Used. Identify and state where they are available for review.
   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
   c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:
   a) the significance criteria or threshold, if any, used to evaluate each question; and
   b) the mitigation measure identified, if any, to reduce the impact to less than significance.
EARLIER ANALYSIS

Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or Negative Declaration. Section 15063 (c) (3) (D). In this case a discussion should identify the following items:

a) Earlier analysis used. Identify earlier analyses and state where they are available for review.
b) Impacts adequately addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
c) Mitigation measures. For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions of the project.

Authority: Public Resources Code Sections 21083 and 21087.

SOURCE REFERENCES

1. Land Use Element of the Porterville General Plan (1998)
2. Circulation Element of the Porterville General Plan (1999)
3. Housing Element of the Porterville General Plan (1992)
5. Open Space Element of the Porterville General Plan (1998)
7. Safety Element of the Tulare County General Plan (1998)
9. Airport Master Plan (1990)
10. Porterville Strategic Plan (1992)
15. Porterville Urban Area Boundary Biotic Survey (Hansen 1988)
16. Porterville Redevelopment Housing Strategic Plan (1994)
17. City of Porterville Storm Drainage Master Plan (2001)
20. City of Porterville Sewer Master Plan (2001)
21. City of Porterville Water Master Plan (2001)
23. San Joaquin Valley Air Pollution Control District Attainment Plan
24. San Joaquin Valley Air Pollution Control District Regulation VII
25. Aerial photo records - City of Porterville
27. 1990 Census Data/Tract and Block Group Maps
28. Existing Infrastructure and Facilities Capacity
30. On-site field inspection
31. City of Porterville Transit Development Plan
32. Emergency Services Plan - Tulare County Operational Area
33. City of Porterville Urban Water Management Plan
35. Project Description
36. Technical Reports
I. **Aesthetics** -- Would the project:

a) Have a substantial adverse effect on a scenic vista? □ □ □ □

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

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

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

**Responses:**

a), b), d): **No Impact.** The project is not a part of or adjacent to a scenic vista, and would have no impact on a designated or eligible state scenic highway. As the tower will not be lighted, and the ground level cabinets will be lighted only as needed in emergencies, operation of the project will not create a new source of light or glare that would adversely affect day or nighttime views in the area. Sources: 1, 5, & 35.

c): **Less Than Significant Impact.** The communications tower will change the existing visual character of the site, resulting in a minor degradation of visual quality. Currently, none of the land uses adjacent to the project area exceed the City’s 35-foot height requirement. Section 2602.C of the Porterville Zoning Ordinance allows antennas to exceed the height limits of any zone, which would include the proposed construction of a 100-foot tower. The tower will thus comply with City standards, and though the towers will be visible above the height of the surrounding buildings and landscaping, the impact would be less than significant. Sources: 1 & 5.
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. **Would the project:**

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

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? ☐ ☐ ☐ ☒

c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? ☐ ☐ ☐ ☒

**Responses:**

a), b), c): **No Impact.** The project area is within the limits of the City of Porterville and is not being farmed. It is zoned as an open area and will not result in any indirect impact which could result in conversion of farmland to non-agricultural use. Sources: 1 & 35.
III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?

c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

d) Expose sensitive receptors to substantial pollutant concentrations?

e) Create objectionable odors affecting a substantial number of people?

Response:

a), c), d), e): No Impact. The project as proposed would not conflict with any applicable air quality plans, nor would it create a cumulatively considerable net increase in criteria pollutants or expose sensitive receptors to substantial concentrations of pollutants. The project would not create any scents or odors. Sources: 4 & 24.

b): Less Than Significant Impact. During the construction stage of the project, crew vehicle trips and construction related activities could potentially generate PM10. As the project does not require unusual grading practices and does not violate the thresholds of significance for other vehicle related operations emissions, the project may be determined to have a less than significant effect from operations. Construction related impacts to PM10 are controlled through the enforcement of San Joaquin Valley Air Pollution Control District Regulation VIII, which establishes a number of mandatory construction practices. Compliance with Regulation VIII is sufficient to reduce the potential impact of development of the subject site to less than significant levels. Sources: 24.
IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Response:

a): Less Than Significant Impact with Mitigation Incorporation. A Reconnaissance Level Biological Survey (Attachment #1) was conducted on April 12, 2005, by a Quad Knopf, Inc. biologist. The project area and a 200-foot buffer zone area were surveyed on foot. No special-status animal or plant species were observed in the project area at that time. No small mammal burrows, potential San Joaquin Kit Fox dens or their sign (e.g., scat, tracks, dens, prey remains, etc.) were observed. The project area is completely barren of vegetation with the exception of oleander shrubs and other ornamental plants located outside along the fence bordering the west side of the fire station.

In the vicinity of the project, Porter Slough runs along the southerly border of the fire station property and supports occasional blue elderberries, valley oak and other trees. Four blue elderberry shrubs were observed on the south bank of Porter Slough and one blue elderberry on its north bank. These blue elderberry shrubs are well outside of 100 feet from the proposed project area. In addition, one blue elderberry shrub, approximately eight (8) feet in height,
is located approximately 30 feet from the southernmost boundary of the project work area. One of the stems was approximately one inch in diameter; no bore holes were observed. The placement of the concrete slab will be 35 feet north of the shrub. The attached map (C-1) indicates the location of the shrub in relation to the proposed site.

The United States Fish and wildlife Service (USFWS) considers the complete avoidance (i.e., no adverse effect to the VELB or its habitat) may be assumed when a 100-foot (or wider) buffer zone is established and maintained around all elderberry plants containing stems measuring one-inch or greater in diameter at ground level. If a 100-foot buffer zone cannot be maintained around elderberry plants with at least one stem 1-inch or greater in diameter at ground level, the USFWS must be contacted for guidance on how to proceed. In several instances the USFWS may approve encroachment on the 100-foot buffer zone, provided a minimum setback of at least 20 feet from the dripline of each elderberry plant can be maintained. In addition, the USFWS will require written verification of protective measures, restoration and maintenance of the 100-foot buffer zone or other requirements in order to approve the encroachment. In this instance, the USFWS has approved encroachment into the 100-foot buffer zone of the single elderberry shrub. As a condition, the project proponent must not encroach within the 20-foot drip line, and the Conservation Guidelines for the Valley Elderberry Longhorn Beetle must be followed. These guidelines are included as Attachment #2.

**Mitigation:** Implementation of the Conservation Guidelines for the Valley elderberry Longhorn Beetle (USFWS 1999), including strict avoidance of any work within the 20-foot drip line of the elderberry shrub will reduce potential impacts to less than significant. Sources: 36

b), c), d), e), f): No Impact. The project as proposed will not have a substantial adverse effect on any riparian habitat, federally protected wetlands, or fish or wildlife species. The project will not conflict with any local policies or conservation plans. Sources: 4 & 8
V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

d) Disturb any human remains, including those interred outside of formal cemeteries?

Response:

a), b), c), d): No Impact. The project area is currently a disturbed, paved lot, and ground disturbance will consist of minor grading necessary to anchor the base. No known historic, archaeological, or paleontological resources exist on site. Sources: 4 & 30.
VI. GEOLOGY AND SOILS -- Would the project:

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a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

ii) Strong seismic ground shaking?

iii) Seismic-related ground failure, including liquefaction?

iv) Landslides?

b) Result in substantial soil erosion or the loss of topsoil?

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

**Response:**

a), c), d), e): **No Impact.** According to the California Geological Survey, there are no established or recognized earthquake fault zones in Tulare County. The project is not at risk, nor will it create a risk of fault rupture, seismic ground shaking, seismic related ground failure, liquefaction, or landslides. The project area is located on stable, medium to coarse textured soils with a high infiltration rate, which are not subject to landslide, lateral spreading, subsidence, liquefaction, collapse or expansion. No septic tanks or alternate wastewater disposal will be constructed as part of the project. Sources: 4, 7, 29, & 30.

b): **Less Than Significant Impact.** Development of the site as proposed will result in ground disturbance through leveling, grading, etc. and could contribute to minor soil erosion during construction. However, the San Emidio loam soils on which the project would be built has a flat slope and hazard of erosion is slight. Normal project procedures, including the enforcement of a site development plan and other development related conditions of approval will maintain a less than significant impact in regards to erosion. In addition, conformance with the City Storm Drain Master Plan, and requirements relative to grading, the California Building Code, etc., will be required. Sources: 29.
VII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

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<td>a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</td>
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<td>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</td>
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<td>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</td>
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<td>d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</td>
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<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?</td>
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<td>f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</td>
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<td>g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</td>
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<td>h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</td>
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Response:

a), b), c), d): No Impact. The project as proposed will not involve hazardous materials, and the project site is not contaminated. Sources: 7.

e), f), g), h): No Impact. The project is not within the vicinity of an airport or an airstrip. The project will not result in any change or interference with an adopted emergency response plan or evacuation plan. Mandatory conformance with the Porterville Zoning Ordinance and the Porterville weed abatement program will ensure that the project will not expose people or structures to a significant risk of loss due to wildfire. Sources: 7 & 12.
VIII. HYDROLOGY AND WATER QUALITY -- Would the project:

a) Violate any water quality standards or waste discharge requirements?

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on-or-off site?

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on-or-off site?

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

f) Otherwise substantially degrade water quality?

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?

j) Inundation by seiche, tsunami, or mudflow?

Response:

a), f): No Impact. Development of the site as proposed would not require any excavation other than minor grading. No uses are proposed which could cause the discharge of pollutants into the groundwater or surface water. Sources: 4.
b): **No Impact.** The proposed project will not draw water from any source. Sources: 35.

c), d), e): **No Impact.** The proposed development will create only a minor change in the gradient of the area with the addition of a 12 by 20 foot and a 5 by 10 foot concrete pad. No substantial change in runoff will occur that would exceed the available capacity of City systems. Sources: 35.

g), h), i), j): **No Impact.** The project does not propose to construct housing or any other type of structure that encourages regular occupation. The FEMA Flood Insurance Rate Map 060407 0010 D (1985) indicates the site is in Flood Zone AH, which is an area of 100 year flooding between one and three feet. The proposed structure would not impede flood flows, nor would it expose people or structures to a significant risk due to flooding. The project area is not within an area subject to inundation by seiche, tsunamis, or mudflows. Sources: 1, 4, 26, & 35.
**IX. LAND USE AND PLANNING** - Would the project:

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a) Physically divide an established community?

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

**Response:**

a), b), c): No Impact. Porterville’s General Plan designates the subject area for Public and Quasi-Public uses and the site is located within the OA (Open Area) Zone. The proposed project will not disrupt or divide the physical arrangement of the established community in this area. The project as proposed is consistent with the polices and guidelines set forth in the Land Use Element and Circulation Element of the General Plan and the Zoning Ordinance. The project as proposed will not violate any of the existing polices, nor will it conflict with any applicable environmental plans or policies adopted by agencies with jurisdiction over the project. Therefore, no impact will occur. Sources: 1, 2, 3, 4, 12, & 30.
X. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

**Response:**

a), b): No Impact. There are no known mineral resources on the proposed project area. Sources: 4.
XI. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?  

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b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?  

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c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?  

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d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?  

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e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?  

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f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?  

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Response:

a), b), c), d): Less Than Significant Impact. Development of the site as proposed will result in short-term increases in noise associated with construction equipment that may exceed the City’s noise level standards. As these activities will be restricted to daytime hours and will be short-term in nature, the impact will be less than significant. Sources: 6.

e), f): No Impact. The project is not within the vicinity of an airport or private airstrip. Sources: 6.
XII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

Response:

a), b), c): No Impact. Based on the historical growth pattern, it is expected that Porterville’s population will continue to grow at about 2.5% annually. The project as proposed will not cause any substantial increase in local population projections. Further, the project as proposed will not require the removal of any existing housing. Sources: 1, 3 & 30.
XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

- Fire protection? ☐ ☐ ☐ ☑
- Police protection? ☐ ☐ ☐ ☑
- Schools? ☐ ☐ ☐ ☑
- Parks? ☐ ☐ ☐ ☑
- Other public facilities? ☐ ☐ ☐ ☑

Response:

a): No Impact. The subject site is within the service area of the Porterville Fire and Police Departments. The project as proposed does not have potential to increase enrollment within the Porterville Unified School District, nor will it affect park usage or other public facilities. Sources: 1, 2, 3, 5, 7 & 8.
XIV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

[Table]

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
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<td>☑</td>
</tr>
</tbody>
</table>

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

[Table]

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☐</td>
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</tr>
</tbody>
</table>

Response:

a), b): No Impact. The project would not result in increased usage of recreational facilities, nor would it create a need for new recreational facilities. Sources: 5 & 8.
XV. TRANSPORTATION/TRAFFIC -- Would the project:

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>e) Result in inadequate emergency access?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>f) Result in inadequate parking capacity?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

**Response:**

a), b), c), d), e), f), g): No Impact. Installation of the transmission tower as proposed will only require access for periodical maintenance and inspections. Therefore, no increase in traffic or affect to Levels of Service will occur. The project as proposed will not affect air traffic patterns as the project area is not within the flight path at a height to encroach traveled air space. The project will not affect already existing roadways in any way resulting in a hazard, changing emergency access, or reducing parking capacity. The project does not conflict with any adopted alternative transportation policies. Sources: 1, 2, 34, & 35.
XVI. UTILITIES AND SERVICE SYSTEMS —
Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

g) Comply with federal, state, and local statutes and regulations related to solid waste?

Response:

a), b), c), d), e): No Impact. The project will not create a need for water usage, treatment, or drainage. The project will not require construction of new storm water drainage facilities. Sources: 30 & 35.

f), g): No Impact. Operation of the project will not generate solid waste. Construction of the project will generate only minor amounts of waste materials, and disposal of such materials is within the capacity of Porterville’s refuse service capacity. Sources: 28 & 35.
XVII. MANDATORY FINDINGS OF SIGNIFICANCE --

<table>
<thead>
<tr>
<th>Potentially Significant Impact</th>
<th>Less than Significant With Mitigation Incorporation</th>
<th>Less than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
</tbody>
</table>

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Response:

a): Less than Significant with Mitigation Incorporation. The project is within a 100-foot radius buffer zone of a single blue elderberry shrub, which is habitat for the Valley Elderberry Longhorn Beetle, but completion of the mitigation requirements as noted in Section IV will reduce any potential impacts to less than significant.

b), c): No Impact. The project as proposed will have no impact on the quality of the natural environment, individually or cumulatively, and will not have substantial adverse effects on humans either directly or indirectly.
April 15, 2005

Mr. Andrew Rattner
Project Manager
Ridge Communications
12667 Alcosta Blvd., Suite 175
San Ramon, California 94583

RE: Reconnaissance Level Biological Survey Results for the Proposed Verizon Wireless Cellular Tower Site Located in the City of Porterville, California.

Dear Andrew:

Verizon Wireless is proposing a project to construct a new wireless cellular tower. The project area will be approximately 1,500 square feet and will be located within the confines of the City of Porterville Fire Station on 500 North Newcomb Street in Porterville, Tulare County, California (Figure 1). More specifically, the project site is identified as Assessor’s Parcel Number 251-010-001, located in the Northwest ¼ of Section 27, Township 21 South, Range 27 East, in the Porterville 7.5-minute USGS quadrangle (Figure 2).

Quad Knopf, Inc. was retained to conduct a biological survey of the proposed project sites. Prior to conducting the field survey, a query of the California Department of Fish and Game Natural Diversity Data Base (CNDDB) (CDFG 2004) was conducted for the Porterville, Success Dam, Fountain Springs, Ducor, Sausalito School, Woodville, Cairns Corner, Lindsay, and Frazier Valley USGS 7.5-minute quadrangles. A review of literature and the CNDDB query indicated that ten special-status animal species, twelve special-status plant species, and two natural vegetation communities of concern have been reported for these quadrangles. In addition to these reviews, a query of the California Native Plant Society’s Electronic Inventory (CNPS 2005) was conducted for the same quadrangles to provide information on additional plant species of concern that have the potential to occur in the project area and surrounding vicinity. This review resulted in two additional plant species. Table 1 lists the results of these reviews.

On April 12, 2005, Quad Knopf, Inc. biologist, Russell E. Sweet, conducted a reconnaissance level biological survey to determine whether special-status plant and animal species or their habitats exist in the project area. The project area and a 200-foot buffer zone were surveyed on foot. Because the project area is located within the known range of the San Joaquin kit fox (Vulpes macrotis mutica), special effort was made to
identify potential presence of this species (e.g., scat, tracks, dens, prey remains, etc.) in the project area. In addition, emphasis on identifying blue elderberry (Sambucus mexicana) was also applied in the project area. Blue elderberry is the host plant for the federal threatened valley elderberry longhorn beetle (Desmocerus californicus dimorphus).

No special-status animal or plant species was observed in the project area. No native vegetation habitats or habitat for special-status plant or animal species was observed in the project area during the field survey. No small mammal burrows, potential San Joaquin kit fox dens or their sign (e.g., scat, tracks, dens, prey remains, etc.) were observed in the project area. Table 2 is a list of the plant and animal species observed in the project area. The subject project area is inside the yard of the City of Porterville Fire Station. The project area is completely barren of vegetation with the exception of oleander shrubs and other ornamental plants located outside along the fence bordering the west side of the fire station grounds (Photographs 1 and 2). The majority of the project area is located in an existing residential setting, roads, houses, and parkways, were observed during the field survey.

Porter Slough runs along the southern border of the fire station property and supports occasional blue elderberries, valley oak (Quercus lobata), and other trees. Non-native grasses largely dominate the understory. Four blue elderberry shrubs were observed on the south bank of Porter Slough and one blue elderberry on its north bank. These blue elderberry shrubs are well outside of 100 feet from the proposed project area. The United States Fish and Wildlife Service (USFWS) considers that complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer zone is established and maintained around all elderberry plants containing stems measuring one-inch or greater in diameter at ground level. In addition, Porter Slough does have many large trees suitable for nesting raptors. Special emphasis was placed on surveying trees adjacent to the project area that are considered preferred for nesting. No raptors nests were observed during the time of the field survey.

No impacts to Porter Slough or blue elderberry shrubs will be a result from the implementation of this project.

If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

[Signature]

Russell E. Sweet
Biologist

Attachments
<table>
<thead>
<tr>
<th>Species</th>
<th>Habitat</th>
<th>Status</th>
<th>Potential Occurrence in Project Area</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Animals</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Branchinecta lynchii</em> (Vernal pool fairy shrimp)</td>
<td>Vernal pools.</td>
<td>FT</td>
<td>None. No habitat present.</td>
</tr>
<tr>
<td><em>Buteo swainsoni</em> (Swainson’s hawk)</td>
<td>Stands with few trees in juniper-sage flats, riparian, and oak savannah habitats. Requires adjacent suitable foraging areas such as grasslands, grain fields, or alfalfa, that support rodent populations.</td>
<td>MBTA, CB</td>
<td>Low. Project site is located within a highly urbanized setting with limited foraging and nesting opportunities for this species. No nests observed during field survey.</td>
</tr>
<tr>
<td><em>Desmocerus californicus dimorphis</em> (Valley elderberry longhorn beetle)</td>
<td>Elderberry shrubs in the Sacramento and San Joaquin Valleys.</td>
<td>FT</td>
<td>None. No habitat present.</td>
</tr>
<tr>
<td><em>Dipodomys nitratoides nitratoides</em> (Tipton kangaroo rat)</td>
<td>Saltbrush scrub and sink scrub communities in the Tulare Lake Basin of the southern San Joaquin Valley. Requires soft, friable soils which escape seasonal flooding.</td>
<td>FE, CE</td>
<td>None. No habitat present.</td>
</tr>
<tr>
<td><em>Gymnogyps californianus</em> (California condor)</td>
<td>Requires vast expanses of open savannah, grasslands, and foothill chaparral in mountain ranges of moderate altitude. Deep canyons containing clefs in the rocky walls provide nesting sites.</td>
<td>FE, MBTA, CE</td>
<td>None. No nesting or foraging habitat present.</td>
</tr>
<tr>
<td><em>Lyotus molestata</em> (Molestan blister beetle)</td>
<td>Inhabits the Central Valley, from Contra Costa to Kern and Tulare Counties.</td>
<td>---</td>
<td>Low. Not reported in the area for many years. Project sites are located on disturbed lands.</td>
</tr>
<tr>
<td><em>Perognathus inornatus inornatus</em> (San Joaquin pocket mouse)</td>
<td>Typically found in grasslands and blue oak savannas. Requires friable soils.</td>
<td>---</td>
<td>None. No habitat present.</td>
</tr>
<tr>
<td><em>Rana boylii</em> (Foothill yellow-legged frog)</td>
<td>Partly shaded, shallow streams and riffles with a rocky substrate in a variety of habitats. Requires at least some cobble-sized substrate for egg-laying.</td>
<td>CSC</td>
<td>None. No habitat present.</td>
</tr>
<tr>
<td><em>Spea hammondii</em> (Western spadefoot)</td>
<td>Vernal pools and other wet areas within grasslands.</td>
<td>CSC</td>
<td>None. No habitat present.</td>
</tr>
<tr>
<td>Species</td>
<td>Habitat</td>
<td>Status</td>
<td>Potential Occurrence in Project Area</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-------------------------------------------------------------------------</td>
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<td>----------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><em>Vulpes macrotis mutica</em></td>
<td>Chenopod scrub, grasslands, sometimes forage in agricultural areas. Requires a suitable prey base.</td>
<td>FE, CT</td>
<td>Low. Area is highly developed, site is within a fenced area, and surrounding lands are developed. In addition, no potential dens or other sign were observed during field survey.</td>
</tr>
<tr>
<td><em>(San Joaquin kit fox)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plants</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Atriplex cordulata</em></td>
<td>Alkaline flats and scalds with sandy soils, within chenopod scrub, grasslands, and meadows.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Heartscale)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Atriplex erecticaulis</em></td>
<td>Grasslands.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Earlimart orache)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Atriplex persistens</em></td>
<td>Vernal pools.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Vernal pool smallscale)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Atriplex subtilis</em></td>
<td>Grasslands.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Subtle orache)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Caulanthus californicus</em></td>
<td>Sandy soils within chenopod scrub, pinyon and juniper woodland, and grasslands.</td>
<td>FE, CE, 1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(California jewel-flower)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Delphinium recurvatum</em></td>
<td>Alkaline soils in chenopod scrub, cismontane woodlands, and grasslands.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Recurved larkspur)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Eryngium spinosepalum</em></td>
<td>Vernal pools, depressions within grasslands.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Spiny-sepaled button-celery)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Fritillaria striata</em></td>
<td>Cismontane woodland, grasslands with heavy clay adobe soils.</td>
<td>CT, 1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Striped adobe-lily)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Linanthus serrulatus</em></td>
<td>Dry slopes, often on decomposed granite in cismontane woodlands or lower montane coniferous forests.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Madera linanthus)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Mimulus pictus</em></td>
<td>Bare ground around gooseberry bushes or around granite rock outcrops within broad-leaved upland forests or cismontane woodlands.</td>
<td>1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Calico monkeyflower)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Species</td>
<td>Habitat</td>
<td>Status</td>
<td>Potential Occurrence in Project Area</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------------------------------</td>
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<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td><em>Pseudobahia peirsonii</em></td>
<td>Adobe clay soils within foothill woodlands and grasslands.</td>
<td>FT, CE, 1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td>(San Joaquin adobe sunburst)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Sidalcea keckii</em></td>
<td>Grassy slopes in blue oak woodlands and grasslands.</td>
<td>FE, 1B</td>
<td>None. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td>(Keck’s checkerbloom)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Natural Vegetation Communities of Concern**

<table>
<thead>
<tr>
<th>Community</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Claypan Vernal Pool</td>
<td>Not present.</td>
</tr>
<tr>
<td>Sycamore Alluvial Woodland</td>
<td>Not present.</td>
</tr>
</tbody>
</table>

**Abbreviations:**

- **FE** Federal Endangered Species
- **FT** Federal Threatened Species
- **MBTA** Species fully protected by the Migratory Bird Treaty Act
- **CE** California Endangered Species
- **CT** California State Threatened Species
- **CSC** California Department of Fish and Game Species of Special Concern
- **1B** Plants categorized by the California Native Plant Society as Rare, Threatened, or Endangered in California and elsewhere.
- **---** None

**Sources:**

California Department of Fish and Game, 2004. California Natural Diversity Data Base, California Department of Fish and Game, Sacramento, CA.

Table 2
List of Animal and Plant Species Observed during the Field Survey

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Animals</strong></td>
<td></td>
</tr>
<tr>
<td><em>Aphelocoma coerulescens</em></td>
<td>Scrub jay</td>
</tr>
<tr>
<td><em>Carpodacus mexicanus</em></td>
<td>House finch</td>
</tr>
<tr>
<td><em>Corvus brachyrhynchos</em></td>
<td>American crow</td>
</tr>
<tr>
<td><em>Corvus corax</em></td>
<td>Common raven</td>
</tr>
<tr>
<td><em>Icterus galbula bullockii</em></td>
<td>Bullock’s oriole</td>
</tr>
<tr>
<td><em>Mimus polyglottos</em></td>
<td>Northern mockingbird</td>
</tr>
<tr>
<td><em>Passer domesticus</em></td>
<td>House sparrow</td>
</tr>
<tr>
<td><em>Zeniaida macoura</em></td>
<td>Mourning dove</td>
</tr>
<tr>
<td><strong>Plants</strong></td>
<td></td>
</tr>
<tr>
<td><em>Amaranthus blitoides</em></td>
<td>Prostrate pigweed</td>
</tr>
<tr>
<td><em>Amsinckia menziesii var. intermedia</em></td>
<td>Fiddleneck</td>
</tr>
<tr>
<td><em>Arceuthobium campylopodum</em></td>
<td>Western dwarf mistletoe</td>
</tr>
<tr>
<td><em>Avena fatua</em></td>
<td>Wild oat</td>
</tr>
<tr>
<td><em>Brassica nigra</em></td>
<td>Black mustard</td>
</tr>
<tr>
<td><em>Bromus diandrus</em></td>
<td>Ripgut</td>
</tr>
<tr>
<td><em>Chamomilla occidentalis</em></td>
<td>pineappleweed</td>
</tr>
<tr>
<td><em>Chenopodium album</em></td>
<td>Lamb’s quarters</td>
</tr>
<tr>
<td><em>Conyza bonariensis</em></td>
<td>Flax-leaved fleabane</td>
</tr>
<tr>
<td><em>Conyza canadensis</em></td>
<td>Horseweed</td>
</tr>
<tr>
<td><em>Cynodon dactylon</em></td>
<td>Bermuda grass</td>
</tr>
<tr>
<td><em>Datura wrightii</em></td>
<td>Jimson weed</td>
</tr>
<tr>
<td><em>Erodium cicutarium</em></td>
<td>Red-stem filaree</td>
</tr>
<tr>
<td><em>Helianthus annuus</em></td>
<td>Annual sunflower</td>
</tr>
<tr>
<td><em>Hirschfeldia incana</em></td>
<td>Short-pod mustard</td>
</tr>
<tr>
<td><em>Hordeum murinum</em></td>
<td>Farmer’s foxtail</td>
</tr>
<tr>
<td><em>Hypochoeris radicata</em></td>
<td>Spotted catsear</td>
</tr>
<tr>
<td><em>Lactuca serriola</em></td>
<td>Prickly lettuce</td>
</tr>
<tr>
<td><em>Malva parviflora</em></td>
<td>Cheeseweed</td>
</tr>
<tr>
<td><em>Marrubium vulgare</em></td>
<td>Horehound</td>
</tr>
<tr>
<td><em>Melilotus indica</em></td>
<td>Sourclover</td>
</tr>
<tr>
<td><em>Nerium oleander</em></td>
<td>White oleander</td>
</tr>
<tr>
<td><em>Populus fremontii ssp. fremontii</em></td>
<td>Fremont cottonwood</td>
</tr>
<tr>
<td><em>Quercus lobata</em></td>
<td>Valley oak</td>
</tr>
<tr>
<td><em>Salix goodingii</em></td>
<td>Gooding’s black willow</td>
</tr>
<tr>
<td><em>Sambucus mexicana</em></td>
<td>Blue elderberry</td>
</tr>
<tr>
<td><em>Senecio vulgaris</em></td>
<td>Common groundsel</td>
</tr>
<tr>
<td><em>Silybum marianum</em></td>
<td>Milk thistle</td>
</tr>
<tr>
<td><em>Sisymbrium irio</em></td>
<td>London rocket</td>
</tr>
<tr>
<td><em>Urtica urens</em></td>
<td>Dwarf nettle</td>
</tr>
</tbody>
</table>

Source: Quad Knopf, Inc. reconnaissance level biological survey conducted on April 12, 2005.
Looking west at the proposed tower site location.

Looking northwest at the proposed tower site location.

Looking north at the proposed tower site location.
Looking south at the proposed tower site location.

Looking southeast at the proposed tower site location.
United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825

Conservation Guidelines for the
Valley Elderberry Longhorn Beetle
9 July 1999

The following guidelines have been issued by the U.S. Fish and Wildlife Service (Service) to assist Federal agencies and non-federal project applicants needing incidental take authorization through a section 7 consultation or a section 10(a)(1)(B) permit in developing measures to avoid and minimize adverse effects on the valley elderberry longhorn beetle. The Service will revise these guidelines as needed in the future. The most recently issued version of these guidelines should be used in developing all projects and habitat restoration plans. The survey and monitoring procedures described below are designed to avoid any adverse effects to the valley elderberry longhorn beetle. Thus a recovery permit is not needed to survey for the beetle or its habitat or to monitor conservation areas. If you are interested in a recovery permit for research purposes please call the Service’s Regional Office at (503) 231-2063.

Background Information

The valley elderberry longhorn beetle (Desmocerus californicus dimorphus), was listed as a threatened species on August 8, 1980 (Federal Register 45: 52803-52807). This animal is fully protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The valley elderberry longhorn beetle (beetle) is completely dependent on its host plant, elderberry (Sambucus species), which is a common component of the remaining riparian forests and adjacent upland habitats of California’s Central Valley. Use of the elderberry by the beetle, a wood borer, is rarely apparent. Frequently, the only exterior evidence of the elderberry—s use by the beetle is an exit hole created by the larva just prior to the pupal stage. The life cycle takes one or two years to complete. The animal spends most of its life in the larval stage, living within the stems of an elderberry plant. Adult emergence is from late March through June, about the same time the elderberry produces flowers. The adult stage is short-lived. Further information on the life history, ecology, behavior, and distribution of the beetle can be found in a report by Barr (1991) and the recovery plan for the beetle (USFWS 1984).
Surveys

Proposed project sites within the range of the valley elderberry longhorn beetle should be surveyed for the presence of the beetle and its elderberry host plant by a qualified biologist. The beetle’s range extends throughout California’s Central Valley associated foothills from about the 3,000-foot elevation contour on the east and the watershed of the Central Valley on the west (Figure 1). All or portions of 31 counties are included: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Mariposa, Merced, Napa, Nevada, Placer, Sacramento, San Benito, San Joaquin, San Luis Obispo, Shasta, Solano, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba.

If elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level occur on or adjacent to the proposed project site, or are otherwise located where they may be directly or indirectly affected by the proposed action, minimization measures which include planting replacement habitat (conservation planting) are required (Table 1).

All elderberry shrubs with one or more stems measuring 1.0 inch or greater in diameter at ground level that occur on or adjacent to a proposed project site must be thoroughly searched for beetle exit holes (external evidence of beetle presence). In addition, all elderberry stems one inch or greater in diameter at ground level must be tallied by diameter size class (Table 1). As outlined in Table 1, the numbers of elderberry seedlings/cuttings and associated riparian native trees/shrubs to be planted as replacement habitat are determined by stem size class of affected elderberry shrubs, presence or absence of exit holes, and whether a proposed project lies in a riparian or non-riparian area.

Elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level are unlikely to be habitat for the beetle because of their small size and/or immaturity. Therefore, no minimization measures are required for removal of elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level with no exit holes. Surveys are valid for a period of two years.

Avoid and Protect Habitat Whenever Possible

Project sites that do not contain beetle habitat are preferred. If suitable habitat for the beetle occurs on the project site, or within close proximity where beetles will be affected by the project, these areas must be designated as avoidance areas and must be protected from disturbance during the construction and operation of the project. When possible, projects should be designed such that avoidance areas are connected with adjacent habitat to prevent fragmentation and isolation of beetle populations. Any beetle habitat that cannot be avoided as described below should be considered impacted and appropriate minimization measures should be proposed as described below.
Avoidance: Establishment and Maintenance of a Buffer Zone

Complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas construction-related disturbance should be minimized, and any damaged area should be promptly restored following construction. The Service must be consulted before any disturbances within the buffer area are considered. In addition, the Service must be provided with a map identifying the avoidance area and written details describing avoidance measures.

Protective Measures

1. Fence and flag all areas to be avoided during construction activities. In areas where encroachment on the 100-foot buffer has been approved by the Service, provide a minimum setback of at least 20 feet from the dripline of each elderberry plant.

2. Brief contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.

3. Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs should be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.

4. Instruct work crews about the status of the beetle and the need to protect its elderberry host plant.

Restoration and Maintenance

1. Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.

2. Buffer areas must continue to be protected after construction from adverse effects of the project. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.

3. No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant should be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.
Conservation Guidelines for the Valley Elderberry Longhorn Beetle

4. The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.

5. Mowing of grasses/ground cover may occur from July through April to reduce fire hazard. No mowing should occur within five (5) feet of elderberry plant stems. Mowing must be done in a manner that avoids damaging plants (e.g., stripping away bark through careless use of mowing/trimming equipment).

Transplant Elderberry Plants That Cannot Be Avoided

Elderberry plants must be transplanted if they cannot be avoided by the proposed project. All elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level must be transplanted to a conservation area (see below). At the Service’s discretion, a plant that is unlikely to survive transplantation because of poor condition or location, or a plant that would be extremely difficult to move because of access problems, may be exempted from transplantation. In cases where transplantation is not possible the minimization ratios in Table 1 may be increased to offset the additional habitat loss.

Trimming of elderberry plants (e.g., pruning along roadways, bike paths, or trails) with one or more stems 1.0 inch or greater in diameter at ground level, may result in take of beetles. Therefore, trimming is subject to appropriate minimization measures as outlined in Table 1.

1. Monitor. A qualified biologist (monitor) must be on-site for the duration of the transplanting of the elderberry plants to insure that no unauthorized take of the valley elderberry longhorn beetle occurs. If unauthorized take occurs, the monitor must have the authority to stop work until corrective measures have been completed. The monitor must immediately report any unauthorized take of the beetle or its habitat to the Service and to the California Department of Fish and Game.

2. Timing. Transplant elderberry plants when the plants are dormant, approximately November through the first two weeks in February, after they have lost their leaves. Transplanting during the non-growing season will reduce shock to the plant and increase transplantation success.

3. Transplanting Procedure.

   a. Cut the plant back 3 to 6 feet from the ground or to 50 percent of its height (whichever is taller) by removing branches and stems above this height. The trunk and all stems measuring 1.0 inch or greater in diameter at ground level should be replanted. Any leaves remaining on the plant should be removed.
b. Excavate a hole of adequate size to receive the transplant.

c. Excavate the plant using a Vermeer spade, backhoe, front end loader, or other suitable equipment, taking as much of the root ball as possible, and replant immediately at the conservation area. Move the plant only by the root ball. If the plant is to be moved and transplanted off site, secure the root ball with wire and wrap it with burlap. Dampen the burlap with water, as necessary, to keep the root ball wet. Do not let the roots dry out. Care should be taken to ensure that the soil is not dislodged from around the roots of the transplant. If the site receiving the transplant does not have adequate soil moisture, pre-wet the soil a day or two before transplantation.

d. The planting area must be at least 1,800 square feet for each elderberry transplant. The root ball should be planted so that its top is level with the existing ground. Compact the soil sufficiently so that settlement does not occur. As many as five (5) additional elderberry plantings (cuttings or seedlings) and up to five (5) associated native species plantings (see below) may also be planted within the 1,800 square foot area with the transplant. The transplant and each new planting should have its own watering basin measuring at least three (3) feet in diameter. Watering basins should have a continuous berm measuring approximately eight (8) inches wide at the base and six (6) inches high.

e. Saturate the soil with water. Do not use fertilizers or other supplements or paint the tips of stems with pruning substances, as the effects of these compounds on the beetle are unknown.

f. Monitor to ascertain if additional watering is necessary. If the soil is sandy and well-drained, plants may need to be watered weekly or twice monthly. If the soil is clayey and poorly-drained, it may not be necessary to water after the initial saturation. However, most transplants require watering through the first summer. A drip watering system and timer is ideal. However, in situations where this is not possible, a water truck or other apparatus may be used.

Plant Additional Seedlings or Cuttings

Each elderberry stem measuring 1.0 inch or greater in diameter at ground level that is adversely affected (i.e., transplanted or destroyed) must be replaced, in the conservation area, with elderberry seedlings or cuttings at a ratio ranging from 1:1 to 8:1 (new plantings to affected stems). Minimization ratios are listed and explained in Table 1. Stock of either seedlings or cuttings should be obtained from local sources. Cuttings may be obtained from the plants to be transplanted if the project site is in the vicinity of the conservation area. If the Service determines that the elderberry plants on the proposed project site are unsuitable candidates for
transplanting, the Service may allow the applicant to plant seedlings or cuttings at higher than the stated ratios in Table 1 for each elderberry plant that cannot be transplanted.

Plant Associated Native Species

Studies have found that the beetle is more abundant in dense native plant communities with a mature overstory and a mixed understory. Therefore, a mix of native plants associated with the elderberry plants at the project site or similar sites will be planted at ratios ranging from 1:1 to 2:1 [native tree/plant species to each elderberry seedling or cutting (see Table 1)]. These native plantings must be monitored with the same survival criteria used for the elderberry seedlings (see below). Stock of saplings, cuttings, and seedlings should be obtained from local sources. If the parent stock is obtained from a distance greater than one mile from the conservation area, approval by the Service of the native plant donor sites must be obtained prior to initiation of the revegetation work. Planting or seeding the conservation area with native herbaceous species is encouraged. Establishing native grasses and forbs may discourage unwanted non-native species from becoming established or persisting at the conservation area. Only stock from local sources should be used.

Examples

Example 1
The project will adversely affect beetle habitat on a vacant lot on the land side of a river levee. This levee now separates beetle habitat on the vacant lot from extant Great Valley Mixed Riparian Forest (Holland 1986) adjacent to the river. However, it is clear that the beetle habitat located on the vacant lot was part of a more extensive mixed riparian forest ecosystem extending farther from the river—s edge—prior to agricultural development and levee construction. Therefore, the beetle habitat on site is considered riparian. A total of two elderberry plants with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The two plants have a total of 15 stems measuring over 1.0 inch. No exit holes were found on either plant. Ten of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are greater than 5.0 inches in diameter. The conservation area is suited for riparian forest habitat. Associated natives adjacent to the conservation area are box elder (Acer negundo californica), walnut (Juglans californica var. hindsii), sycamore (Platanus racemosa), cottonwood (Populus fremontii), willow (Salix goodingii and S. laevigata), white alder (Alnus rhombifolia), ash (Fraxinus latifolia), button willow (Cephalanthus occidentalis), and wild grape (Vitis californica).
Minimization (based on ratios in Table 1):

§ Transplant the two elderberry plants that will be affected to the conservation area.

§ Plant 40 elderberry rooted cuttings (10 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)

§ Plant 40 associated native species (ratio of associated natives to elderberry plantings is 1:1 in areas with no exit holes):
  5 saplings each of box elder, sycamore, and cottonwood
  5 willow seedlings
  5 white alder seedlings
  5 saplings each of walnut and ash
  3 California button willow
  2 wild grape vines
  Total: 40 associated native species

§ Total area required is a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. Since, a total of 80 plants must be planted (40 elderberries and 40 associated natives), a total of 0.33 acre (14,400 square feet) will be required for conservation plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period.

Example 2
The project will adversely affect beetle habitat in Blue Oak Woodland (Holland 1986). One elderberry plant with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The plant has a total of 10 stems measuring over 1.0 inch. Exit holes were found on the plant. Five of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are between 3.0 and 5.0 inches in diameter. The conservation area is suited for elderberry savanna (non-riparian habitat). Associated natives adjacent to the conservation area are willow (Salix species), blue oak (Quercus douglasii), interior live oak (Q. wislizenii), sycamore, poison oak (Toxicodendron diversilobum), and wild grape.

Minimization (based on ratios in Table 1):

§ Transplant the one elderberry plant that will be affected to the conservation area.

§ Plant 30 elderberry seedlings (5 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)
§ Plant 60 associated native species (ratio of associated natives to elderberry plantings is 2:1 in areas with exit holes):

20 saplings of blue oak, 20 saplings of sycamore, and 20 saplings of willow, and seed and plant with a mixture of native grasses and forbs

§ Total area required is a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. Since, a total of 90 plants must be planted (30 elderberries and 60 associated natives), a total of 0.37 acre (16,200 square feet) will be required for conservation plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period.

Conservation Area Provide Habitat for the Beetle in Perpetuity

The conservation area is distinct from the avoidance area (though the two may adjoin), and serves to receive and protect the transplanted elderberry plants and the elderberry and other native plantings. The Service may accept proposals for off-site conservation areas where appropriate.

1. Size. The conservation area must provide at least 1,800 square feet for each transplanted elderberry plant. As many as 10 conservation plantings (i.e., elderberry cuttings or seedlings and/or associated native plants) may be planted within the 1800 square foot area with each transplanted elderberry. An additional 1,800 square feet shall be provided for every additional 10 conservation plants. Each planting should have its own watering basin measuring approximately three feet in diameter. Watering basins should be constructed with a continuous berm measuring approximately eight inches wide at the base and six inches high.

The planting density specified above is primarily for riparian forest habitats or other habitats with naturally dense cover. If the conservation area is an open habitat (i.e., elderberry savanna, oak woodland) more area may be needed for the required plantings. Contact the Service for assistance if the above planting recommendations are not appropriate for the proposed conservation area.

No area to be maintained as a firebreak may be counted as conservation area. Like the avoidance area, the conservation area should connect with adjacent habitat wherever possible, to prevent isolation of beetle populations.

Depending on adjacent land use, a buffer area may also be needed between the conservation area and the adjacent lands. For example, herbicides and pesticides are
Conservation Guidelines for the Valley Elderberry Longhorn Beetle

often used on orchards or vineyards. These chemicals may drift or runoff onto the conservation area if an adequate buffer area is not provided.

2. Long-Term Protection. The conservation area must be protected in perpetuity as habitat for the valley elderberry longhorn beetle. A conservation easement or deed restrictions to protect the conservation area must be arranged. Conservation areas may be transferred to a resource agency or appropriate private organization for long-term management. The Service must be provided with a map and written details identifying the conservation area; and the applicant must receive approval from the Service that the conservation area is acceptable prior to initiating the conservation program. A true, recorded copy of the deed transfer, conservation easement, or deed restrictions protecting the conservation area in perpetuity must be provided to the Service before project implementation.

Adequate funds must be provided to ensure that the conservation area is managed in perpetuity. The applicant must dedicate an endowment fund for this purpose, and designate the party or entity that will be responsible for long-term management of the conservation area. The Service must be provided with written documentation that funding and management of the conservation area (items 3-8 above) will be provided in perpetuity.

3. Weed Control. Weeds and other plants that are not native to the conservation area must be removed at least once a year, or at the discretion of the Service and the California Department of Fish and Game. Mechanical means should be used; herbicides are prohibited unless approved by the Service.

4. Pesticide and Toxicant Control. Measures must be taken to insure that no pesticides, herbicides, fertilizers, or other chemical agents enter the conservation area. No spraying of these agents must be done within one 100 feet of the area, or if they have the potential to drift, flow, or be washed into the area in the opinion of biologists or law enforcement personnel from the Service or the California Department of Fish and Game.

5. Litter Control. No dumping of trash or other material may occur within the conservation area. Any trash or other foreign material found deposited within the conservation area must be removed within 10 working days of discovery.

6. Fencing. Permanent fencing must be placed completely around the conservation area to prevent unauthorized entry by off-road vehicles, equestrians, and other parties that might damage or destroy the habitat of the beetle, unless approved by the Service. The applicant must receive written approval from the Service that the fencing is acceptable prior to initiation of the conservation program. The fence must be maintained in perpetuity, and must be repaired/replaced within 10 working days if it is found to be damaged. Some conservation areas may be made available to the public for appropriate recreational and educational opportunities with written approval from the Service.
these cases appropriate fencing and signs informing the public of the beetle’s threatened status and its natural history and ecology should be used and maintained in perpetuity.

7. Signs. A minimum of two prominent signs must be placed and maintained in perpetuity at the conservation area, unless otherwise approved by the Service. The signs should note that the site is habitat of the federally threatened valley elderberry longhorn beetle and, if appropriate, include information on the beetle’s natural history and ecology. The signs must be approved by the Service. The signs must be repaired or replaced within 10 working days if they are found to be damaged or destroyed.

Monitoring

The population of valley elderberry longhorn beetles, the general condition of the conservation area, and the condition of the elderberry and associated native plantings in the conservation area must be monitored over a period of either ten (10) consecutive years or for seven (7) years over a 15-year period. The applicant may elect either 10 years of monitoring, with surveys and reports every year; or 15 years of monitoring, with surveys and reports on years 1, 2, 3, 5, 7, 10, and 15. The conservation plan provided by the applicant must state which monitoring schedule will be followed. No change in monitoring schedule will be accepted after the project is initiated. If conservation planting is done in stages (i.e., not all planting is implemented in the same time period), each stage of conservation planting will have a different start date for the required monitoring time.

Surveys. In any survey year, a minimum of two site visits between February 14 and June 30 of each year must be made by a qualified biologist. Surveys must include:

1. A population census of the adult beetles, including the number of beetles observed, their condition, behavior, and their precise locations. Visual counts must be used; mark-recapture or other methods involving handling or harassment must not be used.

2. A census of beetle exit holes in elderberry stems, noting their precise locations and estimated ages.

3. An evaluation of the elderberry plants and associated native plants on the site, and on the conservation area, if disjunct, including the number of plants, their size and condition.

4. An evaluation of the adequacy of the fencing, signs, and weed control efforts in the avoidance and conservation areas.
5. A general assessment of the habitat, including any real or potential threats to the beetle and its host plants, such as erosion, fire, excessive grazing, off-road vehicle use, vandalism, excessive weed growth, etc.

The materials and methods to be used in the monitoring studies must be reviewed and approved by the Service. All appropriate Federal permits must be obtained prior to initiating the field studies.

Reports. A written report, presenting and analyzing the data from the project monitoring, must be prepared by a qualified biologist in each of the years in which a monitoring survey is required. Copies of the report must be submitted by December 31 of the same year to the Service (Chief of Endangered Species, Sacramento Fish and Wildlife Office), and the Department of Fish and Game (Supervisor, Environmental Services, Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814; and Staff Zoologist, California Natural Diversity Data Base, Department of Fish and Game, 1220 S Street, Sacramento, California 95814). The report must explicitly address the status and progress of the transplanted and planted elderberry and associated native plants and trees, as well as any failings of the conservation plan and the steps taken to correct them. Any observations of beetles or fresh exit holes must be noted. Copies of original field notes, raw data, and photographs of the conservation area must be included with the report. A vicinity map of the site and maps showing where the individual adult beetles and exit holes were observed must be included. For the elderberry and associated native plants, the survival rate, condition, and size of the plants must be analyzed. Real and likely future threats must be addressed along with suggested remedies and preventative measures (e.g. limiting public access, more frequent removal of invasive non-native vegetation, etc.).

A copy of each monitoring report, along with the original field notes, photographs, correspondence, and all other pertinent material, should be deposited at the California Academy of Sciences (Librarian, California Academy of Sciences, Golden Gate Park, San Francisco, CA 94118) by December 31 of the year that monitoring is done and the report is prepared. The Service's Sacramento Fish and Wildlife Office should be provided with a copy of the receipt from the Academy library acknowledging receipt of the material, or the library catalog number assigned to it.

Access. Biologists and law enforcement personnel from the California Department of Fish and Game and the Service must be given complete access to the project site to monitor transplanting activities. Personnel from both these agencies must be given complete access to the project and the conservation area to monitor the beetle and its habitat in perpetuity.

Success Criteria

A minimum survival rate of at least 60 percent of the elderberry plants and 60 percent of the associated native plants must be maintained throughout the monitoring period. Within one year of discovery that survival has dropped below 60 percent, the applicant must replace failed plantings to bring survival above this level. The Service will make any determination as to the
Conservation Guidelines for the Valley Elderberry Longhorn Beetle

applicant's replacement responsibilities arising from circumstances beyond its control, such as plants damaged or killed as a result of severe flooding or vandalism.

Service Contact

These guidelines were prepared by the Endangered Species Division of the Service's Sacramento Fish and Wildlife Office. If you have questions regarding these guidelines or to request a copy of the most recent guidelines, telephone (916) 414-6600, or write to:

U.S. Fish and Wildlife Service
Ecological Services
2800 Cottage Way, W-2605
Sacramento, CA 95825
Conservation Guidelines for the Valley Elderberry Longhorn Beetle

Figure 1: Range of the Valley Elderberry Longhorn Beetle
Conservation Guidelines for the Valley Elderberry Longhorn Beetle

Literature Cited


USFWS. 1980. Listing the valley elderberry longhorn beetle as a threatened species with critical habitat. Federal Register 45:52803-52807.

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

Table 1: Minimization ratios based on location (riparian vs. non-riparian), stem diameter of affected elderberry plants at ground level, and presence or absence of exit holes.

<table>
<thead>
<tr>
<th>Location</th>
<th>Stems (maximum diameter at ground level)</th>
<th>Exit Holes on Shrub Y/N (quantify)¹</th>
<th>Elderberry Seedling Ratio²</th>
<th>Associated Native Plant Ratio³</th>
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<tr>
<td>non-riparian</td>
<td>stems ≥ 1&quot; &amp; &lt; 3&quot;</td>
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</table>

¹ All stems measuring one inch or greater in diameter at ground level on a single shrub are considered occupied when exit holes are present anywhere on the shrub.

² Ratios in the Elderberry Seedling Ratio column correspond to the number of cuttings or seedlings to be planted per elderberry stem (one inch or greater in diameter at ground level) affected by a project.

³ Ratios in the Associated Native Plant Ratio column correspond to the number of associated native species to be planted per elderberry (seedling or cutting) planted.
RESOLUTION NO.________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A
NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT FOR CONDITIONAL USE
PERMIT 7-2005 TO ALLOW THE CONSTRUCTION OF A 100 FEET HIGH
COMMUNICATIONS TOWER AND RELATED EQUIPMENT IN THE OA (OPEN AREA)
ZONE FOR THAT SITE LOCATED ON EAST SIDE OF NEWCOMB STREET, JUST

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting
of November 1, 2005, conducted a public hearing to consider Conditional Use Permit 7-2005, being
a request to allow the construction of a communications tower and operation. The tower would stand
approximately 100 feet tall with a diameter ranging from roughly three feet (3’) at the base to
approximately one foot (1’) at the highest point. The tower would be placed in a concrete base.
Adjacent to the tower would sit a 12 foot by 20 foot (12’ x 20’) equipment shelter placed on a new
concrete pad of the same dimensions. In addition, a 210 gallon, 60 kw diesel generator will be
mounted on a five foot by ten foot (5’ x 10’) concrete pad. The subject lease site (approximately 30’
x 50’) will be enclosed by an eight foot (8’) high cyclone fence around the perimeter for that site
located on the east side of Newcomb Street, just north of the Porter Slough at the rear of Fire Station
No. 2 in the OA (Open Area) Zone.

WHEREAS: An optional co-location site plan is proposed to allow for two (2) additional
carrier locations with a perimeter of 12’ x 20’ adjacent to and east of the proposed site

WHEREAS: On September 29, 2005, the Environmental Coordinator made a preliminary
determination that a Mitigated Negative Declaration would be appropriate for the proposed project;
and

WHEREAS: The City Council considered the following findings in its review of the
environmental circumstances for this project:

1. That a Negative Declaration was prepared for the project in accordance with the
California Environmental Quality Act.

2. That the Negative Declaration prepared for this project was made available for public
review and comment. The 20 day review period was from September 30, 2005 to
October 20, 2005. At the end of that period, the only agency that responded was
from the Porterville Unified School District on December 1, 2004.

3. That the proposed project will not create adverse environmental impacts.

The proposed Negative Declaration was evaluated in light of the prepared
environmental initial study, comments from interested parties and the public, as well
as responses to written comments received during the review period. It was

ATTACHMENT
ITEM NO. 4
determined that potential impacts associated with the proposed project could be mitigated to a less than significant level through the implementation of the attached mitigation measures.

4. That the City Council is the decision-making body for the project.

5. That the mitigation measures contained in the Negative Declaration were incorporated into a Mitigation Monitoring Program attached hereto as Attachment A and included as Condition 17 in the proposed resolution of approval for Conditional Use Permit 7-2005.

6. That review of the environmental circumstances regarding this project indicates that no adverse impacts would accrue to wildlife resources from implementation of the project.

A Reconnaissance Level Biological Survey was conducted on April 12, 2005, by Quad Knopf, Inc.

On September 8, 2005, City Staff made an on-site inspection to further analyze the surrounding uses for processing data required in the staff report for the Conditional Use Permit 7-2005. As a result of this inspection, Staff observed an elderberry shrub on the outside of the west fence line adjacent to the oleanders of the fire station. The bush was approximately eight feet (8') in height. One of the stems was an inch in diameter. No bore holes were observed.

The approximate location of the shrub is 20 feet north of the southwest corner of the six foot (6') chainlink fence surrounding the fire station property. The location of the eight foot (8') chainlink fence proposed around the perimeter of the proposed tower is 30 feet. The placement of the concrete slab will be 35 feet north of the shrub. The site survey map (C-1) in the environmental initial study indicates the location of the shrub in relation to the proposed site.

Mitigation measures will require the implementation of the Conservation Guidelines for the Valley elderberry Longhorn Beetle (USFWS 1999), including strict avoidance of any work within the 20 foot drip line of the elderberry shrub. Additionally, the additional co-location site adjacent to and south of the proposed will not be allowed.

7. That the project may proceed subsequent to approval and/or conditional approval of the State Department of Fish and Game relative to said State Department’s consideration of a “de minimis impact” pursuant to Section 711.2 et. seq. of the Fish and Game Code.

8. That the environmental assessment and analysis prepared for this project supporting the Negative Declaration reflects the independent judgement of the City of Porterville.
NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Negative Declaration for Conditional Use Permit 7-2005 as described herein.

______________________________
Kelly West, Mayor

ATTEST:

John Longley, City Clerk

By ____________________________
   Georgia Hawley, Chief Deputy City Clerk
RESOLUTION NO._________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF APPROVAL FOR CONDITIONAL USE PERMIT 7-2005 TO ALLOW THE CONSTRUCTION OF A 100 FEET HIGH COMMUNICATIONS TOWER AND RELATED EQUIPMENT IN THE OA (OPEN AREA) ZONE FOR THAT SITE LOCATED ON EAST SIDE OF NEWCOMB STREET, JUST NORTH OF THE PORTER SLOUGH AT THE REAR OF FIRE STATION NO. 2.

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of November 1, 2005, conducted a public hearing to consider Conditional Use Permit 7-2005, being a request to allow the construction of a communications tower and operation. The tower would stand approximately 100 feet tall with a diameter ranging from roughly three feet (3') at the base to approximately one foot (1') at the highest point. The tower would be placed in a concrete base. Adjacent to the tower would sit a 12 foot by 20 foot (12' x 20') equipment shelter placed on a new concrete pad of the same dimensions. In addition, a 210 gallon, 60 kw diesel generator will be mounted on a five foot by ten foot (5' x 10') concrete pad. The subject lease site (approximately 30' x 50') will be enclosed by an eight foot (8') high cyclone fence around the perimeter for that site located on the east side of Newcomb Street, just north of the Porter Slough at the rear of Fire Station No. 2 in the OA (Open Area) Zone.

WHEREAS: An optional co-location site plan is proposed to allow for two (2) additional carrier locations with a perimeter of 12' x 20' adjacent to and east of the proposed site

WHEREAS: The City Council made the following findings with respect to the subject project:

1. That the proposed project is consistent with the site’s General Plan land use designation and zoning.

2. That the site is physically suitable for the type of development proposed.

3. That the design of the project or the proposed improvements are not likely to cause substantial environmental damage.

4. That a Negative Declaration was prepared for this project indicating that such will not have a significant effect on the environment.

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

ATTACHMENT ITEM NO. 5
6. That the standard of population density, site area dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

7. Section 2103 A-8 of the Porterville Zoning Ordinance allows for radio or television transmitters and receivers subject to a Conditional Use Permit.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 7-2005, subject to the following conditions:

1. Upon submittal of a building permit the following will be required:
   a. Submit three (3) complete sets of plans, signed by a licensed Architect or Engineer, to include structural calculations.
   b. Compliance with all applicable codes is required.
   c. Plan check fees are required at the time of building permit issuance.
   d. Pay all other fees at time of permit issuance.
   e. Soils compaction test may be required.

2. The electrical cabinets will be required to be enclosed behind a view obscuring cyclone fence and may not be visible to public view.

3. That the pole and all associated antennas shall be non-reflective, with a treatment color designed to diminish the visual impact on the skyline.

4. That a FAA clearance form will be required to be submitted at the time of building permit submittal.

5. The developer/applicant shall pay all applicable fees in accordance with the Municipal Code and State law. Fees are subject to change annually. The developer/applicant is hereby notified that you have the right to pay fees, dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

6. It is anticipated that the negotiations for lease space will include a provision requiring that space on the tower be made available to the City of Porterville for its communications facilities.
7. Use of the tower and related facilities shall not be permitted to interfere with existing communications. The developer/applicant should be aware that 2.4 MHz and 5.8 GHz facilities are currently in use in the vicinity.

8. If underground electric and/or communications lines are located in the vicinity of Fire Station No. 2, the developer/applicant will likely be required to install conduit (minimum two inch diameter) for use by the City of Porterville.

9. The facility shall be designed, constructed and operated in compliance with all provisions of State law, Federal law, FCC regulations, the City of Porterville Zoning Ordinance, Municipal Code, and adopted City Standards and Specifications.

10. Comply with FCC regulation, specifically to avoid conflicts with the Burton School District and City of Porterville communication frequencies.

11. The tower shall not encroach into the Waster Water Treatment Facility area.

12. Applicants shall provide an underground service(s) to tower from the nearest power source. Easements shall be executed before the commencement of any work.

13. The development of the proposed antenna and related improvements shall conform to the approved plans.

14. That the two (2) unused antenna locations which would be available for co-location by future service providers on the proposed tower will not require any future approval by the City Council. The location of the third unused site available for co-location south of the proposed antenna will not be allowed and will be required to be relocated to the satisfaction of the Community Development Director.

15. At all times, the facility shall be operated and maintained to comply with State Law, the City of Porterville Zoning Ordinance, adopted Building Codes and all other applicable laws and ordinances.

16. The developer/applicant shall pay all applicable fees according to the Municipal Code and State Law.

17. The developer/applicant shall comply with all mitigation measures adopted as a component of the approval of the Mitigated Negative Declaration for this project. Prior to issuance of building permits, the developer applicant shall submit a signed document committing to comply with the adopted mitigation measures.
18. The Conditional Use Permit shall become null and void at the expiration of the term thereof, or if not undertaken and actively and continuously pursued within the time specified in the permit or within one (1) year if no time is specified therein.

Kelly West, Mayor

ATTEST:

John Longley, City Clerk

By __________________________
Georgia Hawley, Chief Deputy City Clerk
PUBLIC HEARING

TITLE: CONDITIONAL USE PERMIT 8-2005 (MARY McClURE)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The applicant is requesting approval of Conditional Use Permit 8-2005 to allow for the construction of a seventeen (17) unit apartment complex (Seven (7) duplexes and one (1) triplex) on a 62,876± square foot vacant lot (with the exception of one existing triplex) extending east and west located on the east side of North Jaye Street, approximately 400 feet north of Henderson Avenue in the R-2 (Four Family Residential) Zone.

Pursuant to Section 301 A-2 (R-2 Zoning) of the Porterville Zoning Ordinance, two (2) to four (4) family units per lot are allowed. Additional units may, subject to the approval of a Conditional Use Permit, be constructed, provided the minimum lot area per family does not exceed one family unit per three thousand (3,000) square feet. Based on the 62,876± square foot lot, a total of twenty-one units (21) units would have been allowed.

Each duplex will consist of 1,960 square feet. The proposed triplex will consist of 2,056 square feet. A total of 27 covered and five (5) uncovered car spaces are proposed. The buildings (single story) will have horizontal siding (light brown), composition roof (brown), and the trim to include the proposed shutters will be dark brown in color. A landscaped area is proposed along the driveway extending into the site to include landscaping throughout the site. It is estimated that approximately 28,216 square feet of landscaping will be provided.

An existing triplex is located on the southwest corner of the west end of the property fronting on North Jaye Street. A proposed paved 20 feet access road will extend east and west along the full length of the northern property line to allow for ingress and egress from North Jaye Street to the apartment units to the east. The first duplex and triplex will be located to the east of the existing triplex. The remaining duplexes will be located at the east end of the subject site.

ENVIRONMENTAL: This project is Categorically Exempt pursuant to Section 15332 of the CEQA Guidelines - construction of in-fill development. Under the Permit Streamlining Act (Section 65950 of the Government Code), the City has 60 days from the date the project was accepted as complete to reach a determination regarding this project.

DD$0 APPROPRIATED/FUNDED _______ CM______
Acting

ITEM NO. 12
RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving Conditional Use Permit 8-2005.

ATTACHMENT:

1. Complete Staff Report
PUBLIC HEARING - STAFF REPORT

TITLE: Conditional Use Permit 8-2005

APPLICANT: Mary McClure
23149 Josef Ct.
Porterville, CA 93257

APPLICANT’S AGENT: Mark Hillman
620 W. Olive Avenue
Porterville, CA 93257

PROJECT LOCATION: East side of North Jaye Street, approximately 400 feet north of Henderson Avenue.

SPECIFIC REQUEST: The applicant is requesting approval of Conditional Use Permit 8-2005 to allow for the construction of a seventeen (17) unit apartment complex (Seven (7) duplexes and one (1) triplex) on a 62,876± square foot vacant lot (with the exception of one existing triplex)

PROJECT DETAILS: Pursuant to Section 301 A-2 (R-2 Zoning) of the Porterville Zoning Ordinance, two (2) to four (4) family units per lot are allowed. Additional units may, subject to the approval of a Conditional Use Permit, be constructed, provided the minimum lot area per family does not exceed one family unit per three thousand (3,000) square feet. Based on the 62,876± square foot lot, a total of twenty-one units (21) units would have been allowed.

Each duplex will consist of 1,960 square feet. The proposed triplex will consist of 2,056 square feet. A total of 27 covered and five (5) uncovered car spaces are proposed. The buildings (single story) will have horizontal siding (light brown), composition roof (brown), and the trim to include the proposed shutters will be dark brown in color. A landscaped area is proposed along the driveway extending into the site to include landscaping throughout the site. It is estimated that approximately 28,216 square feet of landscaping will be provided.

An existing triplex is located on the southwest corner of the west end of the property fronting on North Jaye Street. A proposed paved 20 feet access road will extend east and west along the full length of the northern property line to allow for ingress and egress from North Jaye Street to the apartment units to the east. The first duplex and triplex will be located to the east of the existing triplex. The remaining duplexes will be located at the east end of the subject site.

STAFF ANALYSIS: Development of the site as proposed will provide needed housing in conformance with the City’s General Plan Land Use and Housing Elements and requirements of the State Subdivision Map Act and local ordinances.
The proposal to develop the site with a multiple family residential uses is consistent with the General Plan’s High Density Residential land use designation and R-2 (Four Family Residential) Zone. Additionally, this will in-fill a site that has been vacant for several years.

The maximum allowed density for R-2 zoned property cannot exceed 40% of lot coverage. As proposed, 30% of the subject site will be covered with carports and residential units.

GENERAL PLAN LAND USE DESIGNATION: Medium Density Residential

EXISTING ZONING: R-2 (Four Family Residential)

SURROUNDING AREA ZONING AND LAND USE:

North: County - Single family dwellings.
South: City - Single family dwelling and care home.
East: City - Commercial subdivision partially developed.
West: County - North Jaye Street and single family dwellings.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. Denial of the proposed project would prohibit the use of the site as proposed.

2. Approval of the conditional use permit would allow for the existing vacant site to be developed as proposed.

ENVIRONMENTAL: This project is Categorically Exempt pursuant to Section 15332 of the CEQA Guidelines - construction of in-fill development. Under the Permit Streamlining Act (Section 65950 of the Government Code), the City has 60 days from the date the project was accepted as complete to reach a determination regarding this project.

DATE FILED FOR PROJECT REVIEW COMMITTEE PROCESSING: August 24, 2005

DATE ACCEPTED AS COMPLETE: October 10, 2005

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving Conditional Use Permit 8-2005.

ATTACHMENTS:
1. Site Plan and locator map.
2. Conditional Use Permit Application
3. Notice of Exemption
4. Draft resolution approving Conditional Use Permit 8-2005 to include Exhibit “A”- Site Plan, elevation plan and floor plan.
APPLICATION FOR CONDITIONAL USE PERMIT

(See Page 3 of this form for information on preparing and filing this application)

The Applicant(s) **MARY MCLURE** is/are the owner(s) or tenant(s) of property situated at **Henderson** between **MULBERRY** Street/Avenue and **JAYE** Street/Avenue. Exact legal description of said property being (Use separate sheet if necessary)

**872 N. JAYE**

As applicable, a Plot Plan and 300' radius property owners map, and corresponding mailing list are hereto attached and made a part of this application (See detailed instructions on Page 3 of this form).

(A) Above described property is owned by **MARY MCLURE**

Date acquired **2004**

(B) If applicant is the lessee, give date property was leased:

**N/A**

(C) List below the original deed restrictions, if any, that were placed on the property which pertain to the type of improvements permitted.

Give date said restrictions expire **N/A**

(You may attach copy of original printed restrictions in answer to this question after property underlining those features controlling the type and class of uses permitted thereby).

(D) REQUEST: The applicant requests a Conditional Use Permit to USE the above described property for the following purposes:

(Use this space ONLY to state exactly what is intended to be done, on or, with the property).

**To allow us to build 20 total apartment units**
The basic purpose of the Conditional Use Permit Article of The City Zoning Ordinance is to assure that the design and subsequent operation of a conditional use will be reviewed in order to carry out the purposes of the Ordinance and to protect the public health, safety and welfare, due to the unique and special characteristics of such uses.

1. State how the proposed use will not be materially detrimental to the public welfare or injurious to property or improvements in such vicinity and zone in which the use is proposed to be located.

   **THE USE IS ALLOWED IN THE**
   **R-2 ZONE W/ MORE DENSITY THAN**
   **WE ARE USING**

2. Principal requirements of intended use (Please answer the following statements, if applicable):

   (a) Total number of people that the building (or grounds if the use is not conducted in a building) can accommodate at one time (Seating Capacity).

      **N/A**

   (b) Total number of employees that will work on the property.

      **N/A**

   (c) Total number of off-street parking spaces provided or planned.

      **31**

   (d) Maximum height of buildings or structures.

      **30’**

   (e) If the application is not intended to be for a permanent conditional use, state the length of time for which it is requested.

      **N/A**
the undersigned OWNERS of ADJACENT PROPERTY as shown upon the map attached to the application, hereby certify that we have read the foregoing petition and agree that the facts stated correctly and completely, present the conditions surrounding the property involved in the application, and believe the application SHOULD BE GRANTED (Add additional sheets where necessary. These signatures are desirable but not required).

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APPLICANT'S DECLARATION

STATE OF CALIFORNIA )
  ) ss.)
COUNTY OF TULARE )

I (WE), ________________________ being duly sworn, declare and say that I am (we are) the owner (lessee or agent) of property involved in this application and that I (we) have completed this application and all other documents and maps required hereby to the best of my (our) ability and that the statements and information above referred to are, in all respects, true and correct, except, as to the matters stated to be on my information and belief.

I declare under penalty of perjury that the foregoing is true and correct, executed at __________________________ this ______ day of ______________, 19____

Telephone No. __________________________

Signature

Mailing Address

This is to certify that the foregoing application has been inspected by me and has been found to be thorough and complete in every particular and to conform to the rules and regulations of the City of Porterville governing the filing of such application.

By __________________________

Date Received __________________________

3
NOTICE OF EXEMPTION

TO: Office of Planning and Research
    1400 Tenth Street, Room 121
    Sacramento, CA 95814

FROM: City of Porterville
     291 North Main Street
     Porterville, CA 93257

FROM: Mary McClure
     23149 Josef Ct.
     Porterville, CA 93257

Tulare County Clerk
County Civic Center
Visalia, CA 93291

Conditional Use Permit 8-2005.
Project Title

East side of Jaye Street, approximately 392 feet north of Henderson Avenue
Project Location (Specific)

City of Porterville
Project Location (City)

Tulare
Project Location (County)

Approval of Conditional Use Permit 8-2005 to allow for twenty (20) apartment units on a 62,876± square foot partially developed lot. Currently one triplex exists on the same lot and will not be altered as a part of this project. The lot is in the R-2 (multi-family residential) zone for that site located on the east side of Jaye Street, approximately 392 feet north of Henderson Avenue.
Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

Mary McClure, 23149 Josef Ct., Porterville, CA 93257
Name of Person or Agency Carrying Out Project

Exempt Status: (Check One)

--- Ministerial (Section 15073)
--- Declared Emergency (Section 15071 (a) )
--- Emergency Project (Section 15071 (b) and (c) )
--- X Categorical Exemption. State type and section number: Section 15332

In-fill development (Class 32)
Reasons why project is exempt

Bradley D. Dunlap, Community Development Director
Contact Person

If Filed by Applicant:
1. Attached certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the projected? Yes:  No:

Date Received for filing: 10/21/05

Signature

Acting Community Development Director
Title
RESOLUTION NO._______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF CONDITIONAL USE PERMIT 8-2005 TO ALLOW THE CONSTRUCTION OF A SEVENTEEN (17) UNIT APARTMENT COMPLEX (SEVEN DUPLEXES AND ONE (1) TRIPLEX) ON A 62,876± SQUARE FOOT VACANT LOT (WITH THE EXCEPTION OF ONE EXISTING TRIPLEX) FOR THAT SITE LOCATED ON THE EAST SIDE OF NORTH JAYE STREET, APPROXIMATELY 400 FEET NORTH OF HENDERSON AVENUE

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of November 1, 2005, conducted a public hearing to consider Conditional Use Permit 8-2005, being a request to allow for the construction of a seventeen (17) unit apartment complex (Seven (7) duplexes and one (1) triplex) on a 62,876± square foot vacant lot (with the exception of one existing triplex) for that site located on the east side of North Jaye Street, approximately 400 feet north of Henderson Avenue; and

WHEREAS: This project is Categorically Exempt pursuant to Section 15332 of the CEQA Guidelines - construction of in-fill development. Under the Permit Streamlining Act (Section 65950 of the Government Code), the City has 60 days from the date the project was accepted as complete to reach a determination regarding this project.

WHEREAS: The City Council made the following findings with respect to the subject project:

1. The General Plan designates the subject site as Medium Density Residential.

The subject site is zoned R-2 (Four Family Residential) which is supported by the General Plan. The proposed use is allowed pursuant to approval of a Conditional Use Permit.

2. That the site is physically suitable for the type of development proposed.

The site is generally level. The soil is not highly expansive and therefore will not create any barriers to conversion of the existing single family dwelling to a church.

3. That the design of the project or the proposed improvements are not likely to cause substantial environmental damage.

The subject site is vacant and absent of any vegetation due to weed control. An on-site inspection was conducted by staff. No natural habitat was observed. As such, no endangered, threatened or rare species or habitats exist and no impact will occur.
4. That the proposed location of the project and the conditions under which it will be operated and maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

   Conditions of approval are included to ensure adequate development standards are met.

5. That the standard of population density, site area dimensions, site coverage, yard spaces, height of structures, distance between structures, off-street parking facilities, and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the Zoning Ordinance.

6. The project as proposed complies with all design standards of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 8-2005, subject to the following conditions:

1. Three (3) street trees will be required across the frontage. Additionally, landscaped areas shall have an automatic watering system.


3. The developer/applicant shall pay all applicable fees in accordance with the Municipal Code and State law. Fees are subject to change annually. The developer/applicant is hereby notified that you have the right to pay fees, dedications, reservations or other exactions, under protest, pursuant to Government Code Section 66020(a). You have 90 days from the date fees are paid to file a written protest.

4. The developer/applicant shall comply with Appendix Chapter 33, “Excavation and Grading” of the California Building Code by providing a grading and drainage plan signed by a civil engineer or architect. The developer/applicant shall comply with City Retaining Wall Standards (adopted by City Council January 3, 1989) at lot lines where such standards are applicable.

5. The developer/applicant shall construct drainage facilities as required to serve the property (Ord. No. 1306). The City does not have the infrastructure in place that will accept the runoff from the proposed development. It may not be feasible to drain to the street. Therefore, on-site drainage reservoirs shall be provided, landscaped and maintained as part of a development association. The nearest storm drainpipe is at the intersection of Jaye Street and Henderson Avenue. Connecting to this system via pipeline is an acceptable alternative to the on-site drainage reservoir.
6. The developer/applicant shall dedicate right-of-way adequate for a street width that matches the ultimate width in the adopted Land Use and Circulation Element and/or the width established by the City Council and property necessary for disabled ramp(s) (Ord. 1306). A five foot (5') dedication of additional right of way is a requirement of the proposed development. Dedications are required prior to the issuance of a Building permit.

7. The developer/applicant shall construct street paving (half street, if necessary to match existing grades), curb, gutter, sidewalk, wheelchair ramp(s), water, sewer, etc. along the full frontage of the parcel, except where they exist and are in good condition in the opinion of the City Engineer. Driveways are to be located a minimum of four feet (4') away from property lines.

8. The developer/applicant shall move existing utility structures (For example: poles, splice boxes, vaults, etc.) to a position that provides a minimum of four feet (4') of clear space in the sidewalk area and a minimum of two feet (2') of clear space from the curb face to the structure, unless they are below grade (Title 24 OSA).

9. The developer/applicant shall provide streetlights on Marbelite poles complying with Southern California Edison Company specifications, as approved by the City Engineer. Use of wood poles is prohibited without prior written approval of the City Engineer. 9500 lumen streetlights shall be installed at the northwest corner of the property.

10. The developer/applicant shall, under City inspection, remove all existing abandoned and unnecessary items, to the satisfaction of the City Engineer, prior to the issuance of an occupancy permit (e.g., foundations, septic tanks, irrigation pipes, etc.).

11. The developer/applicant shall abandon existing wells, if any, after first obtaining an abandonment permit from the County Department of Environmental Health, and shall provide the City Engineer proof of compliance with County regulations prior to performing any grading.

12. The developer/applicant shall provide off-site improvements, easements, permits, calculations, etc. if, in the opinion of the City Engineer, they are needed for the proper functioning or phasing of the improvements for an adjacent development (e.g. water, sewer, drainage, etc.).

13. The developer/applicant shall design and improve the parking lot in conformance with Section 2206 and 2211 of the Zoning Ordinance.

14. The developer/applicant shall construct the pipe connecting to on-site fire hydrants to City water main standards and shall provide easements for maintenance of the fire hydrants.
15. The developer/applicant shall install all required refuse container enclosures according to City standards. The developer/applicant shall also sign a waiver of liability for refuse truck damage to the parking lot if the refuse container locations require refuse trucks to travel on the parking lot. The enclosure opening shall face northwest, 45 degree orientation to the access point.

16. The developer/applicant shall comply with City standard for “backflow” prevention pursuant to Resolution No. 9615.

17. The proposed apartments are considered R-1 and R-3 occupancy. Upon submittal of a building permit the following will be required:
   
   a. Submit three (3) complete sets of plans, signed by a licensed Architect or Engineer, to include two (2) sets of energy calculations and structural calculations.
   
   b. Compliance with access laws (both State and Federal) is required.
   
   c. Compliance with all applicable codes is required.
   
   d. Soils compaction will be required.
   
   e. School Development fees and all other City fees are due at the time of building permit issuance.
   
   f. A directory board at the entrance is required.
   
   g. Signs require a separate permit.

18. The developer/applicant shall pay all applicable fees according to the Municipal Code and State Law.

19. When any portion of the building to be protected is in excess of 150 feet from a water supply on a public street, there shall be installed on-site fire hydrants capable of supplying the required flow.

20. An additional fire hydrant will be required. All hydrants must be in place and accepted by the Fire Department prior to any combustibles being brought onto the site. An approved detector check valve must be installed per City standards on any hydrant located on private property. The hydrant shall be located along the driveway in front of the duplex just west of the Fire Department turnaround.
21. The City will test and maintain all fire hydrants in the City whether on private property or not. An easement is required from the owner.

22. Fire hydrants spacing shall be as follows: In Residential development, one (1) hydrant shall be installed at every 500 feet intervals.

23. Access roads shall be provided for every facility, building or portion of a building, when any portion of the facility or portion of an exterior wall is located more than 150 feet from a fire apparatus access as measured by an approved route around the exterior of the building.

24. All dead-end access roads in excess of 150 feet must be provided with an approved turn-around complying with City Standards.

25. All turns on driveways must meet the minimum radius set by City standards.


27. Areas identified as “Fire Lanes” must be identified as such by red painted curbs and identified per requirements set forth in the California Vehicle Code Sec. 22500.1.

28. Any gates installed in the project that restrict access must be fitted with a Knox Key.

29. The minimum fire flow for one and two family dwellings having a fire area not exceeding 3,600 square feet shall be 1,000 g.p.m. with 20 psi residual pressure. One and two family dwellings having a fire area greater than 3,600 square feet shall be 1,500 g.p.m. with 20 psi residual pressure.

30. Additional requirements for compliance with the Uniform Fire Code may be added at the time of building permit review when more information regarding the building type and use are provided.

31. One water service per parcel.

32. That the subject site will be developed in accordance with the site plan and elevation plans labeled EXHIBIT “A”.
33. The Conditional Use Permit shall become null and void if not under taken and actively and continuously pursued within one (1) year.

________________________
Kelly West, Mayor

ATTEST:

John Longley, City Clerk

By ______________________
    Georgia Hawley, Chief Deputy City Clerk
COUNCIL AGENDA - NOVEMBER 1, 2005

SUBJECT: SECOND READING - ORDINANCE NO. 1672, ZONE CHANGE NO. 5-2005 (Annexation 455)

SOURCE: Administrative Services Department/City Clerk Division

COMMENT: Ordinance No. 1672 approved Zone Change 05-2005 (Pre-zoning) changing the existing County AE-20, R-1, R-1-217, R-2, and C-1-SR Zone to City R-1, R-2, and OA for the two areas located south of North Grand Avenue and generally west of Prospect Street in the northerly portion of the community (4.2± and 141.0± acre areas). The ordinance was given a First Reading on August 2, 2005, and has been printed.

RECOMMENDATION: That Council give Second Reading to Ordinance No. 1672, waive further reading, and adopt said ordinance.

ATTACHMENT: Ordinance No. 1672

Item No. 13

Dpt. Appro./ Acting CM Funded
ORDINANCE NO. 1672

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
APPROVING ZONE CHANGE 05-2005 (PRE-ZONING) CONSISTING OF TWO
UNINCORPORATED ISLANDS CONSISTING OF 4.2± ACRES AND FOUR (4)
PARCELS AND 141.0± ACRES AND APPROXIMATELY 293 PARCELS
GENERALLY LOCATED SOUTH OF NORTH GRAND AVENUE AND
GENERALLY WEST OF PROSPECT STREET IN THE NORTHERLY
PORTION OF THE COMMUNITY

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of August 2, 2005, conducted a public hearing to consider Zone Change 05-2005 (Pre-Zoning), to change the existing County AE-20, R-1, R-1-217, R-2, and C-1-SR Zone to City R-1, R-2, and OA for the two areas located south of North Grand Avenue and generally west of Prospect Street in the northerly portion of the community (4.2± and 141.0± acre areas); and

WHEREAS: In conjunction with Zone Change 05-2005, Annexation 455 proposes to annex two unincorporated islands generally located south of North Grand Avenue and generally west of Prospect Street in the northerly portion of the community; and

WHEREAS: The City Council of the City of Porterville, after proceedings duly had and taken, and after due and legal notice having been given, as prescribed by Ordinance 1198 of the City of Porterville, and the laws of the State of California, has determined that the public interest would best be served by approval of the proposed rezoning from County AE-20, R-1, R-1-217, R-2, and C-1-SR Zone to City R-1, R-2, and OA for the two areas located south of North Grand Avenue and generally west of Prospect Street in the northerly portion of the community (4.2± and 141.0± acre areas); and

WHEREAS: The City Council made the following findings in support of the approval of Zone Change 05-2005.

1. That the proposed zoning will conform with the land use designation of the General Plan; and

2. That a Negative Declaration was approved for this project in accordance with the California Environmental Quality Act based on findings of the environmental studies indicating that the Project will not have a negative impact on the environment; and

3. That the Negative Declaration prepared for this project was made available for public review and comment; and

4. That this zoning designation will allow for the logical establishment for future Low Density Residential, Medium Density Residential, and Public and Quasi-Public uses as supported by the City of Porterville General Plan Land Use Element for the 4.2± and 141.0± acre sites; and
5. That this zoning designation will ensure that any future development of the subject site will be in conformance with existing plans and policies and will not adversely impact the surrounding area.

NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of Porterville does ordain as follows:

Section 1: That the following described property in the City of Porterville, County of Tulare, State of California, known as Zone Change 05-2005, is hereby prezoned from County AE-20, R-1, R-1-217, R-2, and C-1-SR Zone to City R-1, R-2, and OA for the two areas located south of North Grand Avenue and generally west of Prospect Street in the northerly portion of the community (4.2± and 141.0± acre areas) more particularly shown on the attached map, incorporated herein by this reference as Exhibit “A”.

Section 2: It is further ordained that upon consummation of Annexation No. 455, all records of the City of Porterville, together with the official zoning map of the City of Porterville, shall be changed to show that all of the above described real property is rezoned from County AE-20, R-1, R-1-217, R-2, and C-1-SR Zone to City R-1, R-2, and OA for the two areas located south of North Grand Avenue and generally west of Prospect Street in the northerly portion of the community.

Section 3: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage and upon consummation of Annexation No. 455.

________________________________________
Kelly West, Mayor

ATTEST:
John Longley, City Clerk

By_____________________________________
Georgia Hawley, Chief Deputy City Clerk
COUNCIL AGENDA - NOVEMBER 1, 2005

SUBJECT: SECOND READING - ORDINANCE NO. 1673, ZONE CHANGE NO. 6-2005 (Annexation 456)

SOURCE: Administrative Services Department/City Clerk Division

COMMENT: Ordinance No. 1673 approved Zone Change 06-2005 (Pre-zoning) changing existing County R-1, R-1-217, R-2, P-1, and C-2 to City R-1, R-2, C-3 (D), and OA for the three areas located south of Olive Avenue and west of Jaye Street in the southerly portion of the community. The ordinance was given a First Reading on August 2, 2005, and has been printed.

RECOMMENDATION: That Council give Second Reading to Ordinance No. 1673, waive further reading, and adopt said ordinance.

ATTACHMENT: Ordinance No. 1673

Item No. 14
ORDINANCE NO. 1673

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
APPROVING ZONE CHANGE 06-2005 (PRE-ZONING) CONSISTING OF THREE
UNINCORPORATED ISLANDS CONSISTING OF: 11.1± ACRES AND
APPROXIMATELY 35 PARCELS; 25.7± ACRES AND APPROXIMATELY 41
PARCELS; AND 89.8± ACRES AND 211 PARCELS LOCATED SOUTH OF OLIVE
AVENUE AND WEST OF JAYE STREET IN THE SOUTHERLY PORTION OF THE
COMMUNITY

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of August 2, 2005, conducted a public hearing to consider Zone Change 06-2005 (Pre-Zoning), to change the existing County R-1, R-1-217, R-2, P-1, and C-2 to City R-1, R-2, C-3 (D), and OA for the three areas located south of Olive Avenue and west of Jaye Street in the southerly portion of the community; and

WHEREAS: In conjunction with Zone Change 06-2005, Annexation 456 proposes to annex three annexation areas located south of Olive Avenue and west of Jaye Street in the southerly portion of the community; and

WHEREAS: The City Council of the City of Porterville, after proceedings duly had and taken, and after due and legal notice having been given, as prescribed by Ordinance 1198 of the City of Porterville, and the laws of the State of California, has determined that the public interest would best be served by approval of the proposed prezoning from County R-1, R-1-217, R-2, P-1, and C-2 to City R-1, R-2, C-3 (D), and OA for the three areas located south of Olive Avenue and west of Jaye Street in the southerly portion of the community (11.1±, 25.7±, and 89.8± acre areas); and

WHEREAS: The City Council made the following findings in support of the approval of Zone Change 06-2005:

1. That the proposed zoning will conform with the land use designation of the General Plan; and

2. That a Negative Declaration was approved for this project in accordance with the California Environmental Quality Act based on findings of the environmental studies indicating that the Project will not have a negative impact on the environment; and

3. That the Negative Declaration prepared for this project was originally made available for public review and comment; and

4. That this zoning designation will allow for the logical establishment for future Low Density Residential, Medium Density Residential, Heavy Commercial, Recreation and Open Space uses as supported by the City of Porterville General Plan Land Use Element for the 11.1±, 25.7±, and 89.8± acre areas; and

5. That this zoning designation will ensure that any future development of the subject site will be in conformance with existing plans and policies and will not adversely impact the surrounding area.
NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of Porterville does ordain as follows:

Section 1: That the following described property in the City of Porterville, County of Tulare, State of California, known as Zone Change 06-2005, is hereby prezoned from County R-1, R-1-217, R-2, P-1, and C-2 to City R-1, R-2, C-3 (D), and OA for the three areas located south of Olive Avenue and west of Jaye Street in the southerly portion of the community (11.1±, 25.7±, and 89.8± acre areas) more particularly shown on the attached maps, incorporated herein by this reference as Exhibit “A”, Exhibit “B”, and Exhibit “C”.

Section 2: It is further ordained that upon consummation of Annexation No. 456, all records of the City of Porterville, together with the official zoning map of the City of Porterville, shall be changed to show that all of the above described real property is rezoned from County R-1, R-1-217, R-2, P-1, and C-2 to City R-1, R-2, C-3 (D), and OA for the three areas located south of Olive Avenue and west of Jaye Street in the southerly portion of the community.

Section 3: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage and upon consummation of Annexation No. 456.

______________________________
Kelly West, Mayor

ATTEST:
John Longley, City Clerk

By _______________________________
Georgia Hawley, Chief Deputy City Clerk
ZONE CHANGE 06-2005 AND ANNEXATION 456 (AREA A) – PROPOSED ZONING

EXHIBIT A

Attachment No. 13-1
SUBJECT: SECOND READING - ORDINANCE NO. 1682, NEGLECT OF REAL PROPERTY

SOURCE: Administrative Services Department/City Clerk Division

COMMENT: Ordinance No. 1682 added Section 18-26 to Chapter 18, Offenses—Miscellaneous, of the Porterville Municipal Code concerning neglect of real property. The ordinance was given a First Reading on October 18, 2005, and has been printed.

RECOMMENDATION: That Council give Second Reading to Ordinance No. 1682, waive further reading, and adopt said ordinance.

ATTACHMENT: Ordinance No. 1682

Item No. 15
ORDINANCE NO. 1682

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ADDING SECTION 18-26 TO CHAPTER 18, OFFENSES—MISCELLANEOUS,
OF THE PORTERVILLE MUNICIPAL CODE CONCERNING
NEGLIGENCE OF REAL PROPERTY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTERVILLE, AS
FOLLOWS, TO WIT:

SECTION 1. Chapter 18, Offenses—Miscellaneous, Article I, In General, is hereby
amended by the addition of Section 18-26, Neglect of Real Property, to read as follows:

Sec. 18-26. Neglect of Real Property.

(a) Purpose. The City hereby finds and determines that the regulation all real property,
which is neglected, is necessary to promote the health, safety, and general welfare of the
people in that neglected real properties can have a detrimental effect upon surrounding
property values and upon the attitude, mentality, and productivity of the general public.

(b) Definitions. For purposes of this Section only, the following definitions shall
apply:

(1) Real Property shall mean all land and accompanying structures, whether
attached to the land or mobile, for commercial or residential use.

(2) Neglected shall mean the maintenance (or lack thereof) of any real property in
such a manner as to cause or allow the real property to become defective,
unsightly, or in such other condition of deterioration or disrepair. This
includes, but is not limited to, the following:

a. Any improvement on the real property, including but not limited to
buildings, garages, carports, or roofs or gutters when the condition of the
patio, curtilage, stucco, siding, or other exterior coating has become so
deteriorated as to permit decay, weathered appearance, peeling paint,
excessive inspection, cracking, broken windows, or warping, rendering
the building unsightly and in a state of disrepair.

b. Buildings or structures, which are abandoned, boarded up, partially
destroyed, or left in a state of partial construction or repair for an
unreasonable time; a period of ninety (90) days shall serve as the
standard in determining whether an unreasonable time has elapsed.

c. Abandoned or broken equipment or machinery, visible from a public
street or sidewalk, or from adjoining property unless separated by a fence
at the height otherwise required pursuant to City regulations and
standards.
d. Property with excessive trash and debris, visible from a public street or sidewalk, or from adjoining property unless separated by a fence at the height otherwise required pursuant to City regulations and standards.

e. Storage of household items customarily used inside a dwelling area including, but not limited to, appliances and furniture in any front yard setback or driveway area.

f. Storage or placement of equipment, construction materials or machinery upon public property or public right-of-way except during necessary work or repair.

g. The maintenance of real property so out of harmony or conformity with the adjacent or surrounding properties as to cause diminution of the enjoyment, use, or value or such properties.

(c) Failure to Properly Maintain Property. Neglect of real property, as defined by this section, shall result in a detailed notice from the City requiring conformity to this section within ninety (90) days. Failure to conform to the requirements of this section within ninety (90) days may result in a declaration by Council of the real property as a public nuisance and summary abatement as provided in Section 1-10 of this Code, civil injunction, and/or any other remedies permitted by law. To the extent permitted by law, the City shall be entitled to recover all costs for abatement of the nuisance, any costs incurred by the City in remedying any violation of this Ordinance, and any and all litigation and enforcement costs, including reasonable attorneys fees and costs related to any civil enforcement action.

(d) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Section or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the remaining portions of the Section of any part thereof. The City Council hereby declares that it would have passed each section, subdivision, paragraph, sentence, clause or phrase in this Section or any part hereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or ineffective.

SECTION 2. That this Ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

Adopted this____ day of November, 2005.

______________________________
Kelly West, Mayor

ATTEST:
John Longley, City Clerk

______________________________
by: Georgia Hawley, Chief Deputy City Clerk
CITY COUNCIL AGENDA: NOVEMBER 1, 2005

SUBJECT: REQUEST FOR A ONE (1) YEAR EXTENSION OF TIME FOR A TEMPORARY USE PERMIT FOR REMOTE CONTROL CAR TRACK

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The applicant is requesting a one (1) year extension of time for a temporary use to allow for a remote control car track to continue in use. The site is located on the south side of Henderson Avenue, east of Fourth Street.

HISTORY: The Porterville City Council, on October 5, 2004, by City Council Ordinance 1659 approved a temporary use permit to allow an existing remote control car track to continue in use. Condition 2 of the ordinance reads that the permit shall expire after one year, unless an extension of time is granted by the City Council. Any complaints received with regard to the facility shall be considered at the time of review. There have been no complaints received by the City regarding this use.

Section 7-3.3 of the City Code empowers the City Council to conditionally approve temporary structures. Section 7-3.3 also provides the City Council the discretion to determine the type and location of the structure, period of time that the structure will be allowed, and other conditions deemed pertinent by the City Council.

RECOMMENDATIONS: That the City Council:

1. Adopt the draft resolution approving a one (1) year extension of time commencing on November 1, 2005 and terminating on November 1, 2006.

ATTACHMENTS:
1. Letter of request
2. Site plan
3. City Council Ordinance 1659
4. Draft Ordinance
Dear Sirs,

Please consider this correspondence a formal request for extension of a Conditional Use Permit for the Remote Controlled Car Track located at 227 E. Henderson Ave., Porterville, CA 93257.

In the past year we have not received any complaints nor know of any problems caused by our use of the subject property. Therefore, I Tim Beebe feel this endeavor is a worthwhile recreation for the citizens of Porterville and should continue unabated.

Tim Beebe 10-25-05
ORDINANCE NO. 1659

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ISSUING A PERMIT FOR TEMPORARY USE TO PERMIT THE CONTINUED OPERATION OF A REMOTE CONTROL RACE TRACK AS A HOBBY/RECREATIONAL USE

WHEREAS: Several members of the community have created and established a track for the recreational use and racing of remote control vehicles on an otherwise vacant lot located on the south side of Henderson Avenue, east of Fourth Street; and

WHEREAS: The use of the site is characterized as a hobby style recreational use with no commercial component; and

WHEREAS: The facility is designed and intended to be a temporary use, easily removed when permanent development is proposed; and

WHEREAS: On October 5, 2004, the City Council of the City of Porterville considered the issuance of a permit to allow temporary structures subject to certain conditions; and

NOW, THEREFORE, BE IT ORDAINED:

SECTION 1: That the City Council of the City of Porterville does hereby issue a permit for the use of Temporary Structures to apply to the Remote Control Vehicle Race Track located on the south side of Henderson Avenue, east of Fourth Street, subject to the following conditions:

1. The operators shall pay an amount to the City of Porterville to reimburse the City for the actual cost of processing the permit.

2. The Permit shall expire after one year, unless an extension of time is granted by the City Council. Any complaints received with regard to the facility shall be considered at the time of review.

3. Under no circumstances shall any fee be charged related to the use of the site for a Remote Control Track. Prohibited fees include, but are not limited to; Admissions Fees, Use Fees, Concessions, etc.
4. The consumption of alcohol on the subject site shall be prohibited.

5. Operation of the facility shall be limited to the hours of 8:00 A.M. to 9:00 P.M.

6. The volume of sound at the property line shall not exceed 65dB.

7. Portable handicapped accessible sanitary facilities shall be provided whenever ten (10) or more persons are present.

8. The site shall be watered sufficiently to prevent the generation of dust prior to and during use.

9. A fire hydrant shall be installed upon the construction of any permanent building on the subject site.

10. Permits shall be secured as necessary to ensure that any structures on the site comply with applicable building codes.

11. Except as permitted herein, the site shall be developed and operated in full compliance with the standards of the Zoning Ordinance, Municipal Code and other laws and regulations.

SECTION 2: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage:

SECTION 3: This ordinance continue to be in effect for the period of one year from its effective date, and shall be subject to review and reconsideration annually, thereafter.

ATTEST:

Pedro R. Martinez, Mayor

John Longley, City Clerk

Georgia Hawley, Chief Deputy City Clerk
STATE OF CALIFORNIA  )
CITY OF PORTERVILLE  )  (SS)
COUNTY OF TULARE  )

I, JOHN LONGLEY, the duly qualified City Clerk of the City of Porterville do hereby certify:

THAT the foregoing ordinance is a true and correct copy of Ordinance No. 1659, passed and adopted by the Council of the City of Porterville at a regular meeting held on the 19th day of October, 2004, that said ordinance has been duly published pursuant to law, and that by the terms and provisions of the Charter of the City of Porterville, said ordinance to become effective on the 18th day of November, 2004, at which time said ordinance is deemed to be in full force and effect.

THAT said ordinance was introduced by Council and the same was duly passed and adopted by the following vote:

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JOHN LONGLEY, City Clerk

by: Georgia Hawley, Chief Deputy
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ISSUING AN EXTENSION OF A TEMPORARY USE PERMIT THE
CONTINUED OPERATION OF A REMOTE CONTROL RACE
TRACK AS A HOBBY/RECREATIONAL USE

WHEREAS: The Porterville City Council, on November 1, 2005, conducted a public
meeting to consider a request for a one (1) year extension of time for a remote control car track to
continue in use. The site is located on the south side of Henderson Avenue, east of Fourth Street.

WHEREAS: The letter of request states they would like an extension for the continued
use of the Remote Control Car Track and that they had not received any complaints caused by the
use of the site.

WHEREAS: On October 19, 2004, the City Council of the City of Porterville by City
Council Ordinance 1659 adopted a temporary use permit to allow an existing remote control car
track to allow temporary structures subject to certain conditions; and

WHEREAS: Chapter 7, Section 7-3.3 of the City Code empowers the City Council to
approve temporary structures in conjunction with residential, commercial or industrial
development or in times of stress or emergency; and

NOW, THEREFORE, BE IT ORDAINED:

SECTION 1: That the City Council of the City of Porterville does hereby issue a permit
for the use of Temporary Structures to apply to the Remote Control Vehicle Race Track located
on the south side of Henderson Avenue, east of Fourth Street, subject to the following condition:
1. That all conditions outlined in City Council Ordinance 1659, attached hereto as Exhibit
“A”, be adhered to.

SECTION 2: This ordinance shall be in full force and effect thirty (30) days from and
after its publication and passage:

ATTACHMENT
ITEM NO. 4
SECTION 3: This ordinance continue to be in effect for the period of one year from its extension date, and shall be subject to review and reconsideration annually, thereafter.

________________________________________
Kelly West, Mayor

ATTEST:

John Longley, City Clerk

________________________________________
Georgia Hawley, Chief Deputy City Clerk
ORDINANCE NO. 1659

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ISSUING A PERMIT FOR TEMPORARY USE TO PERMIT THE CONTINUED OPERATION OF A REMOTE CONTROL RACE TRACK AS A HOBBY/RECREATIONAL USE

WHEREAS: Several members of the community have created and established a track for the recreational use and racing of remote control vehicles on an otherwise vacant lot located on the south side of Henderson Avenue, east of Fourth Street; and

WHEREAS: The use of the site is characterized as a hobby style recreational use with no commercial component; and

WHEREAS: The facility is designed and intended to be a temporary use, easily removed when permanent development is proposed; and

WHEREAS: On October 5, 2004, the City Council of the City of Porterville considered the issuance of a permit to allow temporary structures subject to certain conditions; and

NOW, THEREFORE, BE IT ORDAINED:

SECTION 1: That the City Council of the City of Porterville does hereby issue a permit for the use of Temporary Structures to apply to the Remote Control Vehicle Race Track located on the south side of Henderson Avenue, east of Fourth Street, subject to the following conditions:

1. The operators shall pay an amount to the City of Porterville to reimburse the City for the actual cost of processing the permit.

2. The Permit shall expire after one year, unless an extension of time is granted by the City Council. Any complaints received with regard to the facility shall be considered at the time of review.

3. Under no circumstances shall any fee be charged related to the use of the site for a Remote Control Track. Prohibited fees include, but are not limited to; Admissions Fees, Use Fees, Concessions, etc.

Exhibit "A"
4. The consumption of alcohol on the subject site shall be prohibited.

5. Operation of the facility shall be limited to the hours of 8:00 A.M. to 9:00 P.M.

6. The volume of sound at the property line shall not exceed 65dB.

7. Portable handicapped accessible sanitary facilities shall be provided whenever ten (10) or more persons are present.

8. The site shall be watered sufficiently to prevent the generation of dust prior to and during use.

9. A fire hydrant shall be installed upon the construction of any permanent building on the subject site.

10. Permits shall be secured as necessary to ensure that any structures on the site comply with applicable building codes.

11. Except as permitted herein, the site shall be developed and operated in full compliance with the standards of the Zoning Ordinance, Municipal Code and other laws and regulations.

SECTION 2: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage:

SECTION 3: This ordinance continue to be in effect for the period of one year from its effective date, and shall be subject to review and reconsideration annually, thereafter.

Pedro R. Martinez, Mayor

ATTEST:

John Longley, City Clerk

Georgia Hawley, Chief Deputy City Clerk
STATE OF CALIFORNIA  
CITY OF PORTERVILLE   
COUNTY OF TULARE   

I, JOHN LONGLEY, the duly qualified City Clerk of the City of Porterville do hereby certify:

THAT the foregoing ordinance is a true and correct copy of Ordinance No. 1659, passed and adopted by the Council of the City of Porterville at a regular meeting held on the 19th day of October, 2004, that said ordinance has been duly published pursuant to law, and that by the terms and provisions of the Charter of the City of Porterville, said ordinance to become effective on the 18th day of November, 2004, at which time said ordinance is deemed to be in full force and effect.

THAT said ordinance was introduced by Council and the same was duly passed and adopted by the following vote:

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JOHN LONGLEY, City Clerk

by: Georgia Hawley, Chief Deputy
COUNCIL AGENDA: NOVEMBER 1, 2005

SUBJECT: CONSIDERATION OF RETAINING A CONSULTANT TO ASSIST WITH STATE AND LOCAL GOVERNMENT AFFAIRS

SOURCE: Administrative Services

COMMENT: At the City Council Meeting of September 6, 2005, staff delivered a report for consideration of retaining a Legislative representative. The discussion focused on the firm of California Consulting LLC which is currently providing services to other agencies in the San Joaquin Valley. After discussion on the matter, Council requested time to conduct background and reference checks.

At this time, in order to ensure due diligence and to determine the list of firms in the market place, staff is recommending that a Request for Qualifications (RFQ) or a Request for Proposal (RFP) for these services be prepared and circulated.

RECOMMENDATION: That the Council authorize the preparation and distribution of an RFQ/RFP for Legislative Consulting Services.

ATTACHMENT: Staff report from the September 6, 2005 Council Meeting.
SUBJECT: Consideration of Retaining A Consultant to Assist with State Local Governmental Affairs

SOURCE: City Manager’s Office

City representatives have discussed with California Consulting LLC, the benefits of representation regarding State Agency contacts. The main benefit is to be aware of grant opportunities to support local efforts.

The Council has expressed a strong desire to undertake a number of projects which are currently not funded. Grants do offer opportunities for funding within certain limitations. The major limitation with grant work is organizational capacity.

The City currently has around 100 projects in process. While the City has controlled staffing levels in light of State imposed revenue reductions, it has at the same time maintained a consistent pace with program and project implementation.

The Project Development & Funding Process: Non-routine projects, grant and loan funded projects normally involve the following elements of capacity.

- Personnel and services to formulate and define projects (project framing)
- Personnel to search for funding sources (grants, loans, bonds, COPs, fund balances)
- Personnel and services to prepare funding applications
- Personnel and services to prepare plans & specs, contract documents, and manage construction
- Personnel, supplies, and services to operate and maintain the projects

Time Requirements for Components of Grant Process: Each element of capacity normally involves different levels of commitment. For example, framing a project may be achieved in 8 to 12 hours. Developing an application (grant writing) for funding often involves 100 to 140 hours of effort. Design and contract documents, may take up to 500 hours to prepare.
depending on project complexity. Construction management may involve 4 to 8 hours per day during the course of a project. For a 180 day project, this could well involve an additional 500 hours.

The operation and maintenance of projects and programs are the major elements of cost and commitment. Often they are not considered, so as a result funding is taken from other operations to “backfill” new projects. Over time, this can result in substandard service delivery and the deterioration in facility due to a lack of maintenance and rehabilitation.

Normal Agents in Grant Process: In normal course, the effort to frame projects comes from the City Council and staff members. If there is not an abundance of project and program activity within the organization, staff is normally used to prepare grants. If staff is committed to projects, then often-times consultants are used to write grants. This may well create additional cost.

Construction management has had various approaches in the organization. For construction management, staff specialists, general administrative, and consultants have been used. Normally, we would try to schedule projects so that staff construction specialists can manage them.

This background defines the issues related to managing grant projects and programs. Receiving and implementing grants often creates difficulties by requiring the organization to cope and in some cases, sub-optimize because of an over commitment of staff capacity.

Rationale to Pursue Grants: The reason they are pursued, however, is that City Council’s wish to be effective in improving City services and facilities. Often time, grants are the single method that this can be achieved. Therefore, it is important to consider an approach to pursue additional grant opportunities.

Need to Define “Need List” to Pursue for Project Funding:

The caveat the City Manager proposes to this is that efforts to achieve grant funding should only be for projects or programs that the Council has defined in advance to be a priority.

A “fishing” effort to locate grants will undoubtedly result in grant offers to the City, but this activity may well take the City off its plan and, in fact, may diminish or frustrate services to priorities which have been defined by the City Council.

The City Manager has polled Departmental Directors regarding priority projects that grant offers would facilitate. It is intended that the projects/programs defined are consistent with City Council priorities.

Purchase of Electric Vehicles for Code Enforcement
Comprehensive Zoning Ordinance Update
Code Enforcement Program Implementation Funding
Homeless Housing Assistance Program
Facade Renovation Monies
Incubator Business Program Funding (Airport/Downtown)
Performing Arts Facility
Henderson Reconstruction, Indiana to Main
Indiana Low Water Crossing
Plano Reconstruction, Henderson to Mulberry
Three New Water Wells
PCE Well Head Treatment for Private Water Companies/City
1,500 GPM Surface Water Treatment Facility
Construction of Two New Fire Stations
Two Class 1 Fire Pumpers
Airport Slurry Seal Machine
Elevator to make Fire Station 1 Fully ADA Compliant
Two Units for Rescue Operations and Equipment
Interrupter System to Management Traffic Lights during Emergency Response
Lighter OHV Facility
Lighted Softball Fields
Additional Monies to Complete Rails to Trails Project
Ballpark Bleachers
Playground Equipment
Monies to Support Building Maintenance Projects: Roof replacement, etc.
Monies to support Park Land & Facility Planning & Development
Security Improvements at Police Facility - 350 North “D” Street
Improved Emergency Radio Communications Capabilities
Upgrade of City’s Emergency Operations Center
Addition of Police Department Precinct Station
Improved Police Department Firing Range
Deploy Remote Control Surveillance Cameras in Various High Crime Areas

These projects and programs are not exclusive, but they represent needs within the City that are currently without funding. Undoubtedly, important projects have been missed from the City Manager’s operational review, and the Council should add these to the list, while taking from the list any project that is not viewed as consistent with Council priorities.

**Cost for Program:** The City has defined that to provide an adequate “trial” a time period of 6 months should be defined. A cost amount of $2,000 per month has been defined. As outlined above, finding grants is an initial aspect of the process. Considerable time and effort is required to prepare applications, manage construction, operate and maintain facilities. It is suggested that staff or consultants will prepare applications. (If consultants prepare the application, some additional appropriations may be required to fund consultant efforts) The cost of construction management should be found in the grant if possible and the City should have a specific plan, in advance, for the operations and maintenance of the facility.
There is not a specific line item in the current budget to fund this program. It is suggested, however, that allocations of cost can be made against the general and enterprise funds. This allocation would come from reserves or increase deficits. In any case, this could be returned at the next meeting for consideration. The intention of the program, however, is to recover significantly more than the expenditure to support projects and programs. The six month “trial” period will provide the Council with the likelihood to assess potential outcomes.

**Options for City Council Consideration:** The following options present themselves for Council consideration.

- Hire California Consulting on the contract which has been presented to undertake an effort to pursue grants in the project/program areas outlined above.

- Prepare and disseminate an RFP to solicit potential consultants to pursue grants in the project/program areas outlined above.

- Do not retain a grant search consultant and focus on the completion of current project and pursue grants and loans in the normal course of business through organizational contacts, announcements and publications.

**Recommendation:** Consider retaining a Legislative representative. Conduct appropriate background and research.
GOVERNMENT AFFAIRS CONSULTING AGREEMENT

DATED: September 6, 2005

PARTIES: California Consulting, LLC, a California limited liability Client (hereinafter the “Consultant”); and City of Porterville (hereinafter the “Client”)

AGREEMENT:

The undersigned hereby agree to the following terms and conditions:

Section 1. Duties of Consultant. During the term of this Agreement, Consultant shall provide the Client with federal, state and local governmental affairs consulting and advice as is reasonably requested by the Client. It is understood and acknowledged by the parties that the value of the Consultant’s advice is not readily quantifiable, and that Consultant shall render advice upon request of the Client, in good faith, but shall not be obligated to spend any specific or pre-set amount of time in so doing. Consultant’s duties may include, but will not necessarily be limited to:

a. Offering Client general advice on matters involving federal, state and local governmental issues and affairs;

b. Communicating with key persons in the federal government, state agencies (non-Legislature), local government, community leaders, community organizations, and business persons to further the goals of Client; and,

c. Arranging and/or attending meetings on behalf of the Client and for the furtherance of the stated goals of the Client. Assisting client with issues, problems, and concerns that arise regarding state and federal agencies.

Section 2. Consulting Services Limitation. Notwithstanding any other provision of this Agreement, and pursuant to the requirements of California Government Code Section 87406, for a period of one year after Steven N. Samuelian leaves office as an assembly member of the California Legislature (the “Legislature”) representing the 29th District, Consultant shall not provide any advice, counsel, assistance, services or information or representation on behalf of and for the benefit of Client concerning the Legislature, or any committee or subcommittee thereof, or concerning any member, officer or employee thereof, for purposes of influencing legislative action. The limitation set forth in this Section shall not prevent Consultant from providing consulting services, counsel, assistance, information and representation to, on behalf of and for the benefit of Client concerning any other statewide or state level public agency.

Section 3. Time for Performance of Duties. Notwithstanding any other term or condition of this Agreement, Client specifically acknowledges that Consultant has other
clients and/or outside employment. Consultant shall have control over the time and manner of performing its duties described in Section 1, and shall make available such time as it, in its sole discretion, shall deem appropriate for the performance of its duties under this Agreement.

Section 4. **Term of the Agreement**: The effective date of this Agreement is September 6, 2005, and the agreement shall remain in effect until March 6, 2006 at which time it will expire.

Section 5. **Compensation**. Client shall pay Consultant $2,000 per month as compensation for Consultant’s federal, state and local government affairs consulting services. Client shall pay Consultant on the _1st_ day of each month, without the need for Consultant providing a written invoice. No amount of this compensation, in whole or in part, will be for lobbyist services as defined by Government Code 82039 unless Client has specifically requested Consultant to perform such services requiring Consultant to register Client as a “Lobbyist Employer” pursuant to Government Code sections 82039.5, and 86100 et seq.

Section 6. **Expenses**. The Client agrees to reimburse the Consultant for reasonable out of pocket expenses related to performing services on behalf of client. These reasonable out of pocket expenses shall be limited to mileage and parking expenses. Consultant shall provide Client with a receipt and description of the expense. Client shall reimburse Consultant within Thirty (30) calendar days of Consultant providing the receipt and description of services to Client.

Section 7. **Relationship**. Consultant shall perform its services hereunder as an independent contractor and not as an employee of the Client or an affiliate thereof. It is expressly understood and agreed to by the parties hereto that Consultant shall have no authority to act for, represent or bind the Client or any affiliate thereof in any manner, except as may be agreed to expressly by the Client in writing from time to time.

Section 8. **Confidentiality**. Except in the course of the performance of its duties hereunder, each party agrees that it shall not disclose any trade secrets, know-how, or other proprietary information not in the public domain learned as a result of this Agreement. Similarly, the parties agree that they shall not disclose or divulge this Agreement, or any of its terms or conditions to third parties, except as is necessary to perform the terms and conditions stated herein.

Section 9. **Indemnification**. The Client agrees to indemnify and hold harmless the Consultant, its members, officers, directors, employees and each person who controls Consultant or any of its affiliates from and against any losses, claims, damages, liabilities and expenses whatsoever (including reasonable costs of investigation or defending any action) to which they or any of them may become subject under any applicable law arising out of Consultant’s performance under this Agreement and will reimburse Consultant for all expenses (including counsel fees) as they are incurred. Consultant maintains liability insurance in the amount of one million dollars.

Section 10. **Assignment**. This Agreement shall not be assignable by either party; provided however, that Consultant shall have the discretion to allocate its duties hereunder to owners, affiliates, or employees of Consultant.

Section 11. **No Guaranteed Result**. Client acknowledges and agrees that Consultant does not have control over third party decision makers, and therefore Consultant
makes no representations, warranties or guarantees that it can achieve any particular results. Consultant, however, shall act in good faith toward the performance of its duties described above.

Section 12. Prior Agreements. There are no prior agreements between the parties, and this Agreement represents the sole and only agreement between them. This Agreement may only be modified by a writing signed by both parties.

Section 13. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of California and for all purposes shall be construed in accordance with the laws of said State.

Section 14. Attorneys Fees. The prevailing party in any action filed that arises out of this Agreement shall be entitled to recoup their reasonable attorneys fees and costs from the other party.

Section 15. Notices. All notices will be sent via certified mail or overnight courier such as Federal Express, to:

Consultant at: California Consulting, LLC
1530 East Shaw Ave., Suite 114
Fresno, CA. 93710

Client at: City of Porterville

Section 16. Termination. This Agreement may be terminated by either party for any reason not in violation of federal and/or California state law upon Thirty (30) days written notice to the other party. Client shall compensate Consultant for all services rendered prior to the date of termination. There shall be no liquidated damages in the event of termination under this provision.

IN WITNESS THEREOF, this Agreement is executed on the dates set forth below and effective on the date first set forth above.

"CONSULTANT"  
California Consulting, LLC  
(A California limited liability company)  

By: ___________________________  
Steven N. Samuelian, Manager

"CLIENT"

 Printed Name: ___________________
SUBJECT:   GOLF COURSE MANAGEMENT

SOURCE:   Parks and Leisure Services Department

COMMENT: The service of a Golf Pro has historically been utilized by the City of Porterville for operational management of the municipal golf course. The Golf Pro services include providing the staff, equipment, and furnishings necessary for course registration, pro shop services, food and beverage concession, clubhouse meeting and lounge activities, golf-handicap registration, tournament coordination, driving range operations, golf clinics, and course marshalling. Approximately 180 person hours per week are needed to effectively provide and manage these services at the customary level for the Porterville Golf Course. This entails the services not only of a certified Golf Pro, but also the Pro’s employment of four or more workers.

The Parks & Leisure Services Commission have recommended that the City Council retain the operating structure for the Golf Course, and authorize the recruitment of a new Golf Pro. This recommendation was arrived upon after study of other options for operational management of the course, as well as discussion on the possibility of closing the course.

The Commission also reviewed the provisions of the Golf Pro contracts with Dale Bartlett and with Arlie Morris. A copy of the former contract with Golf Pro Dale Bartlett is included with this report as Attachment 2. Included, as Attachment 3 is the contract with former Golf Pro Arlie Morris. Staff reviewed the provisions and provided the Commission with the following summary of the changes from the old contract to the recent Golf Pro contract.

- The recent Pro was required to obtain an ABC License at their sole expense for the sale of beer.
- The City now owns the golf carts, paying the recent operator 25% of the rental.
- The recent Pro was required to provide increased property damage insurance coverage of $100,000 versus the former $50,000 coverage.
- The recent Pro was required to provide $1,000,000 liquor liability insurance coverage.
- The recent Pro was required to maintain or replace the driving range screen and fencing.
- The recent Pro received 20% of locker rental, monthly/annual tickets, and green fees, versus the former 10% payment.
- The funds are now accounted through the City’s cash register, with the City maintaining the books.

[Signature]

Dir. Appropriated/Funded CM

ITEM NO.: 18
- The recent Pro was required to provide the City with a copy of his annual tax schedule C, Profit or Loss from Business.
- The recent Pro was subject to random alcohol and drug testing.

Dale Bartlett has been at the course since January 1997. The original contract provided for only 10% of the locker, monthly ticket and greens fees to be paid to the Pro, and stipulated that the Pro was to pay the City $700 per month as rent. The first two winters had severe weather, adverse to golf play. The monthly rental was discontinued in June 1998, and the percentage of green fees payable to the Pro was increased to the current level of 20% in May 1999.

Staff continues to recommend retaining the services of another Golf Pro as the most cost effective option available to the City for operating the course, while retaining the highest level of control over the course upkeep. Efforts should continue to economize on course upkeep, particularly with utility service costs. However, the cost of operations and management of the course has been increasing for the past few decades, while the revenue generated from fees has increased at a slower pace. The City has retained full control over the fee structure, and has not permitted the Golf Pro to offer promotions, discounts, or specials. Staff continues to believe that seasonal rates should be considered, and that monthly or annual passes should not be permitted to play without some limits.

Staff has not proposed a specific recruitment effort or proposed contract terms for a new Golf Pro. Prior to doing so, it will be necessary for the City Council to determine:

1. Should the municipal course remain open?
2. Should the course enterprise fund be retained?
3. Should recruitment of a new Golf Pro be undertaken?
4. Should the Golf Pro have more flexibility to make seasonal and day-of-the-week adjustments in control of tee time scheduling?
5. Should future golf fee analysis consider seasonal rates, limits on the use of monthly and annual passes, as well as City residency?

**RECOMMENDATION:** That the City Council direct staff to:
1. Keep the municipal golf course open, and
2. Retain the Course Enterprise Fund, and
3. Prepare and initiate a recruitment effort for a Golf Pro, and
4. Include provisions for the Golf Pro to utilize full discretion and authority in the scheduling of tee times to promote and broaden the opportunities for golf play, and
5. Include seasonal rates, limitations on monthly and annual pass use, and city residency as part of the next golf fee analysis.

**ATTACHMENTS:** Staff Report for the October 18, 2005 City Council Meeting
Golf Pro Contract with Dale Bartlett
Golf Pro Contract with Arlie Morris
SUBJECT: GOLF COURSE MANAGEMENT

SOURCE: Parks & Leisure Services Department

COMMENT: Golf Pro Dale Bartlett has provided notice of contract termination effective October 21, 2005. The City Council has previously considered the matter and directed the Parks & Leisure Services Commission to review the subject, and provide a recommendation to the Council on the subject of future golf course management. The Parks & Leisure Services Commission took action on September 29, 2005 approving a recommendation that the Council not alter the current management structure, and authorize the recruitment of a new Golf Pro. This recommendation was made after study of the golf course financial and management issues, and following public comments.

On the subject of the financial viability of the course, the Commission expressed a desire to evaluate possible golf fee increases as a part of a comprehensive fee analysis in the next few months. Attached to this report is a ten-year summary of reported revenue and expenditures for the golf course. The summary illustrates that the course revenues have increased over the ten-year period at an annual rate of 4.62%. During the same time period the cash expenditures for maintenance of the course have increased at an annual rate of 7.27%. The enterprise has thus been declining at an average rate of 2.65% per year.

With the lateness of the Commission’s recommendation arriving before the City Council it will be necessary for an interim management system to be implemented. Staff recommend arrangements be made for the acquisition by the City of the personal property of Dale Bartlett, which is currently located and utilized in the operational management of the course and clubhouse. An inventory of the equipment and furnishings has been obtained with a sale value provided by the Pro. Acquiring these furnishings will minimize disruption in the operation of the course, and the cost will likely become a part of the new Pro’s responsibility.

Dale Bartlett had originally intended to relocate out of the state in the November time frame. These plans have not fully evolved, and a firm departure date does not currently exist. Staff has discussed with Mr. Bartlett the necessary provisions for his continued management of the course during the time period required for the City to establish new management. Mr. Bartlett is not amenable to continuance under the previous contract arrangements. This is in view of the fact that he has provided notices canceling his insurances, has not replenished inventory, and will not have any certainty on duration of continued management.
## CITY OF PORTERVILLE
### GOLF COURSE
### TEN-YEAR REVENUES AND EXPENDITURES

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<th>Revenues</th>
<th>FY95-96</th>
<th>FY 96-97</th>
<th>FY 97-98</th>
<th>FY 98-99</th>
<th>FY 99-00</th>
<th>FY 00-01</th>
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<td>Total Revenues</td>
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### Expenditures

| Salaries & Benefits | 80,078.67     | 84,833.97     | 90,894.61     | 101,060.05    | 107,985.48    |               |               |               |               |               |                   |
| Maintenance         | 58,062.61     | 63,955.05     | 67,336.55     | 69,424.25     | 84,699.65     |               |               |               |               |               |                   |
| General Services    | 3,707.69      | 3,652.61      | 3,941.21      | 2,772.86      | 30,477.39     |               |               |               |               |               |                   |
| Professional Services | 62,834.56 | 59,979.41     | 60,207.00     | 55,204.25     | 58,899.40     |               |               |               |               |               |                   |
| Other Operating & Utilities | 49,593.34 | 55,611.39     | 51,500.68     | 55,262.63     | 52,829.17     |               |               |               |               |               |                   |
| Risk Management     | 8,114.00      | 8,114.00      | 8,114.00      | 8,114.00      | 8,114.00      |               |               |               |               |               |                   |
| Other Expenses      | 1,923.35      | 1,708.79      | 997.91        | 6,620.40      | 396.00        |               |               |               |               |               |                   |
| Depreciation        | 11,318.00     | 13,368.00     | 14,130.00     | 15,669.00     | 15,696.00     |               |               |               |               |               |                   |
| Total Expenditures  | 184,531.00    | 218,761.00    | 218,477.00    | 245,483.00    | 276,799.00    | 280,290.00    | 295,301.78    | 317,937.57    | 332,102.86    | 386,302.31    |                   |

### Net Paper Profit/(Loss)

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<th>(19,424.69)</th>
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### Net Cash Profit/(Loss)

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<td>-0.51%</td>
<td>12.46%</td>
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<td>1.54%</td>
<td>5.16%</td>
<td>1.89%</td>
<td>5.47%</td>
<td>14.65%</td>
<td>7.27%</td>
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PARKS AND LEISURE SERVICES COMMISSION
MINUTES
September 29, 2005

The special meeting of the Parks and Leisure Services Commission was called to order at 5:32 p.m. The Pledge of Allegiance was led by Director Perrine.

Roll Call:          Present:          Grace Munoz-Rios
                     Tom O’Sullivan
                     Maria Roman
                     Joe Ruiz
                     Greg Shelton

Absent:            George Luna, absent
                     John Hardin, excused absence

Ex Officio Member Absent: Hector Villicana

Scheduled Matters

1) Select an Acting Chairperson for September 29, 2005 meeting
   Director Perrine requested the Commission to appoint a member to chair the meeting in the absence of a Chairman. Commissioner Roman nominated Commissioner Joe Ruiz and Commissioner O’Sullivan seconded.

   Action: Motion passed unanimously

2) Golf Course Management
   Commissioner Ruiz requested public comments.

   Jerry Thompson, 23 W. Cricklewood Ct., native of Porterville, member and board member of Porterville Men’s Golf Association. Consensus of the PMGA is that the golf course is being unfairly subjected to enterprise standard when the rest of Parks & Leisure activities and facilities are not. Concerned that the true costs of the course be considered, not just assigned costs. All community recreation facilities should receive priority for the sake of mental health, physical health and that of our children.

   Ron Lamfear, 547 Kevin Ln., opposed to closing the golf course. He compared the amount of money used to refurbish the City Pool compared to the amount of revenue that is generated. The Airport without the Forest Service would be deserted and the Library only open four days per week. Spend some money on the golf course to attract more people and advertise the golf course.

   Tim Behrens, 857 N. Jaye St., resident and taxpayer of Porterville. Question: at what point did someone decide the golf course needed to make a profit to stay open? It’s a leisure service like any other leisure service in Porterville; it supports the senior citizens and the youth in Porterville. City Council raised the prices and promised to put $300,000 into it, nothing was done, we lost golfers. Suggestions: Hire a businessman to run the business. Decide whether it needs to make a profit or be like every other leisure service in Porterville - a service this city will provide to the citizens of Porterville.

   Lin Fricke, 471 W. Bellevue, resident for 50 years and also plays golf. Of the facilities, (airport, etc.) why is the golf course being singled out?
Fred Young, 26 Fairway Dr., neighbor to golf course. Speaking for the people that live in his cul-de-sac, would like to see the golf course remain open. It is as a positive entity for the community.

Don Bader, 555 Brandy Way. It would be a terrible mistake to close this golf course. The foundation is here, but it needs work.

Josh Kittrell, 1359 W. North Grand Ave. Submitted in writing information on the First Tee Program. Sees the golf course as a great asset.

Rocco Marrongelli, 2047 W. Nancy Ave. Golf course is the heart of the city. Why complain it’s not making a profit? It’s not supposed to. It’s there for the taxpayers. Why take the only thing we have?

David Adams, 1767 Terry Circle, support to keep the golf course open.

Edward Sizemore, 23918 Ave. 208, Lindsay. The golf course is a garbage mess compared to a real golf course that is taken care of. The golf course is just as important to senior citizens as the senior citizen’s center. If you want to sell something, you have to market it. Market the golf course.

Rick Idell, 22344 W. Harrison. Teach ethics on golf course. It gives the senior citizen’s hope. They can’t afford the gas to go out of town to golf.

Jim Waylock, 100 S. Westwood. Delano and Exeter both have 9 hole courses and are able to be open. The golf course is here for everyone’s enjoyment.

Dave Markman, 1441 W. Jean, resident since 1978, playing golf here since 1980. Plays golf for exercise. Would be sad to see it go.

David Hansen, 309 Mill. A pretty good turn out, but would it have been better if there had been a notice in the paper? Are we wasting our time or do we actually have some influence?

Tony Perez, 2356 W. Roby. begs the city to keep the golf course open. More and more young people are playing.

Kay Barber, 66 N. Park Dr., neighbor to the swimming pool / golf course. Congratulates the city on the great work they did on the pool. Supports the golf course.

Tiffany Ross (?), 8 S. Park Dr., Concerned about rumors regarding golf course and property values in the area. Concerned that developers will receive preferential treatment over the taxpaying citizens.

Tony Morales, 369 S. “H” St., born, raised in Porterville. Mr. Leggett gave the golf course to the city. He would roll over in his grave if you were going to sell out. The golf course isn’t hurting anyone. If you promote it correctly, you would get more out there to play. The golf course is not maintained. It would be a travesty if you were to sell out.

Cory Jones, 655 N. 3rd, new to golf. Supports the golf course. Golfs in evenings. All age groups use the course.
Fernando Martinez, 292 S. Plano, golfing for 40 years. Supports the golf course.

Tony Salazar, playing golf for 38 years. For some, this is the only golf course that is available. Provides exercise and friendship for senior citizens.

Dana Neece, 282 Memory Lane, member of the Men's Club. A realtor. There is a large influx of people coming into this area. Proud to boast about the recreation facilities that we have soccer, baseball, swimming pools and municipal golf course. Keep it open.

Commissioner Ruiz thanked the people for their comments and assured those who made comments that their concerns would be conveyed to the City Council who ultimately will make any decisions. Commissioner Ruiz asked that we take a five-minute break and reconvene at 6:30 p.m.

Director Perrine reviewed information prepared for the commission regarding financial conditions of the golf course.

Commissioner O'Sullivan inquired about the depreciation of the golf course.

Commissioner Shelton inquired about the golf course being enterprise.

There were additional discussion and additional public comments were received. Comments involved statements from Tim Behrens and Leonard Hogue regarding the support for raising the fees to assist with generating golf course income.

Commissioner O'Sullivan made a motion to advise the City Council that there is no need to change golf course management practice and to advertise for a new golf pro. Commissioner Roman second.

Action: Motion passed 4 to 0, with Commissioner Shelton abstaining

3) Elect Chairperson for the Commission

Commissioner Shelton made motion to delay electing a chairperson until October 6th meeting. Motion died for lack of second.

Commissioner O’Sullivan made motion to appoint Commissioner Ruiz as the Chairperson. Commissioner Shelton second.

Action: Motion passed unanimous

Meeting adjourned at 7:25 p.m.
Next meeting will be October 6, 2005.

Respectfully submitted,

Nancy Wuth
SERVICE AGREEMENT

DATE: October 18, 2005

PARTIES: City of Porterville, a California municipal corporation, hereinafter referred to as "CITY", and L. Dale Bartlett, hereinafter referred to as "CONSULTANT".

RECITALS:

CITY has undertaken a project on which it is seeking assistance from CONSULTANT. Said project which will hereinafter be referred to as "project" is described as follows:

Project Name & Description: Golf Pro Management and Operations of Municipal Golf Course, Clubhouse, and Driving Range

AGREEMENTS:

IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES: CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as described in Exhibit “A”, Scope of Services, in connection with the above-described project.

SECTION 2. PAYMENT: In consideration for said services and materials, CITY shall pay CONSULTANT at the fixed rate of two thousand dollars per week.
TIME OF PAYMENT: Payments shall be made on the 10th day and last day of each month for each full week of service completed prior to the stated payment dates. CONSULTANT shall submit payment requests at least five days prior to the stated payment dates.

SECTION 3. COMPLETION DATE: The services to be performed by CONSULTANT will be commenced on October 21, 2005, and shall continue on a week-to-week basis until one week after a new Golf Pro commences activities under separate Agreement with City.

SECTION 4. FAMILIARITY WITH PROJECT: CONSULTANT certifies and agrees that it is fully familiar with all of the details of the project required to perform its services. CONSULTANT agrees it will not rely upon any opinions and representations of CITY unless CITY is the only available source of said information.

SECTION 5. INDEPENDENT CONTRACTOR: It is expressly understood that CONSULTANT is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONSULTANT specifically warrants that it will have in full force and effect, valid insurance covering:

(i) Full liability under worker's compensation laws of the State of California; and

(ii) Bodily injury and property damage insurance in the amount not less than One Million Dollars ($1,000,000) per
occurrence; and

(iii) Products/completed operations hazard in the amount of One Million Dollars ($1,000,000) per occurrence; and

(iv) Damage to property in the amount of One Million Dollars ($1,000,000) per occurrence, with no deductible; and

(v) Liquor Liability in the amount of One Million Dollars ($1,000,000) per occurrence.

fully protecting CITY, its elected and appointed officers, employees, agents and assigns, against all claims, and any injuries to third parties, including employees of CITY and CONSULTANT, arising from the negligence of CONSULTANT. CONSULTANT agrees to indemnify, defend (at CITY’S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONSULTANT or any of its employees or agents.

SECTION 6. WORKMANSHIP AND MATERIALS: Every part of the work herein described shall be executed in a professional manner with competent, experienced personnel. Finished or unfinished material prepared under the agreement, prepared by CONSULTANT, shall become property of CITY. CONSULTANT hereby warrants that any materials prepared under this agreement shall be fit for the intended use
contemplated by the parties.

SECTION 7. ASSIGNMENT OF CONTRACT: It is acknowledged by the parties that CITY has entered into this contract with the express understanding that CONSULTANT will perform all work. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.

SECTION 8. AFFIRMATIVE ACTION. CONSULTANT will not discriminate against any employee, or applicant for employment because of race, color, religion, gender, marital status, or national origin.

SECTION 9. CONFLICT OF INTEREST CODE: CONSULTANT agrees to comply with the regulations of CITY’S “Conflict of Interest Code”. Said code is in accordance with the requirements of the Political Reform Act of 1974.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION: This contract may be terminated by either party for any reason by giving at least seven (7) days written notice to the other party. Upon termination by CITY, CITY shall be relieved of any
obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination. Upon termination City will acquire, either directly, or through separate Agreement with others will cause, the acquisition of CONSULTANT'S equipment and merchandise inventory located onsite. The equipment to be acquired and compensation to be paid will be as provided in Exhibit "B". Merchandise inventory shall be new and unused, and acquired at the CONSULTANT'S documented cost, with compensation limited to no more than $3,000 for pro shop merchandise and $1,000 for food service merchandise.

SECTION 11. ENTIRE CONTRACT: It is understood and agreed that this Service Agreement represents the entire Agreement between the parties. Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

SECTION 12. DISPUTES; VENUE: If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. CONSULTANT hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.
IN WITNESS WHEREOF, the parties have executed this Service Agreement on the date and year first above written.

CITY OF PORTERVILLE

By _____________________________
Kelly West, Mayor

Date ___________________________

CONSULTANT

By _____________________________
L. Dale Bartlett

Date ___________________________
EXHIBIT “A”
CONSULTANT GOLF PRO SERVICES OF L. DALE BARTLETT

- Services include those of Golf Pro, employment and management of course operations and clubhouse personnel, operations of the food and beer service concession, as well as pro shop operations.

- The Equipment Inventory shall remain the property of Dale Bartlett, and shall be maintained in good working order and condition, for his use as Golf Pro, until sold at the time of this Agreement termination.

- All course revenues are the property of the City, except food service sales, pro shop sales, and driving range proceeds.

- The Golf Pro is required to conduct golf clinics, at the same rates and schedule previously provided under separate Agreement.
# Exhibit B

**EQUIPMENT INVENTORY**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>QTY</th>
<th>PRICE</th>
<th>XTEND</th>
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<tr>
<td><strong>RESTAURANT EQUIPMENT</strong></td>
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</tr>
<tr>
<td>1 Coffee maker</td>
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<td>$250.00</td>
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</tr>
<tr>
<td>2 Grill</td>
<td>1</td>
<td>$600.00</td>
<td>$600.00</td>
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<tr>
<td>3 Ice machine</td>
<td>1</td>
<td>$2,500.00</td>
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<tr>
<td>4 Refrigerators &amp; Freezers</td>
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<tr>
<td>5 Dishes</td>
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<td>$200.00</td>
<td>$200.00</td>
</tr>
<tr>
<td>6 Microwave</td>
<td>1</td>
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<tr>
<td>7 Tables and Chairs</td>
<td>1</td>
<td>$500.00</td>
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<tr>
<td>8 Televisions</td>
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<td>$350.00</td>
<td>$350.00</td>
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<tr>
<td>9 Meat Slicer</td>
<td>1</td>
<td>$250.00</td>
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<tr>
<td>10 Hot Plates</td>
<td>1</td>
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<tr>
<td><strong>PRO SHOP EQUIPMENT</strong></td>
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<tr>
<td>11 P A System</td>
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<td>12 Door Buzzer</td>
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<td>13 Cash Registers</td>
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<td>14 Computer and Printer</td>
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<td>15 Desk</td>
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<td>16 Filing cabinet</td>
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<tr>
<td>18 Grip Storage</td>
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<td>19 Work Bench</td>
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<tr>
<td>20 Chop Saw</td>
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<tr>
<td>21 Ball Striper</td>
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<tr>
<td>22 misc equipment (air tank, tools, etc.)</td>
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<td>$200.00</td>
<td>$200.00</td>
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<tr>
<td>23 Rental Clubs</td>
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<td>$250.00</td>
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<td>24 Grips</td>
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<tr>
<td>25 Balls (used)</td>
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<tr>
<td>26 Balls (new)</td>
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<td>27 Shoes</td>
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<tr>
<td>28 Clubs (new)</td>
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<td>$0.00</td>
</tr>
<tr>
<td>29 Clubs (used)</td>
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<tr>
<td>30 Display equipment (slat wall, show cases)</td>
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<tr>
<td>31 merchandise</td>
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<tr>
<td>32 Pull Carts</td>
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<tr>
<td><strong>RANGE EQUIPMENT</strong></td>
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<tr>
<td>33 Picker Carts</td>
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<td>$1,000.00</td>
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<tr>
<td>34 Ball Washer</td>
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<td>$600.00</td>
<td>$600.00</td>
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<tr>
<td>35 Ball Dispenser</td>
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<td>$1,000.00</td>
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<tr>
<td>36 Air Compressor</td>
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<td>$150.00</td>
<td>$150.00</td>
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<tr>
<td>37 Sand trailer</td>
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<tr>
<td>38 Range Balls</td>
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<tr>
<td>39 Range Baskets</td>
<td>20</td>
<td>$3.00</td>
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</tr>
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**TOTALS**

$13,075.00
PORTERVILLE MUNICIPAL GOLF COURSE OPERATIONS

AGREEMENT

THIS AGREEMENT, entered into at Porterville, California, by and between the CITY OF PORTERVILLE, a Municipal Corporation of the State of California, hereinafter called "City," and L. DALE BARTLETT, hereinafter called "Operator."

RECITALS

Whereas, the City is the owner of a public golf course located within the City of Porterville and known generally as the Porterville Municipal Golf Course; and

Whereas, the City maintains said golf course for the purpose of making available to the general public the facilities thereon; and

Whereas, in the operation of said golf course, the City desires to make available public restaurant service, professional golfing instruction and other services related to golfing; and

Whereas, Operator desires to undertake and to perform the services set forth above and other services as hereinafter set forth; and

Whereas, throughout the term of this agreement Operator shall be an accredited Class “A” PGA professional, or apprentice (completion of GPTP Level I), in good standing.

NOW, THEREFORE, it is agreed between the parties hereto as follows:

1. The City grants to Operator, and Operator hereby accepts the exclusive right and obligation to undertake on the Porterville Municipal Golf Course, the following specified duties and uses only:

a. On site sale of food, soft drinks and beer (Operator is responsible for obtaining requisite ABC License at his or her sole cost and expense).

b. Sale of golf equipment and miscellaneous merchandise incidental to the game of golf.

c. Rental of City golf carts (City pays percentage to Operator), golf equipment and other equipment incidental to the game of golf.

d. Providing golfing services such as professional golf instructions and professional golf lessons, driving
range, conducting of tournaments and similar competitions.

All of the above specified uses hereby granted under the terms of this agreement shall be permitted, carried on and exercised at locations approved by the City Manager of the City of Porterville, or his designated representative, and at no other place or location than the Porterville Municipal Golf Course.

2. The term of this agreement shall be for five years commencing on February 19, 2002. As soon as practicable after the end of the fourth year of the term of this agreement, and provided that Operator is not in default, and provided further that the City Council of the City of Porterville is satisfied with Operator’s performance up to that time, Operator shall have the option to renew this agreement for an additional five (5) years, i.e., from January 1, 2007 to December 31, 2011; and upon notification of same by the parties shall forthwith commence negotiations for the renewal period.

3. Operator agrees to exercise all rights herein granted subject to, and in accordance with, the rules and regulations of the City Council of the City of Porterville that are now, or may hereafter be, in effect; and the City Manager, or his designated representative, shall provide supervisory control, direction and enforcement of such rules and regulations, and other terms and conditions of this agreement, on behalf of the City of Porterville. These rules and regulations will include, but are not limited to:

a. Enforce proper etiquette including allowing faster players to play through, leave green immediately when completing a hole, no spectators under the age of 12 years be permitted on the course, avoid practice swings which will damage the course, smooth holes and footprints left in sand traps, replace divots, repair damage to greens such as ball marks and spike marks and the movement of riding and/or pull carts. Operator, or his designee, agrees to physically marshall the course by inspecting play from golf cart.

b. Act as starter in conducting starting times, priority for groups and insuring that all players register prior to playing on the course.

4. At the end of the term of this Agreement, or at its earlier termination for any reason whatsoever, Operator agrees to deliver possession of any part of said Municipal Golf Course utilized by Operator, and to clean and restore said premises in a condition satisfactory to the City of Porterville.

5. Operator agrees that he or she will procure and maintain in force throughout the term of this Agreement an insurance policy or policies insuring Operator and the City against public liability and property damage in the following minimum amounts, to wit:
b. That the aforesaid hold harmless agreement in favor of City shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reasons of any of the acts of Operator regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

7. Operator further agrees as follows:

a. Not to assign or sublease this Agreement, or any part thereof, without the written consent of the City first had and obtained, which consent may be withheld by the City at its sole discretion, and the consent to one assignment or one subletting shall not be construed as a consent to any further assignment or subletting.

b. To pay the costs of janitorial services inside the clubhouse and locker room, and the cleaning of windows (inside and outside).

c. Not to violate, permit or suffer the violation of any law, regulation or ordinance of any political subdivision in effect at said premises.

d. To pay the cost of telephone services utilized by Operator at said premises.

e. To pay for water costs for irrigating training area of the golf course driving range, payable on a monthly basis; maintain range to include regular trash and ball pick up, and screen and fence replacement. The City will mow the driving range.

f. Operator shall rent city golf carts to the public. The Operator shall receive 25% of gross revenues for renting the carts. The City shall be responsible for major maintenance of the City owned golf carts. The Operator will be responsible for cleaning of the carts and minor preventative maintenance including checking oil, batteries, tires, general cart condition and reporting cart repair needs to appropriate maintenance staff.

8. Operator shall not commit, or suffer to be committed, any waste upon said premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of the neighborhood or citizens utilizing said golf course.

9. Operator warrants that he has inspected the premises and accepts them in their present condition and "as is". Operator may from time to time, at his own cost and expense, make alterations to the premises provided Operator obtains from the City written approval of said alterations and after obtaining any other permits or licenses as required by law.

10. In the exercise of this agreement, Operator will provide food, including, but not limited to, hot sandwich service and beverage service to the public during that period of time which coincides with the hours of golf play at said Municipal Golf Course. Operator may also
15. This Agreement with Operator is in consideration of the services that Operator shall perform as the professional-manager of the Porterville Municipal Golf Course. In the event said services by Operator are terminated, then this Agreement may, at the option of the City, be immediately terminated and canceled. In the event Operator breaches or fails to comply with any terms or conditions of this Agreement, then, at the option of the City, this agreement shall be immediately terminated, and Operator shall immediately surrender possession of any premises and/or rights herein granted.

16. With respect to the performance of the duties and obligations arising under this Agreement, it is mutually understood and agreed that Operator will be acting as an independent contractor. Nothing in this agreement is intended, nor shall be construed, to create a partnership, an employer/employee relationship, a joint venture relationship, or any other relationship between Operator and the City.

17. The Operator will annually transmit to the City an audit, prepared by a CPA, of all golf related revenues received by Operator, within 60 days after the close of each fiscal year during the term of this contract.

18. Alcohol and drug testing is a condition of approval for this agreement. The Operator shall submit to an alcohol and/or drug test conducted by the City Physician at the City’s expense. The Contractor shall submit immediately to an alcohol and/or drug screen test when requested by the City during the term of this Agreement. Refusing to provide a urine specimen as requested by the City Physician will result in the termination of the Agreement.

19. It is contemplated by the parties herein that from time to time there may be required of Operator additional duties not herein specifically set forth. In that event it is agreed that this Agreement shall be supplemented.

20. Except as otherwise herein set forth, the City agrees to provide services and materials to properly maintain the buildings and grounds of said Municipal Golf Course.

21. This Agreement shall be reviewed annually. Operator’s performance will also be evaluated yearly under the guidelines of the Professional Golf Association Performance Appraisal.

22. Notwithstanding any provision of this agreement to the contrary, this Agreement may be terminated by either party, with or without cause, by giving the other party ninety (90) days written notice of termination. Notice shall be given by personal delivery or first class mail, return receipt requested, addressed as follows:

CITY:

CITY OF PORTERVILLE

[Signature]
Gordon T. Woods, Mayor

ATTEST:

[Signature]
John Longley, City Clerk

Approved as to Form:

[Signature]
Thomas T. Watson, City Attorney

OPERATOR:

[Signature]
L. Dale Bartlett, PGA

S/agree/golf
PORTERVILLE MUNICIPAL GOLF COURSE

AGREEMENT

THIS AGREEMENT, entered into at Porterville, California, by and between the CITY OF PORTERVILLE, a Municipal Corporation of the State of California, hereinafter called "City" and ARLIE G. MORRIS, hereinafter called "Morris".

RECITALS

(a) Whereas, the City is the owner and operator of a public golf course located within the City of Porterville and known generally as the Porterville Municipal Golf Course; and

(b) Whereas, the City maintains said golf course for the purpose of making available to the general public the facilities thereon; and

(c) Whereas, in the operation of said golf course the City desires to make available to said public restaurant service, professional golfing instruction and other services related to golfing; and

(d) Whereas, Morris desires to undertake and to perform the services set forth in paragraph (c) above and other services as hereinafter set forth;

NOW, THEREFORE, it is agreed between the parties hereto as follows:

1. The City grants to Morris and Morris hereby accepts the exclusive right and obligation to undertake on the Porterville Municipal Golf Course the following specified duties and uses only:

   a. On site sale of food, soft drinks and beer.

   b. Sale of golf equipment and miscellaneous merchandise incidental to the game of golf.

   c. Rental of golf carts, golf equipment and other equipment incidental to the game of golf.

   d. Providing golfing services such as professional golf instructions and professional golf lessons and the conducting of tournaments and similar competitions.
All of the above specified uses hereby granted under the terms of this license shall be permitted, carried on and exercised at locations approved by the City Manager of the City of Porterville and at no other place or location than the Porterville Municipal Golf Course.

2. The term of this license shall be for three one (1) year terms commencing on January 1, 1994. The City will give sixty (60) days notice that it will not continue the agreement prior to the expiration of any one (1) year term. The initial term of this agreement shall be for a period of one (1) year commencing on the first day of January, 1994, and terminating on the thirty-first (31st) day of December, 1994. This agreement may be renewed, in the manner as hereinafter set forth, for one (1) year terms; however, in any event, any renewals shall not exceed two in number. Any renewals of this agreement shall be under the terms and conditions of this agreement, as may be amended from time to time by the parties hereto, with notice of renewal being subject to the following conditions:

a. The City shall have the right to prohibit any renewal of this agreement by giving Morris written notice of its intent not to renew the agreement no later than November 1 of the year during which this agreement is in effect, and including any renewals thereof. City's decision not to renew shall be final and need not be based upon cause of termination of the agreement.

b. If, by November 1 of any year during the term of this agreement, or any renewal thereof, the City has not exercised the right to terminate the agreement, Morris shall have the right to decline a renewal of this agreement by giving written notice of his election not to renew the agreement to the City of Porterville Director of Parks and Leisure Services no later than November 15 of any year during the term of this agreement, or any renewal thereof.

c. Should neither party provide notice of its election to choose not to renew this agreement and license, the agreement and license shall be automatically be renewed for a one (1) year period under the same terms and conditions as set forth herein and any amendments hereto.

3. Morris agrees to exercise all rights herein granted subject to and in accordance with the rules and regulations of the City Council of the City of Porterville that may now be or may hereafter be in effect and under the supervision of the Director of Parks and Leisure Services. These rules and regulations will include, but are not limited to:

a. Enforce proper etiquette including allowing faster players to play through, leave green immediately when completing a hole, no spectators under the age of 12 years be permitted on the course, avoid practice swings which will damage the course, smooth holes and footprints left in sand traps, replace divots, repair damage to greens such as ball marks and spike marks and the movement of riding
and/or pull carts. Morris, or his designee, agrees to physically marshall the
course by inspecting play from golf cart. If he chooses not to marshall the
course, he shall reimburse the City for the actual cost of providing a golf course
marshall.

b. Act as starter in conducting starting times, priority for groups and insuring that
all players register prior to playing on the course.

4. At the end of the term of his license or at its earlier termination for any reason
whatsoever, Morris agrees to deliver possession of any part of said Municipal Golf Course
utilized by Morris under the terms of this license and to clean and restore said premises in a
condition satisfactory to the City of Porterville.

5. Morris agrees that he will procure and maintain in force throughout the term of this
license an insurance policy or policies insuring Morris and the City against public liability and
property damage in the following minimum amounts, to wit:

a. Comprehensive form of commercial general liability, which shall be primary as
respects to the City of Porterville, with aggregate limits, not being reduced by
prior claims, and naming the city as an additional insured, in at least the
following amounts:

1. Bodily injury, including death to one or more persons, each occurrence:
   $1,000,000.00.

2. Products/completed operations hazard, each occurrence: $1,000,000.00.

3. Damage to property, each occurrence: $50,000.00.

b. Workers’ compensation insurance, conforming to all applicable statutory limits,
and covering all employees of Morris.

All insurance shall be carried with insurance companies having a Best rating of not less
that AVIL and licensed to do business in the State of California. A renewal policy shall be
procured not less than ten (10) days prior to the expiration of any such policy. The policies of
insurance as above provided or certificates of the insurers evidencing insurance carried on shall
be deposited with the City Clerk of the City immediately upon the execution of this agreement.
Should the required insurance coverage, for any reason whatsoever, be canceled, the insurer is
required to provide the City with thirty (30) days notice of such cancellation.

6. Morris hereby agrees to, and shall, hold the City, its elective and appointive boards,
oficers, agents and employees, harmless from any liability for damage, or claims for damage,
for personal injury, including death, as well as from claims for property damage which may
arise from Morris’s operations under this agreement, or by any one or more persons directly or
indirectly employed by, or acting as agent for, Morris. Morris agrees to, and shall, defend the City and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages causes, or alleged to have been caused, by reason of any of the aforesaid operations, provided as follows:

a. That the City does not, and shall not, waive any rights against Morris which it may have by reason of the aforesaid hold harmless agreement because of the acceptance by the City, or the deposit with the City by Morris, of any of the insurance policies or certificates of insurance described in this agreement; and

b. That the aforesaid hold harmless agreement in favor of City shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the acts of Morris regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

7. Morris further agrees as follows:

a. Not to assign or sublease this agreement or any part thereof without the written consent of the City first had and obtained, which consent may be withheld by the City at is sole discretion, and the consent to one assignment or one subletting shall not be construed as a consent to any further assignment or subletting.

b. To pay the costs of janitorial services inside the clubhouse and windows and locker room.

c. Not to violate or permit or suffer the violation of any law, regulation or ordinance of any political subdivision if effect at said premises.

d. To pay the cost of telephone services utilized by Morris at said premises.

e. To pay for water costs for irrigating the golf course driving range payable on a monthly basis.

8. Morris shall not commit, or suffer to be committed, any waste upon said premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of the neighborhood or citizens utilizing said golf course.

9. Morris warrants that he has inspected the premises and accepts them in their present condition and "as is". Morris may from time to time, at his own cost and expense, make alterations to the premises provided Morris obtains from the City written approval of said alterations and after obtaining any other permits or licenses as required by law.
10. In the exercise of this license Morris will provide food, including but not limited to hot sandwich service and beverage service, to the public during that period of time which coincides with the hours of golf play at said Municipal Golf Course. Morris may also provide said food and beverage service at other times in accordance with the regulations and approval of the City. In this regard Morris shall, at his sole cost, provide all necessary fixtures and equipment for the purpose of supplying said services.

11. Morris shall, under all regulations, including times when the Golf Course is required to be open to the public, now in effect or hereafter in effect within the City of Porterville and subject to the supervision of the City Manager of the City of Porterville or his designated representative, perform those duties required of the professional-manager of said Municipal Golf Course and, in the absence of Morris from the premises, provide a qualified starter at said Municipal Golf Course and shall further conduct himself at all times in a manner that shall reflect credit upon himself and upon the City of Porterville.

12. For the services of Morris as professional-manager of said golf course, the City agrees to pay to Morris as compensation the following:

Ten percent (10%) of all fees collected for lockers, tickets, green fees.

Morris is also entitled to three (3) complimentary monthly tickets.

Morris will be ineligible for vacation, sick leave or retirement benefits that may now or hereafter be available to employees of the City of Porterville. However, Morris will continue to receive the basic compensation as set forth above although Morris's absence from the premises may occur from time to time for reason of sickness or vacation. Notice of vacation absences shall be given in advance to the City Manager or his designee and shall be held at a reasonable time as determined by the City Manager or his designee. Said compensation provided for in this paragraph shall be paid to Morris by the city monthly on the basis of the revenue as set forth and received from the preceding month.

13. Prior to conducting any business as contemplated herein, and at all times during the term of this agreement, Morris shall secure a business license from the City of Porterville and provide proof of such license to the Director of Parks and Leisure Services for the City of Porterville.

14. Morris agrees that the golf course shall be open for use six (6) days a week, Tuesdays through Sundays, and shall further be opened every Monday that is declared to be a state and/or local holiday, except the course will not be open on the following holidays, whether falling on a Monday or otherwise: Veteran's Day, Thanksgiving Day, Christmas Day and New Year's Day.
15. This license is granted to Morris in connection with the services that Morris shall perform as the professional-manager of the Porterville Municipal Golf Course. In the event said services by Morris are terminated then this agreement may, at the option of the City, be immediately terminated and canceled. In the event Morris breaches or fails to comply with any terms or conditions of this agreement, then, at the option of the City, this license shall be immediately terminated and Morris shall immediately surrender possession of any premises and/or rights herein granted. In the event the City is required to bring suit to enforce any provision of this agreement then, and in that event, Morris agrees to pay to the City reasonable attorney's fees.

16. With respect to the performance of the duties and obligations arising under this agreement, it is mutually understood and agreed that Morris will be acting as an independent contractor. Nothing in this agreement is intended, nor shall be construed, to create a partnership, an employer/employee relationship, a joint venture relationship, or any other relationship between Morris and the City.

17. It is contemplated by the parties herein that from time to time there may be required of Morris additional duties not herein specifically set forth. In that event is agreed that this agreement shall be supplemented.

18. Except as otherwise herein set forth, the City agrees to provide services and materials to properly maintain the buildings and grounds of said Municipal Golf Course.

19. This Agreement shall be reviewed annually. Morris's performance will also be evaluated yearly under the guidelines of the Professional Golf Association Performance Appraisal.

20. Notwithstanding any provision of this agreement to the contrary this agreement may be terminated by either party, with or without cause, by giving the other party ninety (90) days written notice of termination. Notice shall be given by personal delivery or first class mail, return receipt requested, addressed as follows:

If to the City:

P.O. Box 432
Porterville, CA 93258
Attn: City Manager
With copies to:

Morgan L. Foley
McCormick, Kabot,
Michner and Foley
1220 West Main Street
Visalia, CA 93291

If to Morris:

Arlie G. Morris
431 West Garden Street
Porterville, CA 93257

With copies to:

Notwithstanding the foregoing either party may terminate this agreement for cause upon thirty (30) days written notice to the other party, in the manner set forth herein.

In the event this agreement is terminated prior to the conclusion of the term hereof, Morris shall be entitled to retain payments under this agreement and to receive (1) payment from the 10% from greens for the month in which this agreement is terminated.

21. Neither Morris nor any agent, servant, or employee of Morris shall willfully discriminate against any employee or patron of the Porterville Municipal Golf Course in any facilities related thereto, and all patrons of the facilities and current employees shall be treated equally without regard to their race, color, age, religion, ancestry, sex, national origin, local custom, habit, or sexual orientation. Violation by Morris of this paragraph of the State Fair Practice Acts shall be caused to terminate this agreement.

22. If any legal action, arbitration or other proceeding is brought in connection with this agreement, the prevailing parties shall be entitled to recover its actual attorney’s fees and costs, in addition to other costs incurred in such action, arbitration or proceeding, reimbursement of fees advance in the event of arbitration, and other relief to which it may be entitled.
IN WITNESS WHEREOF, the parties have caused this agreement to be executed at Porterville, California on December 7, 1993.

LICENSOR:

CITY OF PORTERVILLE

[Signature]

Daryl C. Nicholson, Mayor

ATTEST:

[Signature]

C.G. Buffaker, City Clerk

Approved as to Form:

[Signature]

Morgan L. Foley, City Attorney

LICENSEE:

[Signature]

Arlie G. Morris

:GolfAgre
SUBJECT: ADOPTION OF RESOLUTION EXPRESSING CONCERN ON RIVER FLOW AND RELEASE ISSUES

SOURCE: Administration

COMMENT: A member of the City Council has requested that this resolution be presented to the City Council for consideration of adoption at this meeting.

Recommendation: To be determined by Council.

Attachment: Draft Resolution
RESOLUTION NO. ___-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
EXPRESSING CONCERN ON RIVER FLOW AND RELEASE ISSUES RAISED BY
A RECENT U.S. DISTRICT COURT RULING AND REQUESTING THE
GOVERNOR’S ASSISTANCE IN HELPING PROTECT THE SAN JOAQUIN
VALLEY’S ECONOMIC WELL-BEING

WHEREAS, the City of Porterville is located within Tulare County, in the heart of a region along the
East Side of the San Joaquin Valley in Central California that depends largely upon supplies of water
from the Central Valley Project’s Friant Division to sustain many tens of thousands of acres of irrigated
farmland; and

WHEREAS, Friant water contributes indirectly to the groundwater supply utilized for municipal and
industrial purposes within the City of Porterville, its residents and businesses; and

WHEREAS, the Porterville Irrigation District, Tea Pot Dome Water District, Saucelito Irrigation District,
Lower Tule River Irrigation District, Lindmore Irrigation District and Lindsay-Strathmore Irrigation
District—all of which are Central Valley Project contractors of Friant Division water—are located within or
very near the Porterville area; and

WHEREAS, these Friant contractors and their water users, utilizing water supplies from the San Joaquin
River, contribute much of importance to the economic, social and cultural well-being of the City of Porterville
and the southern San Joaquin Valley of California; and

WHEREAS, some recent efforts to restore the San Joaquin River could be in conflict with the beneficial uses
of water utilized near the City of Porterville by contractors in the CVP’s Friant Division; and

WHEREAS, litigation against the United States Bureau of Reclamation currently being pursued by an
environmental coalition headed by the Natural Resources Defense Council (NRDC) has the potential to result
in court-ordered releases of water from Friant Dam for anadromous fishery restoration purposes that could
create drastic reductions in Friant Division water supply quantities and reliability that would inevitably lead
to severe negative socio-economic impacts on the City of Porterville, its residents and businesses, and the
entire San Joaquin Valley; and

WHEREAS, Arnold Schwarzenegger, Governor of the State of California, has recognized by Executive
Order that “the San Joaquin Valley is a region rich in resources and important to California’s heritage,
economy, environment and identity. It is one of the most productive agricultural regions in the world – home
to farmlands that feed the nation and the world.”

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Porterville publicly
acknowledges its concerns regarding threats to this region’s Central Valley Project water supply and concerns
that this fundamental foundation of the economic, social, cultural and environmental interests of Porterville
residents, may be damaged significantly by any such curtailments in water service; and

BE IT FURTHER RESOLVED, that the City Council of the City of Porterville does hereby declare its
support of the Friant Water Users Authority, Porterville Irrigation District, Tea Pot Dome Water District,
Saucelito Irrigation District, Lower Tule River Irrigation District, Lindmore Irrigation District, Lindsay-
Strathmore Irrigation District and other Friant Division contractors of CVP water as well as other agencies
and organizations, including the Valley Water Alliance, that are engaged in protecting the Friant Division water supplies used beneficially along the San Joaquin Valley’s East Side; and

BE IT FURTHER RESOLVED, that it is the position of the City of Porterville that the U.S. Bureau of Reclamation should be allowed to continue to operate the Friant Division of the Central Valley Project in a manner consistent with the historic commitments made by the federal government to the communities of the central and southern San Joaquin Valley to provide economical and reliable water supplies to agricultural, municipal and industrial water and power users and to achieve a reasonable balance among all competing interests for use of all water supplies; and

BE IT FURTHER RESOLVED, that it is the belief of the City of Porterville that no decisions should be made or implemented regarding San Joaquin River restoration, including a return of flows to certain sections of the river and attempts to revive a salmon fishery, until such time that adequate scientifically based and obtained information, data, findings and analysis exists and is available; and

BE IT FURTHER RESOLVED, that any actions related to San Joaquin River restoration should take into consideration the social, cultural and economic impact of modifying water supplies that people, businesses, industry, communities and agriculture have relied upon for more than 50 years; and

BE IT FURTHER RESOLVED, the City of Porterville does hereby respectfully request that Governor Schwarzenegger direct the California Partnership for the San Joaquin Valley, established by his Executive Order of June 25, 2005, to also recommend, as part of its San Joaquin Valley Strategic Action Proposal that is due on October 31, 2006, means of helping preserve and protect the heritage, economy, environment and identity of the City of Porterville and the central and southern San Joaquin Valley that is currently threatened by possible reductions in water supply from the Friant Division of the Central Valley Project; and

BE IT FURTHER RESOLVED, that the City of Porterville further respectfully requests that Governor Schwarzenegger direct the Resources Secretary to utilize the fishery expertise of the California Department of Fish and Game and all other appropriate State of California agencies in pursuing scientific investigation and economic analysis while evaluating the practicality and feasibility of San Joaquin River fishery restoration alternatives, including but not limited to anadromous fish species, consistent with enhancing the economic and social interests of this City and the San Joaquin Valley.

ADOPTED this _____ day of November, 2005.

_________________________________________
Kelly West, Mayor

ATTEST:

John Longley, City Clerk

_________________________________________
By: Georgia Hawley, Chief Deputy City Clerk
COUNCIL AGENDA - NOVEMBER 1, 2005

SUBJECT:  CANCELLATION OF JANUARY 3, 2006 COUNCIL MEETING

SOURCE:  Administration

COMMENT:  Due to State budgetary activity, increased staff workloads, effects of the hiring freeze, and efforts to conform to the vacation and administrative leave policy by Directors and key personnel, the City Council has cancelled the first Council meeting in January for the past two years. As the January 3, 2006 regularly scheduled Council meeting falls immediately after the Holiday season, this item is being presented should Council wish to consider canceling the January 3, 2006 Council Meeting. This would allow the staff and City Council to focus on current Legislative aspects pertaining to the budget. Action would need to be taken at this meeting regarding the January 3 meeting in order to allow for notification of interested parties.

If the January 3 meeting is not held, the next regularly scheduled meeting would be January 17, 2006. However, should a necessity arise, a special meeting could be conducted to expedite any item which might require immediate action.

RECOMMENDATION:  To be determined by City Council.

Item No. 20

Approp./Funded  Acting CM
SUBJECT: ASSEMBLYMEMBER MAZE REQUEST FOR LEGISLATIVE REMEDIES NECESSARY FOR THE CITY OF PORTERVILLE

SOURCE: Administrative Services

COMMENT: The City Manager is in receipt of a letter dated October 11, 2005 from the office of Assemblymember Bill Maze. This letter is Assemblymember Maze’s annual request for legislative ideas and recommendations.

The time line to allow for the development of legislation necessitates the delivery of legislative ideas and recommendations by December 1, 2005. This item is for information purposes. Ideas generated in the next two weeks can be compiled for discussion at the Council Meeting of November 15, 2005.

RECOMMENDATION: Information Only.

ATTACHMENT: Letter from Assemblmember Bill Maze.
October 11, 2005

John Longley
City Manager
City of Porterville
291 N. Main Street
Porterville, CA 93257

Dear John,

The Legislature has adjourned until January 2006. During the fall interim, I once again turn to the local representatives in Assembly District 34 for their legislative priorities, ideas and needs.

As the representative for the City of Porterville, I am interested in learning if there are any legislative remedies necessary for the City of Porterville. If you require legislation for a particular situation, or have a legislative idea that would benefit the cities and counties of Assembly District 34, I am most interested in hearing from you.

Please contact my Capitol Office with any information that would be helpful regarding your legislative need or idea. Any background or substantiating statistics or evidence of the need is always tremendously helpful in drafting legislation.

Before I meet my bill limit, I want to be quite sure that I have met the needs of my district. If you would kindly respond to this query as soon as possible, I would sincerely appreciate it. There are many requests to introduce legislation; obviously requests from my district must receive top priority and first consideration. To do this, I must be in receipt of your requests by early December.

While I cannot guarantee that I can introduce every piece of legislation that I am presented with, I want to assure you that the cities and counties I represent will once again be given top priority.

I look forward to hearing from you. It is an honor to represent you in the California State Assembly.

Sincerely,

BILL MAZE
Assemblyman, 34th District
COUNCIL AGENDA: NOVEMBER 1, 2005

SUBJECT: CONSIDERATION OF TWO HOUR PARKING ALONG THURMAN AVENUE

SOURCE: Public Works Department - Engineering Division

COMMENT: Staff was asked by a member of the Council to consider placing a two hour parking time limit along Thurman Avenue from Main Street to 2nd Street. Staff's analysis concludes that placing a two hour parking time limit on this specific street is not warranted. Chief among the reasons for this conclusion is the fact that there is a 60 stall public parking lot adjacent to the area in question. Therefore, parking is available to area patrons when curbside parking is full.

Staff has received requests, from time to time, asking that other streets in the downtown area revert to limited time parking. Staff has also heard from downtown patrons that placing limited time parking on any of the streets will be detrimental to the vitality of downtown. It is staff's opinion that marking one street for limited time parking is not appropriate without considering the entire downtown area and the opinion of the downtown merchants.

Further, limited parking time is only effective if police resources are available to enforce this restriction on a daily and consistent manner. In speaking with the Police Department, action on this matter would be on a "by complaint" basis and would be considered a low priority.

RECOMMENDATION: That City Council take no action on this matter at this time.
COUNCIL AGENDA: NOVEMBER 1, 2005

SUBJECT: AUTHORIZATION TO PREPARE AND EXECUTE DOCUMENTS RELATED TO THE REFUNDING OF CERTIFICATES OF PARTICIPATION

SOURCE: Administrative Services

COMMENT: The City Council has directed staff to move forward with the preparation of documents necessary to facilitate the refinancing of the 1998 Street Improvement Certificates of Participation. The attached resolution is the next step in completing this process.

The attached resolution will allow for the preparation, circulation, and execution of the documents necessary to complete this financial transaction. The documents to be prepared include the lease agreement between the City of Porterville and the Porterville Public Finance Authority, and the preliminary official statement (POS).

The key element in this refinancing is that the annual debt service payments from the General Fund remain unchanged. This requirement is highlighted in Section 2 (b) of the resolution and will hold true as a mandate in this transaction. The variables in the transaction are interest rates and cash out for future projects. Through the course of this transaction, as interest rates may move slightly up or down, the amount of cash out will inversely be adjusted, with no change in annual debt service. Once the refinance if funded, all interest rates will be locked in for the life of the issuance.

Since the refinancing is a two-party transaction, a similar resolution has been prepared for the board of the Porterville Public Finance Authority for its consideration.

RECOMMENDATION: That the City Council adopt the attached resolution authorizing the preparation, circulation, and execution of the documents related to the COP refinance.

ATTACHMENT: Resolution.

Dir. Appro./ Funded CM

Item No. 23
CITY OF PORTERVILLE

RESOLUTION NO. ___

RESOLUTION AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF CERTAIN LEASE FINANCING DOCUMENTS (CERTIFICATES OF PARTICIPATION—2005 INFRASTRUCTURE FINANCING PROJECT), AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

WHEREAS, the City of Porterville, California (the "City"), working together with the Porterville Public Financing Authority (the "Authority"), proposes to finance and refinance various public infrastructure improvements on real property within and without the boundaries of the City, including the refunding of the outstanding Certificates of Participation (1998 Infrastructure Financing Project) (the "1998 Certificates"), and it is in the public interest and for the public benefit that the City authorize and direct execution of a lease agreement and certain other financing documents in connection therewith;

WHEREAS, a preliminary official statement containing information material to the offering and sale of the Certificates described below (the "Preliminary Official Statement") has been prepared on behalf of the City; and

WHEREAS, the documents below specified shall be filed with the City and the members of the City Council (the "Council"), with the aid of its staff, shall review said documents;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville that:

Section 1. Certificates of Participation (2005 Infrastructure Financing Project) (the "Certificates") are hereby authorized to be executed and delivered pursuant to the provisions of the Trust Agreement, as hereinafter defined.

Section 2. The below-enumerated documents, substantially in the forms on file with the City Clerk, be and are hereby approved, and the Mayor, the City Manager, the Deputy City Manager or the Director of Finance, or the designee of any such official, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, the approval of such changes to be conclusively evidenced by the execution and delivery by such official of such documents, and the City Clerk is hereby authorized and directed to attest to such official’s signature:

(a) a lease and right of entry agreement, between the City, as lessor and grantor, and the Authority, as lessee and grantee, pursuant to which the City will lease, or grant a right of entry, to the Authority of various arterial streets located in the City or, if required in connection with the procurement of municipal bond insurance for the Certificates, other unencumbered assets of the City (the "Property");
(b) a lease agreement, by and between the Authority, as lessor, and the City, as lessee (the "Lease Agreement"), pursuant to which the Authority will lease the Property back to the City, so long as the maximum annual lease payments to be paid by the city under the Lease Agreement does not exceed $1,300,000 and so long as the term of the Lease Agreement does not exceed 31 years;

(c) a trust agreement, by and among the Authority, the City and U.S. Bank National Association as trustee (the "Trust Agreement"), relating to the financing, and the execution and delivery of the Certificates; and

(d) an escrow deposit and trust agreement, by and between the City and U.S. Bank National Association as escrow bank, relating to the financing, and the execution and delivery of the Certificates.

Section 3. A purchase agreement, by and between Wulff, Hansen & Co. (the "Underwriter") and the City, relating to the purchase by the Underwriter of the Certificates (the "Purchase Agreement"), substantially in the form on file with the City Clerk, be and is hereby approved, and the Mayor, the City Manager, the Deputy City Manager or the Director of Finance, or the designee of any such official, is hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by such official, the approval of such changes to be conclusively evidenced by the execution and delivery by such official of the Purchase Agreement, so long as the Underwriter’s discount does not exceed 2% of the principal amount of the Certificates, exclusive of any original issue discount which does not represent compensation to the Underwriter.

Section 4. The Preliminary Official Statement describing the financing, substantially in the form on file with the City Clerk, with such changes, insertions and omissions as may be approved by the Mayor, the City Manager, the Deputy City Manager or the Director of Finance, or the designee of any such official, is hereby approved. The Council authorizes and directs the Mayor, the City Manager, the Deputy City Manager or the Director of Finance, or the designee of any such official, on behalf of the City, to deem “final” pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the “Rule”) the Preliminary Official Statement prior to its distribution by the Underwriter.

Section 5. The Mayor, the City Manager, the Deputy City Manager, the Director of Finance, or the designee of any such official, is authorized and directed to cause the Preliminary Official Statement to be brought into the form of a final official statement (the "Final Official Statement") and to execute said Final Official Statement, dated as of the date of the sale of the Certificates, and a statement that the facts contained in the Final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Certificates, true and correct in all material respects and that the Final Official Statement did not, on the date of sale of the Certificates, and does not, as of the date of delivery of the Certificates, contain any untrue statement of a material fact with respect to the City or omit to state material facts with respect to the City required to be stated where necessary to make any statement made therein not misleading in light of the circumstances under which it was made. The Mayor, the City Manager, the Deputy City Manager or the Director of Finance, or the designee of any such official, shall take such further actions prior to the signing of the Final Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the Final Official Statement, which shall include such changes and additions thereto deemed advisable by the Mayor, the City Manager, the Deputy City Manager or the Director of Finance, or the designee of any such official, and such information permitted to be excluded from the Preliminary Official Statement pursuant to
the Rule, shall be conclusive evidence of the approval of the Final Official Statement by the City.

Section 6. The Final Official Statement, when prepared, is approved for distribution in connection with the offering and sale of the Certificates.

Section 7. The Mayor, the City Manager, the Deputy City Manager, the Director of Finance, the City Clerk and all other appropriate officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the financing herein authorized.

Section 8. This Resolution shall take effect from and after the date of its passage and adoption.

*****

I, the undersigned City Clerk of the City of Porterville, hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the City Council of the City of Porterville at a meeting thereof on the 1st day of November, 2005, by the following vote of the members thereof:

AYES:

NOES:

ABSTAIN:

ABSENT:

__________________________________________
City Clerk
PORTERVILLE REDEVELOPMENT AGENCY AGENDA

PUBLIC HEARING

SUBJECT: SALE OF PROPERTY LOCATED IN PROJECT AREA #1

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: During the March 4, 2003 City Council meeting, Council approved the demolition of all structures on the parcel located at 296 N. Main Street and a portion of the site to be developed into a park or a plaza. On June 17, 2003, the City Council authorized Staff to negotiate the sale of the northerly one-third of the property located at 296 N. Main Street. Since that time, Staff has been negotiating with Ennis Commercial Properties, LLC (the “Developer”) for the sale of the property and the proposed development of the site.

To facilitate negotiations with the Developer, the City will sell the property to the Redevelopment Agency with the understanding that the Agency’s negotiations with the Developer are to include a Disposition and Development Agreement (DDA) which would provide for certain physical elements of the development in keeping with the historic characteristics of downtown and being sensitive to the adjacent park. The Developer has indicated that the project would include retail space fronting Main Street at the ground level and office space on a second story. The concept would be compatible with the Redevelopment Strategic Plan.

The DDA with the Developer specifies the following terms and conditions:

- Developer will pay a purchase price of $110,000 for the approximately 8,800 square foot parcel located at the southeast corner of Main Street and Thurman Avenue. The purchase price shall be paid through a deposit of $95,000 into the Escrow and a deposit into Escrow of a Promissory Note for the remaining $15,000. The Promissory note shall bear interest at an annual rate of 6.75%, which is equal to the Bank Prime Loan rate as reported in the Federal Reserve Statistical Release dated September 30, 2005.

- Design of the building shall be compatible with the historic buildings in the area and shall be complementary to Centennial Park.
- Design of exterior architectural design, colors, materials, outdoor seating, and signage shall be based upon the Redevelopment Design Guidelines.

- Developer agrees that the first floor of the building design shall incorporate a restaurant/coffee shop with outdoor seating in the plaza oriented toward Centennial Park.

- City agrees that a loading zone will be located on Thurman Avenue, on the north side of the building, for tenants’ use. Any change in location of the loading zone shall be subject to the approval of the Community Development Director, which will not be unreasonably withheld.

A copy of the Disposition and Development Agreement is on file in the Community Development Department.

RECOMMENDATION: That the Porterville Redevelopment Agency approve the sale of the approximately 8,800 square foot parcel located at the southeast corner of Main Street and Thurman Avenue and authorize the Chair to sign all necessary documents to complete the transaction.

Attachments: 1) Resolution
2) Public Report
RESOLUTION ______

A RESOLUTION OF THE PORTERVILLE REDEVELOPMENT AGENCY
AUTHORIZING THE SALE OF PROPERTY TO
ENNIS COMMERCIAL PROPERTIES, LLC

WHEREAS, the Porterville Redevelopment Agency ("Agency") is a community
redevelopment agency organized and existing under the Community Redevelopment
Law, Health, and Safety Code 33000 et seq.; and

WHEREAS, the City Council of the City of Porterville has approved a
Redevelopment Plan for the Porterville Redevelopment Project; and

WHEREAS, one of the goals of the Redevelopment Plan is to eliminate the
blighting influence of underutilized or vacant lots; and

WHEREAS, Agency proposes to enter into a Disposition and Development
Agreement for the sale of the approximately 8,800 square feet of real property located at
the southeast corner of Main Street and Thurman Avenue; and,

WHEREAS, a Public Report has been prepared pursuant to Section 33431 of the
California Health and Safety Code describing the proposed transaction, and has been
available to the public for a minimum two-week period; and,

WHEREAS, the Agency has made the following findings with regard to the
project:

1) The sale of the property is based on the fair market value of the parcel as
determined by an independent appraisal.

2) The proposed development will eliminate the blighting influence of
underutilized or vacant lots.

3) The project is consistent with the Porterville Redevelopment Plan and
Implementation Plan for the Porterville Redevelopment Agency.

NOW THEREFORE, THE PORTERVILLE REDEVELOPMENT AGENCY
DOES RESOLVE AS FOLLOWS:

1) The Agency finds and determines that the development is of benefit to the
Porterville Redevelopment Project.

2) The Agency finds and determines that the development will assist in the
elimination of the blighting influence of underutilized or vacant lots.
3) The Agency approves the sale of property owned by the Agency that is located at the southeast corner of Main Street and Thurman Avenue in the City of Porterville pursuant to the terms and conditions of the Disposition and Development Agreement.

Passed, approved, and adopted this 1st day of November 2005.

AYES:

NOES:

ABSTAIN:

ABSENT:

__________________________________________
Kelly West, Chair

ATTEST: ____________________________________
John Longley, Secretary
PUBLIC REPORT
PORTERVILLE REDEVELOPMENT AGENCY

DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement")
ENNIS COMMERCIAL PROPERTIES, LLC ("Buyer")

The Porterville Redevelopment Agency desires to provide for the redevelopment of approximately 8,800 square feet of real property located at the southeast corner of Main Street and Thurman Avenue in the City of Porterville. The proposal before the Porterville Redevelopment Agency is the conveyance of said parcel to the Buyer pursuant under the terms and conditions of the Disposition and Development Agreement.

California Redevelopment Law permits a redevelopment agency to enter into an Agreement in order to set forth the terms and conditions relating to the Agency’s sale of the Site to the Developer, and the Developer’s development and operation of said site. The Developer’s acquisition of the Site and the development and operation of the Improvements thereon, and conveyance of an operating covenant to the Agency, as provided for in the Agreement, is in the vital and best interest of the City and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws. This report includes the following information regarding the proposed sale:

1. A copy of the proposed sale or lease.

2. A summary of the agreement which describes any costs to be borne by the Agency and the estimated value of any land to be conveyed, determined at the highest and best use permitted under the Redevelopment Plan and with consideration for the restrictions and conditions contained in the Agreement.

3. An explanation of why the sale is necessary and how it will assist in the elimination of blight as identified in the Porterville Redevelopment Plan.

This report fulfills those requirements.

Proposed Sale, Lease or Agreement

A copy of the proposed agreement is available for review in the Community Development Department, located at City Hall, 291 N. Main Street, Porterville, California.
Summary of Agreement

The financial terms of the agreement include a stipulated price for the acquisition of the site and the development of a commercial/professional office complex on the Site. General terms and conditions of the Agreement are as follows:

1. Buyer agrees to acquire the site and pay to the Agency a sum of $110,000 for the approximately 8,800 square foot parcel located at the southeast corner of Main Street and Thurman Avenue, Porterville, California. The value was established by the November 18, 2004 appraisal prepared by Dennis Schneider, MAI, SRA ("Schneider Appraisal") on the following terms and conditions:

   a. Section 201 of the Agreement specifies that the Developer shall pay the purchase price through the deposit of $95,000 into the Escrow and the deposit into the Escrow of a promissory note for the remaining $15,000. The Agreement further states that the Promissory Note shall bear interest at an annual rate of 6.75%, which is equal to the Bank Prime Loan rate as reported in the Federal Reserve Statistical Release dated September 30, 2005.

   b. Section 301.1 of the Agreement establishes the Development Conditions of the site to include the design shall be compatible with the historic buildings in the area and to be complementary to Centennial Park. The design of the buildings shall be based upon the Redevelopment Design Guidelines. The first floor of the building design shall incorporate a restaurant/coffee shop with outdoor seating in the plaza oriented toward Centennial Park. A loading zone shall be located in Thurman Avenue, on the north side of the building, for tenants' use.

2. The Agency will purchase said site from the City for a sum of $110,000.

Fair Market Value or Fair Reuse Value (33433 (b)(1)-(2)

An appraisal was prepared for the project on November 18, 2004 by Dennis Schneider, MAI, SRA, and is incorporated herein by this reference. The appraisal determined the fair market value for the parcel to be $110,000, without any special restrictions, based on comparable sales in the region, normal marketing times, and bulk sales discounts normally associated with such projects. The appraised value was therefore estimated to be the "fair market value" within the meaning of Section 33433 (b)(1). No special provisions have been placed on the development of the project.
Conformity with Implementation Plan (33433(h))

The project is contained in the Implementation Plan for the Porterville Redevelopment Agency and is therefore in conformance with that plan, as required by redevelopment law.

Agency Findings

Agency staff has reviewed the request and has made the following findings:

1. The sale of the property is based on the fair market value of the parcel as determined by an independent appraisal.

2. The proposed development will eliminate the blighting influence of underutilized or vacant lots.

3. The project is consistent with the Porterville Redevelopment Plan and Implementation Plan for the Porterville Redevelopment Agency.
AUTHORITY AGENDA: NOVEMBER 1, 2005

SUBJECT: AUTHORIZATION TO PREPARE AND EXECUTE DOCUMENTS RELATED TO THE REFUNDING OF CERTIFICATES OF PARTICIPATION

SOURCE: Administrative Services

COMMENT: The City Council has directed staff to move forward with the preparation of documents necessary to facilitate the refinancing of the 1998 Street Improvement Certificates of Participation. The attached resolution is the next step in completing this process.

The attached resolution will allow for the preparation, circulation, and execution of the documents necessary to complete this financial transaction. The documents to be prepared include the lease agreement between the City of Porterville and the Porterville Public Finance Authority, and the preliminary official statement (POS).

The key element in this refinancing is that the annual debt service payments from the General Fund remain unchanged. The variables in the transaction are interest rates and cash out for future projects. Through the course of this transaction, as interest rates may move slightly up or down, the amount of cash out will inversely be adjusted, with no change in annual debt service. Once the refinance if funded, all interest rates will be locked in for the life of the issuance.

Since the refinancing is a two-party transaction, a similar resolution has been prepared for the City Council for its consideration.

RECOMMENDATION: That the Porterville Public Finance Authority Board adopt the attached resolution authorizing the preparation, circulation, and execution of the documents related to the COP refinance.

ATTACHMENT: Resolution.
PORTERVILLE PUBLIC FINANCING AUTHORITY

RESOLUTION NO. ___

RESOLUTION APPROVING, AUTHORIZING AND DIRECTING
PREPARATION AND EXECUTION OF CERTAIN LEASE FINANCING
DOCUMENTS (CERTIFICATES OF PARTICIPATION—2005
INFRASTRUCTURE FINANCING PROJECT) AND AUTHORIZING AND
DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

WHEREAS, the City of Porterville, California (the “City”), working together with the Porterville Public Financing Authority (the “Authority”), proposes to finance and refinance various public infrastructure improvements on real property within and without the boundaries of the City, including the refunding of the outstanding Certificates of Participation (1998 Infrastructure Financing Project), and it is in the public interest and for the public benefit that the Authority authorize and direct execution of a lease agreement and certain other financing documents in connection therewith; and

WHEREAS, the documents below specified shall be filed with the Authority and the members of the Board of Directors of the Authority (the “Board”), with the aid of its staff, shall review said documents.

NOW, THEREFORE, BE IT RESOLVED by the Porterville Public Financing Authority that:

Section 1. The below-enumerated documents, substantially in the forms on file with the Secretary, be and are hereby approved, and the Chairman, the Executive Director or the Treasurer, or the designee of any such official, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, the approval of such changes to be conclusively evidenced by the execution and delivery by such official of such documents, and the Secretary is hereby authorized and directed to attest to such official’s signature:

(a) a lease and right of entry agreement, between the City, as lessor and grantor, and the Authority, as lessee and grantee, pursuant to which the City will lease, or grant a right of entry, to the Authority of various arterial streets located in the City or, if required in connection with the procurement of municipal bond insurance for the Certificates, other unencumbered assets of the City (the “Property”);

(b) a lease agreement, between the Authority, as lessor, and the City, as lessee, pursuant to which the Authority will lease the Property back to the City (the “Lease Agreement”);

(c) an assignment agreement, by and between the Authority and U.S. Bank National Association, as trustee (the “Trustee”), pursuant to which the Authority will assign certain of its rights under the Lease Agreement, including its right to receive lease payments thereunder, to the Trustee; and

(d) a trust agreement, by and among the Authority, the City and the Trustee, relating to the financing and the execution and delivery of certificates of participation evidencing the direct, undivided fractional interests of the owners thereof in lease payments to be made by the City under the Lease Agreement.
Section 2. The Chairman, the Executive Director, the Treasurer, the Secretary and other officials of the Authority are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the lease financing herein authorized.

Section 3. This Resolution shall take effect from and after the date of its passage and adoption.

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I, the undersigned Secretary of the Porterville Public Financing Authority, hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Directors of the Porterville Public Financing Authority at a meeting thereof on the 1st day of November, 2005, by the following vote of the members thereof:

AYES:

NOES:

ABSTAIN:

ABSENT:

________________________________________
Secretary